REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE/ORIGINAL JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No.8850 OF 2015

Election Commission of India ... Petitioner

Versus

Bajrang Bahadur Singh & Others ... Respondents

WITH

TRANSFERRED CASE NO.60 OF 2015

Bajrang Bahadur Singh ... Petitioner

Versus

His Excellency, the Governor of U.P.
& Others ... Respondents

J U D G M E N T

Chelameswar, J.

1. One Bajrang Bahadur Singh respondent no. 1 in SLP(C) No. 8850/2015 and the petitioner in Transferred Case No. 60/2015 (hereinafter being referred to as the petitioner for the sake of convenience) contested in the general elections

held in the year 2012 to the UP Legislative Assembly from 315 Pharenda Assembly Constituency. On 6.3.2012, he was declared elected.

2. On 29.1.2015, the Governor of Uttar Pradesh made a declaration in exercise of the authority conferred under Article 192 of the Constitution of India that the petitioner incurred the disqualification stipulated under Section 9A of the Representation of the People Act, 1951 (hereinafter referred to as "the R.P. Act"). Such a declaration came to be made on an undisputed finding of fact that the petitioner entered into four contracts (hereinafter referred to as the CULPRIT CONTRACTS for the sake of convenience) with the State of U.P. sometime in the year 2013 after his election to the Legislative Assembly and performed his obligations arising under the said contracts.

The Governor made the following order on 29.01.2015:

> Therefore, I, Ram Naik, Governor, Uttar Pradesh, upon exercising the powers under Article 192(1) of the Constitution of India hereby declare that Shri Uma Shankar Singh from 06.03.2012 and Shri Bajrang Bahadur Singh from 15.10.2012 have become disqualified from the membership of Uttar Pradesh Legislative Assembly.
>
> (Original in Hindi, translated by Court staff)

3. As a consequence of the above-mentioned decision of

the Governor, a notification came to be issued by the Secretariat of the Legislative Assembly on 17.2.2015 stating that a seat occupied by the petitioner representing 315 Pharenda Assembly Constituency fell vacant. On 10.3.2015, the Election Commission of India (hereinafter referred to as "COMMISSION" for the sake of convenience) issued a press note by which the election schedule for filling up 7 casual vacancies in 7 different Assembly constituencies in four different States was announced, one of them being 315 Pharenda Assembly Constituency.

4. On 13.3.2015, the petitioner filed a writ petition challenging the decision of the Governor dated 29.01.2015 and sought various reliefs. On 17.3.2015, a notification under Section 150(1) of the R.P. Act came to be issued by COMMISSION notifying, inter alia, the election to fill up 315 Pharenda Assembly Constituency. Thereupon, on an application by the petitioner, the High Court of Allahabad passed an interim order on 20.3.2015 - staying the election process to the above-mentioned constituency.

5. Aggrieved by the said interim order, the COMMISSION

moved SLP(C)No. 8850/2015. On 23.3.2015, notice was issued and also an interim suspension of the impugned order of the High Court was granted. However, by subsequent order dated 30.3.2015, for reasons recorded therein, this Court thought it fit to withdraw the writ petition filed by the petitioner to this Court and also to keep the notification dated 17.3.2015 in abeyance.

6. Learned Senior Counsel for the petitioner Mr. Harish Raval made two principal submissions:

(i) that the disqualification prescribed under Section 9A of the R.P. Act operates **only** at the threshold thereby rendering a person ineligible for contesting any election contemplated in the R.P. Act. In other words, Section 9A prescribes only a disqualification for a person seeking to contest an election – described by this Court in the case of ***Election Commission India v. Saka Venkata Subba Rao***, (1953) 4 SCR 1144 as "existing disqualification" but it does not render a legislator disqualified from continuing as such on the ground that such legislator subsequent to his election

entered into a contract with the appropriate government. Therefore, the petition did not incur any disqualification.

(ii) Even if the petitioner is to be held to have incurred a disqualification, such disqualification ceased to exist, the moment petitioner discharged his obligations arising out of the CULPRIT CONTRACTS. Therefore, he cannot be held to be ineligible for continuing as a member of the legislature on a true and proper interpretation of Section 9A of the Act. In other words, a declaration such as the one made by the governor of U.P. on 29.1.2015 could have been made and operate only during the subsistence of the CULPRIT CONTRACTS but not after they ceased to subsist.

7. On the other hand, Ms. Meenakshi Arora, learned senior counsel for the COMMISSION submitted that disqualification contemplated under Section 9A takes within its sweep both "pre-existing" and "supervening" contracts. There is no warrant to give a restricted interpretation to the language of Section

9A, such as the one suggested by the learned counsel for the petitioner. Therefore, the Governor's decision cannot be faulted. The interpretation sought to be placed on Section 9A by the learned counsel runs directly contrary to the purpose sought to be achieved by the provision.

8. Learned counsel also submitted that the decision of the Governor is rendered in exercise of the authority conferred under Article 192 of the Constitution on the question whether a member of the legislature "has become subject to any disqualification",. By a constitutional declaration under the said Article, the same 'shall be final'. The correctness of such a decision though is amenable to judicial review, such a review is possible only on a few limited grounds as expounded and settled by this Court. The petitioner's case does not fall within the ambit of such permissible judicial review.

