

ITEM NO.33

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 1152/2017

ASHWINI KUMAR UPADHYAY

Petitioner

VERSUS

UNION OF INDIA & ANR.

Respondents

(FOR ADMISSION)

Date : 01-12-2017 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s)

Mr. Sidharth Luthra, Sr. Adv.
Mr. Sajan Poovayya, Sr. Adv.
Mr. Pratibhanu, Adv.
Mr. Priyadarshi Banerjee, Adv.
Mr. Kumar Vaibhav, Adv.
Mr. Karan Sharma, Adv.
Mr. R. D. Upadhyay, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Sidharth Luthra, learned senior counsel for the petitioner. Though this petition has been drafted in a clumsy manner, yet Mr. Luthra has endeavoured to discern the essence of the petition and put it forth. His emphasis is on interpretation of Section 29A of the Representation of the People Act, 1951 (for brevity, 'the 1951 Act'). It is urged by him that there are certain provisions under the 1951 Act which disqualify people from contesting the election and, therefore, the people who are disqualified,

especially who have been convicted under the criminal law and stand disqualified, should not be allowed to take the benefit of Section 29A of the 1951 Act. He has drawn our attention to paragraph 33 of the decision rendered by this Court in *Indian National Congress (I) vs. Institute of Social Welfare & Ors.*, (2002) 5 SCC 685. The said paragraph 33 is reproduced below:-

"33. However, there are three exceptions where the Commission can review its order registering a political party. One is where a political party obtained its registration by playing fraud on the Commission, secondly, it arises out of sub-section (9) of Section 29A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law."

Emphasising on the said paragraph, it is submitted by Mr. Luthra that it is a duty of the Election Commission to exercise a quasi-judicial power, and if the Election Commission is not clothed with the power of not granting the benefit under Section 29A of the 1951 Act, the disqualified persons may form a political party and come for registration. In this regard, he has also drawn our attention to a two-Judge Bench decision of this Court in *Lily Thomas vs. Union of India & Ors.*, (2013) 7 SCC 653, where the Court had declared sub-section (4) of Section 8 of the 1951 Act as unconstitutional by quoting thus:-

"36. As we have held that Parliament had no power to enact sub-section (4) of Section 8 of the Act and accordingly sub-section (4) of Section 8 of the Act is ultra vires the Constitution, it is not necessary for us to go into the other issue raised in these writ petitions that sub-section (4) of Section 8 of the Act is violative of Article 14 of the Constitution. It would have been necessary for us

to go into this question only if sub-section (4) of Section 8 of the Act was held to be within the powers of the Parliament. In other words, as we can declare sub-section (4) of Section 8 of the Act as ultra vires the Constitution without going into the question as to whether sub-section (4) of Section 8 of the Act is violative of Article 14 of the Constitution, we do not think it is necessary to decide the question as to whether sub-section (4) of Section 8 of the Act is violative of Article 14 of the Constitution.

37. The only question that remains to be decided is whether our declaration in this judgment that sub-section (4) of Section 8 of the Act is ultra vires the Constitution should affect disqualifications already incurred under sub-sections (1), (2) and (3) of Section 8 of the Act by sitting members of Parliament and State Legislatures who have filed appeals or revisions against their conviction within a period of three months and their appeals and revisions are still pending before the court concerned."

We are only inclined to address this issue and nothing more. Mr. Luthra also accepts the same. He does not press the prayer for declaring Section 29A as ultra vires, and rightly so. Therefore, it is to be discerned what has been contended by Mr. Luthra, can flow from Section 29A by interpretative process.

Issue notice to the respondents.

(Deepak Guglani)
Court Master

(H.S. Parasher)
Assistant Registrar