A

K. PRABHAKARAN

v.

P. JAYARAJAN

JANUARY 11, 2005

B [R.C. LAHOTI, CJ., SHIVARAJ V. PATIL, K.G. BALAKRISHNAN, B.N. SRIKRISHNA AND G.P. MATHUR, JJ.]

Representation of the People Act, 1951:

C *Section 8(3)—Disqualification under—Determination of—Subsequent appellate judgment having bearing on the conviction and sentence of the candidate—Effect of—On disqualification—Held: the disqualification has to be determined with reference to date of election and date of scrutiny of nomination paper and not the date of judgment in an election petition or in appeal thereagainst—Appellate judgment of a date subsequent to the date of*

D *nomination or election would not have the effect of wiping out the disqualification from a back date—Sections 100(1)(a) and (d)(i), 67A and 36(2)(a).*

Section 8(3)—Term of imprisonment of 2 years—Determination of—For

E *incurring disqualification—Held: For determining the term of imprisonment, in case of consecutive sentences, the aggregate period of punishment for all the offences and in case of concurrent sentences, the longest of the several terms of imprisonment is to be taken into consideration—In order to attract disqualification, it is not necessary that the term must be in respect of one single offence—The provisions of Section 8 have to be construed in harmony*

F *with the provisions of Cr.P.C.—Code of Criminal Procedure, 1973—Section 31.*

Section 8(4)—Saving from disqualification—Applicability of—Held: The saving is available only so long as the House continues and the candidate continues to be member of the House—It ceases to apply if the House is

G *dissolved or the candidate ceases to be member of the House.*

Constitution of India, 1950:

Article 14—Candidates at election—Classification as 'member of House' and 'non-member of House' for the purpose of disqualification—Propriety of

H

such classification—Held: such classification is reasonable and based on well laid down differentia and has nexus with public purpose sought to be achieved—Representation of the People Act, 1951—Sections 8(3) and (4). A

Interpretation of Statute:

Interpretation of provision of law and pronouncement on the construction of statutory provision—Held: While interpreting and pronouncing it should be kept in mind that the view would be applied to myriad situations—Interpretation resulting in confusion, anomaly, uncertainty and practical difficulties has to be avoided. B

Legal Fiction—Meaning and use of—Held: Legal fiction presupposes existence of not-existent state of facts and then works out the consequences flowing from those state of facts—Since it is created only for some definite purpose, it should be limited to that purpose—Stretching it beyond that legitimate field would amount to an illegitimate extension of the purpose of the legal fiction. C D

Words and Phrases:

Expression "Any offence" in the context of Section 8(3) of Representation of People Act, 1951.

The questions which arose for consideration before this Court were: E

(1) Whether an appellate judgment of a date subsequent to the date of election and having a bearing on conviction of a candidate and sentence of imprisonment passed on him would have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than 2 years was disqualified from filing nomination and contesting the election on the dates of nomination and election? F

(2) What is the meaning to be assigned to the expression—"A person convicted of any offence and sentenced to imprisonment for not less than 2 years" as employed in sub-section (3) of Section 8 of the Representation of the People Act, 1951? Is it necessary that the term of imprisonment for not less than 2 years must be in respect of one single offence to attract the disqaualification? G

(3) What is the purport of sub-section (4) of Section 8 of the Act; H

2005(1) eILR(PAT) SC 111

A whether the protection against disqualification conferred by sub-section (4) on a member of a House would continue to apply though the candidate had ceased to be a member of Parliament or Legislature of a State on the date of nomination or election?