9. Another important question that arises in this matter, is, the legality and propriety of the High Court's interim order dated 20.3.2015, whether the High Court was acting within its jurisdiction when it intercepted the election process after the issuance of a notification under Section 150(1) of the Act

calling upon the constituency to elect its representative, in view of the prohibition contained in Article 329(b) of the Constitution of India. The details of the submissions will be considered later in this judgment.

10. Before we examine the correctness of the rival submissions, we deem it appropriate to examine the scheme of the relevant provisions of the Constitution and of the R.P. Act.

11. The Constitution of India declares that there shall be a bi-cameral legislature at the national level. In so far as States are concerned, Article 168 of the Constitution declares that certain States specified therein shall have a bi-cameral legislature and the remaining States shall have a legislature consisting of only one House.

> **Article 168- Constitution of Legislatures in States-** (1) For every State there shall be a Legislature which shall consist of the Governor, and
>
> (a) in the States of Andhra Pradesh, Bihar,Maharashtra, Karnataka, Tamilnadu and Uttar Pradesh, two Houses:
> (b) in other States, one House.
>
> (2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly."

Elaborate provisions are made in the Constitution regarding the composition of these bodies, the periodicity with which the election to these bodies are to be conducted, the qualifications and disqualifications for seeking the membership of any one of these bodies and matters incidental thereto.

12. Article 173 of the Constitution prescribes that persons seeking to become members of the legislative bodies must possess certain qualifications. Any person who doesn't possess the qualifications mentioned in Article 173 is declared not to be qualified "to be chosen to fill a seat in the legislature of a State". Briefly stated to become a member of the State legislature, a person must be (i) a citizen of India, (ii) must be of the minimum age specified (iii) must subscribe to an "oath of faith and allegiance". Article 173 also postulates that a person seeking election to the legislature of the State is required to possess such other qualifications as may be prescribed by or under any law made by the Parliament.

> "Article 173. Qualification for membership of the State Legislature – A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he-
>
> > (a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the

Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and

c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

13. Article 191 stipulates certain persons to be disqualified for "being chosen as and for being" a member of the Legislature. It reads as follows:-

"Article 191. Disqualifications for membership- (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly of Legislative Council of a State-

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;"

e) if he is so disqualified by or under any law made by Parliament."

14. It can be seen from Article 191 that under clauses (a) to (d) of sub-Article (1), the Constitution itself prescribes certain conditions which render a person disqualified for the

membership of the Legislature. Whereas clause (e) authorises the Parliament to prescribe by law other conditions which render persons disqualified for membership of the Legislature.

15. The R.P. Act, 1951 under Chapter II prescribes certain additional qualifications for membership of the State Legislature in certain cases. Such prescription is referable to Article 173(c). Section 5 prescribes qualifications for filling up a seat in a State Legislature which is reserved in favour of Scheduled Castes and Scheduled Tribes. Such reservation is mandatory under the Constitution[1].

16. Chapter III prescribes the disqualifications for the membership of the legislature. Section 8 declares that persons convicted of any one of the offences enumerated in Section 8 are disqualified. It further provides that upon such conviction, if the convict is sentenced only to fine the disqualification is for a period of 6 years running from the date of such conviction. On the other hand, if the convict is sentenced to imprisonment, such disqualification runs from the date of such conviction and continues for a further

[1]See Articles 330 and 332

period of 6 years after the release of the convict from jail.

> **"Section 8. Disqualification on conviction for certain offences. –** (1) A person convicted of an offence punishable under –
>
> xxxx xxxx xxxx xxxx
>
> shall be disqualified, where the convicted person is sentenced to –
>
> **(i)** only fine, for a period of six years from the date of such conviction;
>
> **(ii)** imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release."

17. Sub-section (2) of Section 8 makes a special provision regarding the period of disqualification on the basis of (i) the offences specified under sub-section (2) and (ii) the term of imprisonment to which a convict is sentenced.

> "8(2) **A person convicted for the contravention of** –
>
> (a) any law providing for the prevention of hoarding or profiteering; or
> (b) any law relating to the adulteration of food or drugs; or
> (c) any provisions of the Dowry Prohibition Act, [1961 (28 of 1961)
>
> and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release."

18. Section 8A prescribes the disqualification on the ground of corrupt practices. The period of disqualification may extend to a maximum of 6 years. Section 9 stipulates the disqualification for dismissal of a person from the service of the Union of India or the State or on the ground of disloyalty

or corruption, the period of disqualification being 5 years from the date of the dismissal.

19. Section 9A is relevant in the context of the present case and it reads as follows:-

> "Section 9A. **Disqualification for Government contracts, etc**.-A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the executions of any works, undertaken by that Government.
>
> Explanation-For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part."

20. Section 10[2] stipulates a disqualification which subsists only so long as the disqualifying EVENT subsists and it is similar to Section 9A in its operation. Section 10A[3] prescribes a disqualification which last for three years from the relevant date. We are not really concerned with other details of Chapter III except Section 11[4] which empowers the

---

[2] **10. Disqualification for office under Government company** – A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share.

[3] **10A. Disqualification for failure to lodge account of election expenses –** If the Election Commission is satisfied that a person –

(a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act, and

(b) has no good reason or justification for the failure,

the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

[4] **11. Removal or reduction of period of disqualification.**—The Election Commission may, for reasons to be recorded, remove any disqualification under this Chapter 1 (except under section 8A) or reduce the period of any such disqualification.

