

MOOT PROPOSITION

The State of Anand Pradesh is a multi-linguistic, multi-cultural and multi-religious State. The total area of state of Anand Pradesh is 51, 117 Sq. Kms. and its total population is 3 crores. The legislature of State of Anand Pradesh is synonymous to the legislature of State of Punjab. Election to Rambag Constituent Assembly of State of Anand Pradesh was to be held in the month of April, 2015. There were three candidates for contesting the elections namely Maheshwar Yadav (Appellant No. 1), Gurpratap Singh (Appellant No. 2) and Ramshareef (Respondent). Appellant No.1 was belonging to Bhartiya Vikas Party which is a national party. Appellant No.2 was an independent candidate and Respondent was of Jan Seva party, which is a regional party.

Before filing of nomination papers, all the three candidates disclosed their assets as per the requirements of law. The assets of Appellant No.1 disclosed through affidavit filed along with nomination papers consisted of immovable property worth Rs.10 lakh and cash worth Rs. 50 thousand. There was no other property apart from the above mentioned property in the name of Appellant No.1. It was specifically mentioned in affidavit that Appellant No.1 do not own any car. The assets of Appellant No.2 as disclosed in affidavit were, a flat in a multistory luxurious building in posh area of the constituency, cash worth Rs. 20 lakhs, jewellery worth Rs.1 crore and two luxury cars. Respondent disclosed his assets as single story house, cash worth Rs. 5 lakhs, jewellery worth Rs. 50 thousand and a car. Along with the discloser of assets, all the three candidates also disclosed their educational qualifications. Appellant No.1 was holding a post graduate degree in law from a recognized university, Appellant No. 2 was a graduate and Respondent was an illiterate person.

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Nominations were filed on 20th March, 2015. On 20th March, 2015 when Appellant No.1 was filing the nominations, the Respondent filed objections to the Returning Officer regarding the wrong disclosure of assets and stated that the actual assets of Appellant No.1 were worth Rs. 20 crores approximately. It was also disclosed by the Respondent that he also owned two luxury cars. On 22nd March, 2015, Appellant No.1 also raised two objections before the returning officer. First objection was regarding the incompetency of the Respondent to contest elections on the ground of his illiteracy. Second objection was regarding his conviction and sentence for several offences for a term exceeding 2 years under Section 143, 148, 447, 353, 427 read with Section 149 of IPC by Judicial Magistrate 1st Class (JMJC) of the area, which is also a ground of disqualification under Representation of People Act, 1951. The Appellant No. 1 alleged before the returning officer that on 10th December, 2014 the JMJC convicted the Respondent of all the charges with rigorous punishments imprisonment of 3 months, 1 year, 3 months, 6 months, 6 months respectively. The sentences were directed to run consecutively and not concurrently. Thus the Respondent was sentenced to undergo imprisonment for a total period of 2 years and 6 months.

The Respondent replied to the objection that he had already filed Criminal Appeal before Session Court against the order of JMJC. During the pendency of appeal the Session Court gave the direction for the suspension of execution of sentence. He further alleged that bail was granted to him on 25th February, 2015 by the Session Court. The returning officer after scrutinizing the objections and reply dismissed the objections filed by the Appellant No. 1.

Elections were held on 20th April, 2015 and result was declared on 1st May, 2015. The Respondent won the election with a margin of 10 thousand votes and 5 thousand votes from Appellant No.1 and 2 respectively. On 10th May, 2015 Appellant No.1 and 2 filed Election Petition before High Court on two grounds.

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Firstly, on the ground of disqualification and secondly, that Appellant's constitutional rights to get elected has been violated due to wrong interpretation of law by Returning Officer. It was alleged by the appellants that the Returning Officer do not possess the authority to interpret the law.

Pending the appeal before the High Court, on 20th May, 2015 Session Court partly allowed the appeal of respondent by maintaining the conviction subject to the modification that substantive sentence of imprisonment for several offences will run concurrently. Another development was a decision in an another appeal case by Supreme Court (SC) of India against the order of High Court involving the election matter, where in, the SC decided about the interpretation of the grounds of disqualification for contesting election to the parliament as well as state legislature. The Hon'ble SC held that apart from the conviction and sentence of the candidate contesting election as a ground of disqualification, the detention of the candidate in jail regarding some offenses will also to be considered as a ground of disqualification.

However, the present High Court dismissed the Election Petition of the Appellants maintaining the decision of returning officer in disregard to the decision of Session Court and irrespective of the decision of SC in other appeal case. Meanwhile, in order to nullify the decision of SC in other appeal case, Parliament of India amended Representation of People Act, 1951 to the effect that the candidate contesting election will not be debarred from contesting election simply on the basis of detention of the candidate in the jail or custody. Further the amendment provides that the ground of disqualification will only be applicable in case of specific Sections of IPC and some other offenses incorporated after amendment in the Act, such as S.153A, 171E, 171F, 176(1) & (2), 376A, 376B, 376C, 376D, 498A, 505(2) & (3) of IPC and the Protection of Civil Rights Act, 1955 (22 of 1955), (which provides for punishment for the preaching and practice

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of "untouchability", and for the enforcement of any disability arising there from;) or Section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or Sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or Section 3 (offence of committing terrorist acts) or Section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or Section 7 (offence of contravention of the provisions of Sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or Section 125 (offence of promoting enmity between classes in connection with the election) or Section 135 (offence of removal of ballot papers from polling stations) or Section 135A (offence of booth capturing) of clause (a) of sub-Section (2) of Section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991; or Section 2 (offence of insulting the Indian National Flag or the Constitution of India) or Section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971), or the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or the Prevention of Corruption Act, 1988 (49 of 1988); or the Prevention of Terrorism Act, 2002 (15 of 2002).

The effect of such amendment was that it resulted in completely absolving the Respondent in the present case from disqualification. The Appellant

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No. 1 and 2 filed an appeal to the SC against the decision of High Court and also challenged the validity of Amendment Act passed by the Parliament.

Argue in favour and against as the Appellants and Respondent.