Allowing the appeal, the Court

B

HELD: *Per Lahoti, CJ. (for himself and for Patil, Srikrishna and Mathur, JJ.):*

1.1. The question of qualification or disqualification of a returned candidate within the meaning of Section 100(1)(a) of the Representation C of the People Act, 1951 has to be determined by reference to the date of his election which date, as defined in Section 67A of the Act, shall be the date on which the candidate is declared by the Returning Officer to be elected. Whether a nomination was improperly accepted shall have to be determined for the purpose of Section 100(1)(d)(i) by reference to the date D fixed for the scrutiny of nomination, the expression, as occurring in Section 36(2)(a) of the Act. Such dates are the focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat in a House. It is by reference to such focal point dates that the question of disqualification under Sub-sections (1), (2) and (3) of Section 8 shall have to be determined. The factum of E pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction to sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates. The decision dates are the date of election and the date of scrutiny of F nomination and not the date of judgment in an election petition or in appeal thereagainst. [328-G; 329-B]

Amrit Lal Ambalal Patel v. *Himathbhai Gomanbhai Patel and Anr.*, AIR (1968) SC 1455, relied on.

G 1.2. An appellate judgment of a date subsequent to the date of nomination or election (as the case may be) and having a bearing on conviction of a candidate or sentence of imprisonment passed on him would not have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than two years was actually and as a fact H disqualified from filing nomination and contesting the election on the date

of nomination or election (as the case may be). [321-G-H] A

Shri Mani Lal v. *Shri Parmai Lal and Ors.*, [1970] 2 SCC 462 and *Vidya Charan Shukla* v. *Purshottam Lal Kaushik*, [1981] 2 SCC 84, overruled.

Dalip Kumar Sharma v. *State of M.P.*, [1976] 1 SCC 560, distinguished. B

1.3. What is relevant for the purpose of Section 8(3) is the actual period of imprisonment which any person convicted shall have to undergo or would have undergone consequent upon the sentence of imprisonment pronounced by the Court and that has to be seen by reference to the date of scrutiny of nominations or date of election. All other factors are irrelevant. A person convicted may have filed an appeal. He may also have C secured an order suspending execution of the sentence or the order appealed against under Section 389 of the Code of Criminal Procedure, 1973. But that again would be of no consequence. A Court of appeal is empowered under Section 389 to order that pending an appeal by a convicted person the execution of the sentence or order appealed against D be suspended and also, if he is in confinement, that he be released on bail or bond. What is suspended is not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. [320-D-F]

Sarat Chandra Rabha and Ors. v. *Khagendranath Nath and Ors.*, [1961] E 2 SCR 133, followed.

1.4. The proceedings in election petition are independent of the election proceedings which are held by the Executive. By no stretch of imagination the proceedings in election petition can be called or termed as continuation of election proceedings. The High Court trying an election F petition is not hearing an appeal against the decision of Returning Officer or declaration of result of a candidate. [316-C]

1.5. Undoubtedly, the High Court is forming an opinion on the date of judgment in election petition but that opinion has to be formed by reference to the date of scrutiny, based not on such facts as can be G fictionally deemed to have existed on a back date dictated by some subsequent event, but based on the facts as they had actually existed then, so as to find out whether the Returning Officer was right or wrong in his decision on scrutiny of nomination on that date, i.e., the date of scrutiny. The correctness or otherwise of such decision by the Returning Officer H

2005(1) eILR(PAT) SC 111

A cannot be left to be determined by any event which may have happened between the date of scrutiny and the date of pronouncement of the judgment by the High Court. [316-E-F]

1.6. While interpreting a provision of law and pronouncing upon the construction of a statutory provision the Court has to keep in mind that B the view of the law taken by it would be applied to myriad situations which are likely to arise. Such interpretation has to be avoided as it would result in creating confusion, anomaly, uncertainty and practical difficulties in the working of any system. [316-G; 317-A]

C 1.7. An appellate judgment in a criminal case, exonerating the accused-appellant, has the effect of wiping out the conviction as recorded by the trial Court and the sentence passed thereon - is a legal fiction. While pressing into service a legal fiction it should not be forgotten that legal fictions are created only for some definite purpose and the fiction is to be limited to the purpose for which it was created and should not be extended D beyond that legitimate field. A legal fiction pre-supposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to their logical extent having due regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the E purpose of the legal fiction. Fictionally an appellate acquittal wipes out the trial Court conviction, yet, to hold on the strength of such legal fiction that a candidate though convicted and sentenced to imprisonment for two years or more was not disqualified on the date of scrutiny of the nomination, consequent upon his acquittal on a much later date, would F be an illegitimate extension of the purpose of the legal fiction.