Election Commission to remove any disqualification under the Chapter except the disqualification prescribed under Section 8A. It also authorises the Election Commission to reduce the period of any such disqualification notwithstanding the fact that period of disqualification is fixed under the various other provisions of the Chapter.

21. Article 192 stipulates that if any question arises as to whether a member of the Legislature of a State "has become subject to any disqualification" mentioned in clause 1 of Article 191, such a question is required to be referred to the decision of the Governor. The Article also declares that the decision of the Governor shall be final. Sub Article (2) obligates the Governor to obtain the opinion of the Election Commission before giving any decision. Article 192 reads as follows:-

> "Article 192. Decision on questions as to disqualifications of members- (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.
>
> (2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

22. The scope of authority of the Governor acting under

Article 192 first fell for the consideration of this Court in the case of ***Saka Venkata Subba Rao (supra)***[5].

By a unanimous decision of a Constitution Bench of this Court, it was held:-

> "16. For the reasons indicated we agree with the learned Judge below in holding that Articles 190 (3) and 192 (1) are applicable only to disqualifications to which a member becomes subject after he is elected as such, and that neither the Governor nor the Commission has jurisdiction to enquire into the respondent's disqualification which arose long before his election."

23. This Court took note of the fact that a person can incur any one of the disqualifications contemplated in Article 191 either before the election or after the election - elegantly classified by the then Attorney General M.C. Setalvad as "pre-existing disqualifications" and "supervening disqualifications".

24. Dealing with the scope of Article 192, this Court concluded that the authority of the Governor to examine the question of disqualification extended only to the 2nd of the

[5] Subba Rao was convicted by the Sessions Court and sentenced to a term of 7 years rigorous imprisonment in the year 1942 and released on the occasion of the celebration of Independence Day on 15th August, 1947, he desired to contest in the election held in 1952 to Kakinada Legislative Assembly in the erstwhile Madras Legislative Assembly. As he was under a disqualification having had suffered imprisonment, he made an application under Section 11 to the Election Commission seeking an exemption. As there was no response from the Election Commission, he went ahead and filed his nomination and contested the election successfully. He took his seat in the Legislative Assembly. In the interregnum between the date of the nomination and the declaration of the election of the respondent, the Election Commission had rejected the respondent's application seeking exemption. On receipt of the communication from the Election Commission, the Speaker referred the matter to the Governor for his decision under Article 192. At that stage, the respondent approached the High Court challenging the competence of the reference of the Speaker.

above-mentioned two categories of disqualification i.e., the supervening disqualifications acquired subsequent to the election of a person to the Legislature.

25. In the case on hand, the disqualification if any is only supervening disqualification. As we already noticed, that all the relevant facts on the basis of which the petitioner is declared disqualified are facts which occurred subsequent to the election of the petitioner. Therefore, the Governor necessarily has the authority to examine the question.

26. The issue before us is not really whether the Governor has necessary authority in law to examine the question of disqualification of the petitioner herein. The question is whether CULPRIT CONTRACTS render the petitioner disqualified from continuing to be a member of the legislative assembly.

27. In support of the 1st submission that Section 9A does not prescribe any supervening disqualification, Shri Rawal emphasised on the language of Section 9A more particularly the clause which says "for so long as there subsists a contract.....". According to the learned counsel, the Legislature never

contemplated that any person who enters into contractual relationship with the Government either to supply goods or for execution of any works undertaken by the Government be eternally disqualified for contesting an election to the Legislature. The disqualification subsists only so long as the contract subsists. The moment the contract ceases to subsist the disqualification also ceases to exist. It is therefore, submitted that if the construction suggested by the petitioner is not accepted, Section 9A would lead to a situation that a legislator who enters into a contract with the government which subsists only for a fraction of the tenure of the legislator would deprive a validly elected legislator his right to be a legislator even for that period for which he suffers no disqualification. Therefore, the Section must be interpreted to cover only the pre-existing disqualifications. It is further submitted that the language of Section 9A in contra-distinction to the language of Article 191(1)[6] does not specify whether the disqualification under the Section takes within its sweep the events which occur subsequent to the election.

[6] "disqualified for being chosen as and for being"

28. On the other hand, Ms. Meenakshi Arora submitted that a person acquires the disqualification the moment he enters into a contract with the government by virtue of the operation of law i.e., Article 190(3).[7] As a sequel the seat occupied by such legislator falls automatically vacant. Article 192 only prescribes the forum and procedure for the adjudication of the question whether any one of the events contemplated under Article 190(1) took place. The argument of the petitioner is not tenable.

29. In support of the submission, learned counsel relied on the judgment of this Court in ***P.V. Narasimha Rao v. State (CBI/SPEC)***, (1998) 4 SCC 626.

30. The main questions which were debated by this Court in

---

[7] "(3) If a member of a House of the Legislature of a State.-

(a) becomes a subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation."

that case were (i) whether a member of the Parliament is a public servant within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988, and, therefore, whether any sanction was required for prosecuting such a person under the said Act, (ii) if sanction is required, who is the competent authority to grant the sanction. It is in that context, this Court considered the scope of Articles 101, 102 and 103 which were substantially similar to Articles 190 to 192.

31. We now examine the 1st submission of the petitioner. The logic of the petitioner is that disqualifications prescribed under Sections 8, 9, 10A of the R.P. Act run for a statutorily fixed time frame which is totally unrelated to the duration of the disqualifying EVENT. Whereas for the disqualification under Section 9A, the period of disqualification is co-terminus with subsistence of the contract (the disqualifying event). Therefore, the submission: if the interpretation of the petitioner is not accepted in a case such as the one at hand though the disqualification subsists only for a limited period i.e. a fraction of the tenure of the legislator, the same would have the effect of terminating the membership of the

Legislator even for that period during which there is no subsisting contract.

32. In our opinion, the submission of the petitioner overlooks the language of Article 190 sub-clause (3). It reads as follows:-

> (3) "If a member of a house of the Legislature of a State-
>
> (a) **becomes subject to** any of the disqualifications mentioned in clause (1) or clause (2) of Article 191; or
>
> (b) ….....
>
> **his seat shall** thereupon **become vacant.**"

33. It can be seen from the language of the sub-section (3) that if a member of a House of the Legislature becomes subject to any of the disqualifications mentioned in clause(1) or clause (2) of Article 191, his seat shall thereupon become vacant. In other words, the vacancy occurs the moment a person incurs the disqualification by operation of law. The duration of the currency of the disqualifying EVENT is irrelevant. While Article 191 deals with the disqualifications for two classes of people (I) those who are aspiring to be the members of the Legislature (ii) those who are already Members of the Legislature, Article 190(3) deals only with the vacation of the seats by the members of the Legislature -

therefore, applicable only to the 2nd of the two classes covered by Article 191. Acquisition of a disqualification contemplated under Article 191 is an incident which entails a legal consequence of rendering the seat (occupied by such a Legislator who acquired the disqualification) vacant by operation of law. Article 192 only prescribes the forum and stipulates the procedure for determination of the fact whether a Legislator has incurred the disqualification. As pointed out by this Court in ***Narasimha Rao's case*** *(supra)*, Article 192 does not provide for removal of a member from the Legislature by an action of the Governor. The removal takes place by virtue of the operation of law on the happening of the event, that is, the acquisition of a disqualification. The fact that the disqualification under Section 9A subsists only for a limited period of time in our view makes no difference to the consequences flowing from the occurrence of such disqualifying EVENT.

34. Each one of the events contemplated under the various clauses of Article 191(1) can subsist for a limited period of time depending upon the facts and circumstances of the case. For example, under clause(a), the holding of office of

profit specified therein renders a person disqualified. Goes without saying, the tenure of such an office of profit may differ from case to case. Under clause (b), a person who is of unsound mind and stands so declared by a competent Court is disqualified. The event which renders a person disqualified has two components in it. (i) a person must be of unsound mind and (ii) stands so declared by competent Court. It is only on the happening of both the events, such a person becomes disqualified. But there is nothing in nature that a person who is of unsound mind and declared so by a competent Court need to continue in the same state of mind forever. It is possible in some cases that with appropriate medical treatment, that unsoundness of mind could be cured and on proof of the same, an appropriate declaration from the competent Court revoking the earlier declaration can always be obtained upon such declaration, the disqualification ceases. So is the case of status of undischarge insolvency and citizenship of India. The citizenship status of a person can change from time to time.

35. In all the above-mentioned situations on the happening of the disqualifying EVENT, a Legislator ceases to be

Legislator and his seat falls vacant by operation of law but not because of any declaratory adjudication. Article 192 does not contemplate the Governor making a declaration that the seat has fallen vacant. It only obligates the Governor to decide whether a Legislator has incurred anyone of the disqualifications mentioned in clause(1) of Article 191. The vacancy occurs by virtue of constitutional declaration contained in Article 190 clause(3) which we have already noticed. Dealing with the parallel provisions of Article 101, 102 and 103 of the Constitution, which deal with the disqualification of members of the Parliament, this Court in ***Narasimha Rao's case*** (supra) held that "if the President holds that the Member has become subject to a disqualification, the member would be ***treated to have ceased to be a member on the date when*** he became subject to such disqualification." (Para 93) (Agrawal, J).

36. Justice S.P. Bharucha also reached the same conclusion and held as follows:-

> "180. The question for our purposes is whether, having regard to the terms of Articles 101, 102 and 103, the President can be said to be the authority competent to remove a Member of Parliament from his office. It is clear from Article 101 that the seat of a Member of Parliament becomes vacant immediately upon his becoming subject to the disqualifications mentioned in Article 102, without more. **The removal of a Member of Parliament is occasioned by operation of law and is self-operative.**

> Reference to the President under Article 103 is required only if a question arises as to whether a Member of Parliament has earned such disqualification; that is to say, if it is disputed. **The President** would then have to decide whether the Member of Parliament had become subject to the automatic disqualification contemplated by Article 101. His **order would not remove the Member of Parliament from his seat or office but would declare that he stood disqualified.** It would operate not with effect from the date upon which it was made but would relate back to the date upon which the disqualification was earned. Without, therefore, having to go into the connotation of the word "removal" in service law, it seems clear that the President cannot be said to be the authority competent to remove a Member of Parliament from his office."