[319-A-C, G-H]

2.1. For the purpose of attracting applicability of disqualification within the meaning of "a person convicted of any offence and sentenced to imprisonment for not less than two years", the expression as occurring G in Section 8(3) of the Act, what has to be seen is the total length of time for which a person has been ordered to remain in prison consequent upon the conviction and sentence pronounced at a trial. The word 'any' qualifying the word 'offence' should be understood as meaning the nature of offence and not the number of offence/offences. The use of adjective H 'any' qualifying the noun 'offence' cannot be pressed in service to

countenance the submission that the sentence of imprisonment for not less than two years must be in respect of a single offence. [329-C-D; 325-C] A

2.2. The word 'any' may have one of the several meanings, according to the context and the circumstances. It may mean 'all', 'each'; 'every'; 'some'; or 'one' or many out of several'. The word 'any' may be used to indicate the quantity such as 'some', 'out of many', 'an infinite number'. It may also be used to indicate quality or nature of the noun which it qualifies as an adjective such as 'all or 'every'. [324-G-H] B

Shri Balaganesan Metals v. *M.N. Shanmugham Chetty and Ors.*, [1987] 2 SCC 707, relied on. C

Black's Law Dictionary (sixth Edition) p. 94; Law Lexicon, P. Ramanatha Aiyar, Second Edition, p.116; Principals of Statutory Interpretation by Justice G.P. Singh, 9th Edition, 2004 p. 302, referred to.

2.3. The purpose of enacting disqualification under Section 8(3) of the Act is to prevent criminalization of politics. Section 8 seeks to promote freedom and fairness at elections, as also law and order being maintained while the elections are being held. The provision has to be so meaningfully construed as to effectively prevent the mischief sought to be prevented. The expression 'a person convicted of any offence' has to be construed as 'all offences of which a person has been charged and held guilty at one trial'. The applicability of the expression "sentenced to imprisonment for not less than 2 years" would be decided by calculating the total term of imprisonment for which the person has been sentenced. D E

[325-F-H; 326-A-B]

2.4. Under Section 31 Cr.P.C., it is competent for a criminal court to pass several punishments for the several offences of which the accused has been held guilty. The several terms of imprisonment to which the accused has been sentenced commence one after the other and in such order as the court may direct, unless the Court directs that such punishments shall run concurrently. Each of the terms of imprisonment to which the accused has been sentenced for the several offences has to be within the power of the Court and the term of imprisonment is not rendered illegal or beyond the power of the Court merely because the total term of imprisonment in the case of consecutive sentences is in excess of the punishment within the competency of the Court. For the purpose of appeal by a convicted person it is the aggregate of the consecutive sentences passed against him which F G H

2005(1) eILR(PAT) SC 111

A shall be deemed to be a single sentence. The same principle can be held good and applied to determining disqualification. Under Section 8(3) of the Act, the period of disqualification commences from the date of such conviction. The disqualification continues to operate for a further period of six years calculated from the date of his release from imprisonment. Thus, the disqualification commences from the date of conviction whether
B or not the person has been taken into custody to undergo the sentence of imprisonment. He cannot escape the effect of disqualification merely because he has not been taken into custody because he was on bail or was absconding. The actual period of imprisonment is relevant. [323-A-F]

C 2.5. The provisions of Section 8 of the Act have to be construed in harmony with the provisions of the Cr.P.C. and in such manner as to give effect to the provisions contained in both the legislations. In the case of consecutive sentences the aggregate period of imprisonment awarded as punishment for the several offences and in the case of punishments consisting of several terms of imprisonment made to run concurrently, the
D longest of the several terms of imprisonment would be relevant to be taken into consideration for the purpose of deciding whether the sentence of imprisonment is for less than 2 years or not. [323-F-G]