37. Therefore, now it is a settled proposition of law that the happening of any one of the disqualifying EVENTS has the effect of making the seat occupied by such a disqualified person vacant immediately by operation of law. The effect of the decision of the Governor under Article 192 is only to decide whether a legislator acquired the disqualification on a particular date on the happening of one of the disqualifying EVENTS contemplated under Section 191. The consequence is that the legislator who acquires the disqualification ceases to be a Member of the Legislature with effect from the date of the acquisition of the disqualification.

38. We have already noticed that there are two classes of disqualification contemplated under Article 191, (i) disqualifications which last only for a limited period that is, during the currency of certain events specified under

Article 191, (ii) statutory disqualifications prescribed under Section 8, Section 8A, Section 9 and Section 10A which render a person ineligible for a period specified under each of the above-mentioned provisions. The disqualifications under Sections 9A and 10 of the Act are akin to the disqualifications contemplated under clauses (a) to (d) of Article 191(1) where the period of disqualification is co-terminus with the currency of the event which renders a person ineligible both for being chosen as or for being a Member of the Legislature. Nonetheless on the acquisition of the disqualification by a legislator, he ceases to be a legislator forthwith by operation of law. However, the cessation of the disqualifying factor cannot put such a person back in the legislature without his being elected once again, of course such person is entitled to contest any election under the R.P. Act, the moment the disqualifying factor ceases to exist as the disqualification is co-terminus with the disqualifying EVENT.

39. We, therefore, reject the 1st submission of the petitioner.

40. We now deal with the second submission of the

petitioner that on the true and proper construction of the language of Section 9-A of the R.P. Act, a declaration such as the one which is a subject matter of the dispute on hand could not have been given after the petitioner executed the CULPRIT contracts.

41. Shri Rawal submitted that a disqualification for the membership of the Legislature on the ground of a 'subsisting contract' with the government (the State of U.P. in the case on hand) cannot be an everlasting disqualification. Section 9A categorically declares that a person entering into contractual relationship with the appropriate Government shall be disqualified only "for so long as there subsists a contract". Therefore, learned counsel submitted that the moment the contractual relationship comes to an end, the disqualification also ceases. An adjudication (under Article 192 by the Governor that the petitioner incurred a disqualification) after the execution of the contracts is neither contemplated nor justified on the language of Section 9A.

42. The submission of Shri Rawal, in our opinion, is in fact only a facet of the first submission.

43. The language of Section 9A which declares a person shall be disqualified "if and for so long as there subsists a contract", must be understood in the background of the scheme of Chapter III of the R.P. Act. All other provisions except Sections 9A and 10 of the Chapter prescribe a fixed tenure of disqualification. That tenure has nothing to do with the duration of the currency of the event which brings about the legal consequence of disqualification. Only Section 9A and Section 10 limit the tenure of disqualification and make it co-terminus with the currency of the EVENT which creates a disqualification. Therefore, the clause "if and for so long as" in our view, in these two provisions must be understood only to convey (in the context of a Legislator who incurs a disqualification) that he is not debarred from contesting any election under the Act including a bye-election arising as a direct consequence of his vacating the seat in the Legislature if the EVENT (the subsistence of which brought about the consequence of disqualification) ceases to subsist by the relevant date. The interpretation such as the one sought to be placed by the petitioner would amount to Parliament nullifying the constitutional declaration contained

in Article 190(3) read with Article 191.

44. Shri Rawal very painstakingly placed before us the evolution and history of the disqualification on account of a subsisting contract under the Representation of People Act, 1951. The disqualification which is mentioned in Section 9A of the Representation of People Act 1951 as it stands today was originally contained in Section 7(d) of the Act[8].

45. By Act 47 of 1966, Chapter III of the R.P. Act came to be substituted making substantial changes in the provisions of Chapter III. Relevant for our purpose is to note that Section 7 of the R.P. Act no more deals with disqualification on the

[8]"Disqualifications

7. Disqualifications for membership of Parliament or of a State Legislature. A person shall be disqualified for being chosen as and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State.

… … …

(d) If, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government."

It can be seen from the language of the said Section was couched in language casting the net was much wider. However, by Act 58 of 1958, Section 7(d) was amended and it reads as follows:-

"PART III

AMENDMENTS OF THE REPRESENTATION OF THE PEOPLE ACT, 1951

15. In Section 7 of the 1951 Act,-

(a) for clause (d), the following clause shall be substituted, namely:-

(d) if there subsists a contract entered into in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government;"

ground of subsisting contracts. It only deals with certain definitions for the purpose of Chapter III. The provision regarding the disqualification on account of subsisting contract with the Government is now incorporated under Section 9A of the Act.

46. Shri Rawal argued that an examination of the evolution of the provision dealing with disqualification on the ground of 'subsisting contract' with the Government coupled with the existence of authority in COMMISSION to remove the disqualification or reduce the period for which a person is rendered disqualified must lead to a construction of Section 9A which would as far as possible eliminate the unseating of a legislator after the contract ceases to subsist.

47. Per contra Ms. Arora submitted that the submission of the petitioner, if accepted would lead to anamolous consequences defeating the very purpose behind Section 9A. The learned counsel also argued that the possibility of the COMMISSION removing the disqualification cannot determine the scope and amplitude of Section 9A.

48. In support of his submission, Shri Rawal relied upon the

objects and reasons of the Act 47 of 1966 which were referred to by this Court in the case of ***Prakash Khandre v. Dr. Vijay Kumar Khandre & Others***, (2002) 5 SCC 568, this Court extracted the objects and reasons which prompted the amendment of old Section 7(d) and insertion of Section 9A.

> "30. The objects and reasons for substituting Section 7(d) by Section 9-A are as under:-
>
> Apart from the grouping of the sections effected by clause 20, some changes have also been made in the relevant provisions. In the new Section 9-A, an Explanation has been added to make it clear that a contract with the Government shall be deemed not to subsist by reason only of the Government has not performed its part of the contract either wholly or in part. *This change has become necessary in order to do away with the disqualification that attached to a person for being chosen as or for being a Member of Parliament or State Legislature even after he has fully performed his part of the contract,* since it would hardly be justifiable to retain such a disqualification provision in a modern welfare State when State activities extend almost every domain of the citizen's affairs where very many persons, *in one way or the other, have contractual relationship with the Government. That being the case, an unduly strict view about government contract in the present day might lead to the disqualification of a large number* of citizens many of whom may prove to be able and capable Members of Parliament or State Legislatures. *It would be of interest to note in this connection that in the United Kingdom, any disqualification arising out of any contract with the Crown has been done away with by the House of Commons Disqualification Act, 1957."*

49. Shri Rawal laid stress on the fact that the Parliament was conscious of the fact that an unduly strict view w.r.t. to the disqualification on the ground of subsisting contract with the Government might lead to a "disqualification of a large number of citizens many of whom may prove to be able to and capable of "Members of Parliament

or State Legislatures."

50. To test the soundness of the submission, we must examine the rationale behind Section 9A. This Court in ***Konappa Rudrappa Nadgouda v. Vishwanath Reddy & another***, AIR 1969 SC 447 dealt with the rationale behind the disqualification prescribed under Section 9A of the R.P. Act and observed as follows:-

> "… But if the contract subsists in such manner that it cannot be said to have been substantially completed, the law must take its own course. It is of the essence of the law of Elections that candidates must be free to perform their duties without any personal motives being attributed to them. A contractor who is still holding a contract with Government is considered disqualified, because he is in a position after successful election to get concession for himself in the performance of his contract. That he may not do so is not relevant. The possibility being there, the law regards it necessary to keep him out of the elections altogether..."

51. In ***Shrikant v. Vasantrao and Others*** 2006(2) SCC 682, once again this Court had an occasion to deal with Section 9A and the object behind Section 9A. At para 20, this Court observed as follows:-

> "20. The object and intent of Section 9-A of the Act is to maintain the purity of the legislature and to avoid conflicts between duty and interest of Members of the Legislative Assembly and the Legislative Council. The said object is sought to be achieved by ensuring that a person who has entered into a contract with the State Government and therefore liable to perform certain obligations towards the State Government, is not elected as a Member of the Legislative Assembly or Legislative Council, lest he should use his influence as an elected member of the Legislature to dilute the obligations or to seek and secure undue advantages and benefits in respect of the subsisting contracts. It seeks to ensure that personal interests will not override his duties and obligations as a member of the

> legislature or Legislative Council. For the purpose of Section 9-A, what is relevant is whether the candidate has a subsisting contract with the appropriate Government (in this case, the State Government) either for supply of goods to the State Government or for execution of any work undertaken by the State Government..."

52. In the light of the observations made by this Court in the case of ***Konappa*** and ***Shrikant*** referred to above, the observations made in ***Prakash Khandre's case*** (supra) must be understood in the right perspective. Prakash Kandre had entered into a contract with the State of Karnataka in connection with a particular road work. He decided to contest the election to the legislative assembly of the Karnataka. Before filing the nomination at the election, Prakash intimated the authorities of the State in writing that he was terminating the contract. The authorities of the State accepted the same and the registration of Prakash was cancelled. Prakash became an MLA and his election was challenged on the ground of Section 9A. The question before this Court was whether the contract between Prakash and the State of Karnataka subsisted on the relevant date. It is in the process of the examination of such a question, incidentally, this Court examined the history of Section 9A and the objects and reasons behind Section 9A. The decision

did not in fact rest upon anything connected with the objects and reasons behind Section 9A.

53. In the circumstances, it is difficult to accept the submission of the learned counsel for the petitioner on the basis of the objects and reasons appended to the Amendment Act by which Section 9A was introduced. The purpose of Section 9A as repeatedly held by this Court is to maintain the purity of the legislature and to avoid conflict of personal interest and duty of the legislators. It would be strange logic that persons with a subsisting contract with the government are perceived to be undesirable to become members of the legislature as there is a likelihood of conflict between their duty as legislators, if elected and their personal interest as contractors, but legislators can enter into contracts with the government with impunity.

54. Shri Rawal also relied upon certain observations made by this Court in ***Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani & others***, (1977) 1 SCC 70 and ***M.V. Rajashekaran & Others v. Vatal Nagaraj & Others***, (2002) 2 SCC 704 in support of his submissions that Section 9A must be construed as suggested by him.

55. In both the cases, the question which fell for the consideration of this Court was the interpretation of the expression "office of profit". In ***Mahdukar's case***, the said expression occurred in the Maharashtra Municipalities Act in the context of election to the Presidency of the Municipal Council. In ***Rajashekharan's case***, it was in the context of an election to the Legislative Council of Karnataka. It is true that in both the cases, this Court took the view that a construction which would have the effect of shutting out of many prominent and eligible persons from contesting the election should not be adopted.