2.6. It cannot be said that Section 8 of the Act is a penal provision and therefore should be construed strictly. Contesting an election is a
E statutory right and qualifications and disqualifications for holding the office can be statutorily prescribed. A provision for disqualification cannot be termed a penal provision and certainly cannot be equated with a penal provision contained in a criminal law. [326-B-C]

F *Lalita Jalan and Anr.* v. *Bombay Gas Co. Ltd. and Ors.*, [2003] 6 SCC 107, relied on.

3.1. Sub-section (4) of Section 8 of the Act is an exception carved out from sub-Sections (1), (2) and (3). The saving from disqualification is preconditioned by the person convicted being a Member of a House on
G the date of the conviction. The purpose of carving out such an exception is not to confer an advantage on any person; the purpose is to protect the House. The benefit of such saving is available only so long as the House continues to exist and the person continues to be a Member of a House. The saving ceases to apply if the House is dissolved or the person ceases to be Member of the House. [328-E]

H

Shibu Soren v. *Dayanand Sahay and Ors.*, [2001] 7 SCC 425, relied on. A

3.2. A comparative reading of sub-sections (3) and (4) of Section 8 of the Act shows that Parliament has chosen to classify candidates at an election into two classes for the purpose of enacting disqualification, i.e.: (1) a person who on the date of conviction is a member of Parliament or B Legislature of a State, and (ii) a person who is not such a member. The persons falling in the two groups are well defined and determinable groups and, therefore, form two definite classes. Such classification cannot be said to be unreasonable as it is based on a well laid down differentia and has nexus with a public purpose sought to be achieved. [326-H; 327-A-B] C

Per Balakrishnan, J: (Partly dissenting):

1. From the words used in the first part of Section 8(3) of the Act, viz. "a person convicted of any offence", it is clear that in order to incur disqualification, the person must have been convicted of any offence and D sentenced to imprisonment for not less than two years. Out of the offences on six counts, for which the respondent had been found guilty, if all of them are taken individually, the respondent is not a person convicted of any offence, for which the sentence imposed on him is more than two years. It is the gravity of the offence that matters and not the conviction for various minor offences and the total period of two years or more to be E calculated by putting together all sentences for various minor offences. "Any offence" used in Section 8(3) of the Act is to be taken as "out of many offences". [331-E]

2. Merely because the Magistrate ordered that the sentence shall run consecutively, and the aggregate period exceeds two years or more, a F person convicted would not incur the disqualification under Section 8(3) of the Act. The direction for the sentence to run concurrently or consecutively is a direction as to the mode in which sentence is to be executed. That does not affect the nature of the sentence. The disqualification under Section 8(3) of the Act shall not be solely dependent G on the direction as to the mode in which the sentence is to be executed, especially when there are no statutory or judicial guidelines in this regard. [332-B-D]

3. The words of Section 8(3) are to be strictly interpreted and if only the person squarely comes within the four corners of the ordinary meaning H

2005(1) eILR(PAT) SC 111

of the words used in the Section, the disqualification could be used against him. If he has not been convicted for any offence, for not less than two years, he is not liable to be disqualified from contesting the election. Of course, criminalization of politics has become a serious problem to be tackled and no body would dispute that it affects the very foundation of our democratic institutions, but that by itself is not sufficient to interpret the words in a very expansive manner so as to include within its ambit the persons who are strictly not coming within its purview, especially when the disqualification is not only from contesting the election and the disqualification would continue for a further period of six years since the release. [332-E-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8213 of 2001.

From the Judgment and Order dated 5.10.2001 of the Kerala High Court in E.P. No. 1 of 2001.

WITH

C.A. No. 6691 of 2002.