56. In our opinion, the observations made by this Court in the context of the expression 'office of profit' may not be extended to the cases of the persons with subsisting contracts with the Government without any further scrutiny. We can't close our eyes to the reality of the unwholesome influence which money power exerts on the political system in this country. Any interpretation of Section 9A which goes to assist a legislator who directly enters into a contractual relationship with the State for deriving monetary benefits (in

some cases of enormous proportions) should be avoided and be given a construction which as far as possible eliminates the possibility of creating such situation where the duty is certainly bound to conflict with personal interest. We are fortified in our view by the observations of this Court in ***Ashok Kumar Bhattacharyya v. Ajoy Biswas*** (1985)1 SCC 151 that the approach which appeals to us to interpret the expression 'office of profit' is that "it should be interpreted with the flavour of reality bearing in mind the object for enactment of Article 102(1)(*a*), namely, to eliminate or in any event to reduce the risk of conflict between the duty and interest amongst members of the legislature by ensuring that the legislature does not have persons who receive benefits from the executive and may thus be amenable to its influence.

57. ***Rajashekharan's case*** quotes the above passage with approval.

58. In fact, a three Judge Bench of this Court in ***Shrikant v. Vasantrao & Others***, (2006) 2 SCC 682 had an occasion to consider the object of Section 9A of the R.P. Act.

This Court in Para 20 held as follows:-

> **"20.** The object and intent of Section 9-A of the Act is to maintain the purity of the legislature and to avoid conflicts between duty and interest of Members of the Legislative Assembly and the Legislative Council. The said object is sought to be achieved by ensuring that a person who has entered into a contract with the State Government and therefore liable to perform certain obligations towards the State Government, is not elected as a Member of the Legislative Assembly or Legislative Council, lest he

> should use his influence as an elected member of the legislature to dilute the obligations or to seek and secure undue advantages and benefits in respect of the subsisting contracts. It seeks to ensure that personal interests will not override his duties and obligations as a member of the legislature or Legislative Council…"

59. For all the abovementioned reasons, we reject the 2nd submission made by the learned counsel for the petitioner. As a consequence, the transferred case (Civil Miscellaneous Writ Petition No. C14270 of 2015 filed before the High Court) shall be liable to be dismissed and is accordingly dismissed.

60. Though, in view of our above conclusion, it may be really not necessary for the purpose of this case to go into the other question regarding the legality and propriety of the High Court's Order dated 20.3.2015 by which the High Court stayed the election process of the bye-election to Pheranda Assembly Constituency. We deem it appropriate to examine the matter as such questions are likely to arise if not regularly at least occasionally.

61. The authority and jurisdiction of the High Courts under Article 226 to adjudicate the disputes which are brought before them is a grant of the Constitution, though such authority and jurisdiction have well known limitations. Such

limitations are self-imposed based on the structure of the Constitution the distribution of the functions of the various organs of the Constitution and other well established legal principles. One of such limitations emanates from the mandate under Article 329(b) which reads as follows:-

> **"Article 329. Bar to interference by courts in electoral matters**.— Notwithstanding anything in this Constitution-
>
> (b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

62. The sweep of the Article fell for the consideration before this Court on more than one occasion. Two of the most prominent decisions of this subject are ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Others***, (1952) 3 SCR 218 *and* ***Mohinder Singh Gill & another v. The Chief Election Commissioner, New Delhi & others*** (1978) 1 SCC 405, Both the cases were decided by Constitution benches of this Court. The question which arose in those two cases was whether the jurisdiction of the High Court's could be invoked to intercept the election process which is already set in motion. This Court on a construction

of Article 329(b) held in ***N.P. Ponnuswami*** *(supra)* that "Article 329(b) : was primarily intended to exclude or oust the jurisdiction of all Courts in regard to electoral matters and to lay down the only mode in which the election could be challenged."

63. In ***Mohinder Singh Gill*** *(supra)*, this Court held:

> "Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result..
>
> This Court further held as follows:-
>
> "…The plenary bar of Article 329(b) rests on two principles: (i) the peremptory urgency and prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion; and (ii) the provision of the special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes the other forms, the right and remedy being creatures of the statute and controlled by the Constitution. The conclusion is, therefore, irresistible that jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction…."

64. However, in the case on hand, the primary challenge of the petitioner is not to the electoral process but the decision of the Governor which resulted in the unseating of the petitioner as a consequence of which a bye-election ensued. In other words, the very existence of a vacancy in the legislature is in question.

65. The interference of the High Court in exercise of the

jurisdiction under Article 226 with the issuance of notification for filling up of casual vacancy in the Legislative Assembly of Uttar Pradesh (Pharenda constituency) in our opinion arises out of an absolute necessity. The election in question is inextricably interlinked with the legality of the decision of the Governor which resulted in the declaration of the vacancy in the Legislative Assembly representing the Pharenda constituency.

66. The decision of the Governor dated 29th January, 2015 declaring that the petitioner incurred a disqualification under Section 9A of the R.P. Act is under challenge before the High Court.

67. That being the case, there is always a possibility in a given case that the decision of the Governor could be held to be unsustainable.[9] In the eventuality of such a conclusion by

[9] The learned counsel for the COMMISSION very fairly submitted that notwithstanding the declaration under Article 191 that the decision of the Governor shall be final, the decision is amenable to the scrutiny of the Constitutional courts although on very limited grounds. Such grounds are explained by a Constitution Bench of this Court in ***Kihoto Hollohan v. Zachillhu***, 1992 Supp (2) SCC 651 which was relied upon in ***Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council & Others***, (2004) 8 SCC 747.

In ***Kihoto's case***, this Court was dealing with the validity of the Constitution 52nd Amendment Act, 1985 by which the Xth Schedule was added to the Constitution.

Para 6 of the Xth Schedule contains a declaration such as the one contained in Article 192 saying that the "decision of the Chairman ….. shall be final." Apart from such a declaration, Para 7 of the Xth Schedule makes an express declaration "that no Court shall have any jurisdiction in respect of any matter ……. under this Schedule".

the High Court, the Legislator who is unseated consequent upon decision of the Governor under Article 192 is entitled to continue as a Member of the Legislature if the tenure to which he is elected still survives. But in the meanwhile if a bye-election were to be held to fill up the vacancy arising as a consequence of the decision of the Governor and in such an election if a person other than unseated legislator gets elected, there would be a very anomalous situation of two persons validly elected to the same seat in the Legislature. Therefore, in our opinion, the case on hand does not fall within the "blanket ban on the litigative challenges to the electoral steps". The interim order granted by the High Court is perfectly justified.

Dealing with the above two provisions, this Court held that "the concept of statutory finality embodied in paragraph 6(1) does not detract from or abrogate the judicial review under Articles 136, 226 and 227 of the Constitution in so far as infirmities based on violations of constitutional mandates, *malafides*, non-compliance with rules of natural justice and perversity are concerned."

A similar declaration of finality exists in Article 217(3). The scope of such a declaration fell for the consideration of a Constitution Bench of this Court in ***Union of India v. Jyoti Prakash Mitter***, (1971) 1 SCC 496 wherein this Court held:-

> "32. The President acting under Article 217(3) performs a judicial function of grave importance under the scheme of our Constitution. He cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President the Court has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the Rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence. But this Court will not sit in appeal over the judgment of the President, nor will the Courts determine the weight which should be attached to the evidence."

In view of the legal position emerging from the above decisions, a declaration of finality contained in Article 192 cannot be considered to be conclusive and the decision of the Governor is amenable to the judicial review on the limited grounds as indicated in the above-mentioned two judgments.

68. However, we notice that the COMMISSION is under a statutory obligation to hold a bye-election within a period of six months from the date of the occurrence of the vacancy. Such obligation emanates from Section 150 and Section 151A. They read as follows:-

> **150. Casual vacancies in the State Legislative Assemblies**.—(1) When the seat of a member elected to the Legislative Assembly of a State becomes vacant or is declared vacant or his election to the Legislative Assembly is declared void, the Election Commission shall, subject to the provisions of sub-section (2), by a notification in the Official Gazette, call upon the Assembly constituency concerned to elect a person for the purpose of filling the vacancy so caused before such date as may be specified in the notification, and the provisions of this Act and of the rules and orders made thereunder shall apply, as far as may be, in relation to the election of a member to fill such vacancy.
>
> (2) If the vacancy so caused be a vacancy in a seat reserved in any such constituency for the Scheduled Castes or for any Scheduled Tribes, the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled Castes or to such Scheduled Tribes, as the case may be.
>
> **Section 151A. Time limit for filling vacancies referred to in sections 147, 149, 150 and 151**.— Notwithstanding anything contained in section 147, section 149, section 150 and section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy:
>
> Provided that nothing contained in this section shall apply if—
>
> (a) the remainder of the term of a member in relation to a vacancy is less than one year; or
>
> (b) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye election within the said period.

The purpose behind the command is obvious.

> "Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as

possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted." [See: ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency & Others***, (1952) SCR 218]

69. The question, therefore, is as to how to reconcile the two apparently conflicting constitutional obligations, (i) of the High Court to adjudicate the dispute regarding the legality of the Governor's decision under Article 192 and (ii) the COMMISSION's obligation to hold the election within a period of six months from the date of occurrence of the vacancy.

70. Unfortunately, there is no period of limitation prescribed by law within which a person aggrieved by the decision of the Governor under Article 192 can approach the High Court. Until such law is made, we deem it appropriate to hold that any person aggrieved by a decision of the Governor under Article 192 must approach the High Court by initiating appropriate proceedings, (if he is so desirous) within a period of eight weeks from the date of the decision of the Governor.

71. Such proceedings must be heard by a Bench of at least

two Judges and be disposed of within a period of eight weeks from the date of initiation without fail. The Chief Justice of the concerned High Court will make an appropriate arrangement in this regard. If the above-mentioned time frame is strictly followed, the Commission would still be left with another eight weeks of time to comply with the obligations emanating from Section 151 A of the R.P. Act.

72. Application(s) for impleadment allowed.

73. In view of the dismissal of the transferred case, the special leave petition is disposed of.

.....J.
(J. Chelameswar)

.....J.
(R.K. Agrawal)

New Delhi;
April 9, 2015