L. Nageswara Rao, K.K. Venugopal, Roy Abraham, Ms. Seema Jain, Himinder Lal, Ajay Verma, Nikhil Majithia, Sudanshu Srivastava, Appellant-In-Person in C.A. No. 6691/2002 and M.C. Dhingra, G. Prakash and Ms. Beena Prakash, Ranbir Singh Kundoo and Sanjay Sharawat for the appearing parties.

The following Judgments/Order of the Court was delivered by

R.C. LAHOTI, CJI. (FOR SELF AND ON BEHALF OF HON. SHIVARAJ V. PATIL, B.N. SRIKRISHNA AND G.P. MATHUR JJ.)

Facts in C.A. No. 8213/2001

Election to the No. 14 Kuthuparamba Assembly Constituency was held in the months of April-May, 2001. There were three candidates, including the appellant K. Prabhakaran and the respondent P. Jayarajan contesting the election. Nominations were filed on 24.4.2001. The poll was held on 10.5.2001. The result of the election was declared on 13.5.2001. The respondent was declared as elected.

In connection with an incident dated 9.12.1991, the respondent was facing trial charged with several offences. On 9.4.1997, the Judicial Magistrate

First Class, Kuthuparamba held the respondent guilty of the offences and sentenced him to undergo imprisonment as under :-

Offences	Sentence
Under Section 143 read with Section 149 IPC	R.I. for a period of one month
Under Section 148 read with Section 149 IPC	R.I. for six months
Under Section 447 read with Section 149 IPC	R.I. for one month
Under Section 353 read with Section 149 IPC	R.I. for six months
Under Section 427 read with Section 149 IPC	R.I. for three months
Under Section 3(2) (e) under the P.D.P.P. Act read with Section 149 IPC	R.I. for one year

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 5 months. On 24.4.1997, the respondent filed Criminal Appeal No. 118/1997 before the Sessions Court, Thalassery. In exercise of the power conferred by Section 389 of the Code of Criminal Procedure, 1973 (hereinafter 'the Code' for short) the Sessions Court directed the execution of the sentence of imprisonment to be suspended and the respondent to be released on bail during the hearing of the appeal.

The nomination paper filed by the respondent was objected to by the appellant on the ground that the respondent having been convicted and sentenced to imprisonment for a term exceeding 2 years was disqualified from contesting the election. However, the objection was overruled by the returning officer and the nomination of the respondent was accepted. The returning officer formed an opinion that the respondent was convicted for many offences and any of the terms of imprisonment for which he was sentenced was not 2 years, and therefore, the disqualification within the meaning of Section 8(3) of the Representation of the People Act, 1951 (hereinafter 'RPA', for short) was not attracted.

2005(1) eILR(PAT) SC 111

A On 15.6.2001, the appellant filed an election petition under Chapter II of RPA mainly on the ground that the respondent was disqualified, and therefore, neither his nomination was valid nor could he have been declared elected.

On 25.7.2001, the Court of Sessions partly allowed the appeal filed by B the respondent. The conviction of the accused and the sentences passed on him were maintained, subject to the modification that the substantive sentences of imprisonment for the several offences for which the respondent was found guilty were made to run concurrently.

On 5.10.2001, a learned Designated Election Judge of the High Court C decided the election petition by directing it to be dismissed. The learned Judge did not find any fault with the view taken by the returning officer that Section 8(3) of RPA was not attracted. The learned Judge also held that during the pendency of the election petition, the sentence passed by the trial court had stood modified by the appellate court which, while maintaining the D conviction and different terms of imprisonment to which the respondent was sentenced, had directed the sentences to run concurrently. In the opinion of the High Court, the sentence, as modified by the appellate court, operated retrospectively from the date of the judgment of the trial court, and, therefore also the disqualification had in any case ceased to exist. The High Court placed reliance on two decisions of this Court namely *Shri Manni Lal* v. *Shri* E *Parmai Lal and Ors.*, [1970] 2 SCC 462 and *Vidya Charan Shukla* v. *Purshottam Lal Kaushik,* [1981] 2 SCC 84.

Facts in C.A. 6691/2002

On 18.9.1993, FIR No.386 for offences under Sections 148, 307, 323, F 325, 326/149 of Indian Penal Code and Sections 25 and 27 of Arms Act 1959 was registered against Nafe Singh, respondent No.1. One of the injured persons in the incident, died after the registration of the F.I.R. and the offence was converted into one of murder under Section 302 I.P.C. and other accused persons were arrested. Later on Nafe Singh was released on bail. On 10.5.1996 G while the charges against Nafe Singh and other accused persons were being tried, elections took place in the State of Haryana. Nafe Singh contested elections and on 10.5.1996 he was declared elected as Member of Legislative Assembly from Bahadargarh Constituency.

On 17.5.1999, the Sessions Court trying the accused and others, held H Nafe Singh guilty of an offence punishable under Section 302 I.P.C. and

other offences. On 19.5.1999 he was sentenced to undergo imprisonment for life. On 25.5.1999 he filed an appeal in the High Court against his conviction. On 8.10.1999 the High Court directed the execution of sentence of imprisonment passed against Nafe Singh to be suspended and also directed him to be released on bail. Nafe Singh furnished bail bonds and was released on bail. By that time he had undergone imprisonment for four months and twenty one days.

On 14.12.1999, the Governor of the State of Haryana dissolved Haryana Assembly for mid term poll. In the first week of January 2000 the Election Commission notified the election programme. For 37-Bahadurgarh Assembly Constituency, the last date for filing nominations was appointed as 3.2.2000. On 29.1.2000 Indian National Lok Dal, to which Nafe Singh belonged, released the first list of its official candidates wherein the name of Smt. Shiela Devi wife of Nafe Singh, respondent No.1, was included. On 1.2.2000 Smt. Shiela Devi filed her nomination paper on Indian National Lok Dal ticket. On 2.2.2000 Nafe Singh also filed his nomination paper as a dummy candidate or an alternative to his wife Smt. Shiela. On the date of the scrutiny of nomination papers the appellant objected to the nomination of Nafe Singh submitting that the latter in view of his conviction and sentence of life imprisonment passed under Section 302 I.P.C. was disqualified for being chosen as a member of Haryana Assembly under Article 191 of the Constitution read with Section 8(3) of the RPA. The objection was overruled by the Returning Officer who accepted as valid the nomination paper filed by Nafe Singh. However, the nomination paper of Smt. Shiela, wife of Nafe Singh was not found to be in order and hence rejected. Indian National Lok Dal then nominated Nafe Singh as its candidate from Bahadurgarh Assembly Constituency. Polling was held on 22.2.2000. Results were declared on 25.2.2000 wherein Nafe Singh was declared elected over the appellant, the nearest rival, by a margin of 1,648 votes. There were, in all, eleven candidates in the election fray.

On 8.4.2000, the appellant filed an election petition under Chapter II of the RPA. One of the grounds taken in the election petition was of improper acceptance of the nomination paper of Nafe Singh by the Returning Officer. Nafe Singh contested the election petition. The learned Designated Election Judge of the High Court of Punjab and Haryana framed 13 issues arising from the pleadings of the parties. Issues No.1 to 7 were heard as preliminary issues not requiring any evidence.

2005(1) eILR(PAT) SC 111

A Before we may proceed to notice the result of the election petition as determined by the High Court, a few more dates need to be noticed, as they are relevant. The hearing of the preliminary issues commenced on 12.2.2001 and continued for several dates of hearing. On 19.3.2001 Nafe Singh, in spite of the hearing on all the issues having been already concluded, made a request to the High Court that the High Court may first decide his criminal B appeal so that in the event of his being exonerated of the charges and being acquitted, he could gain the benefit of the decisions of this Court in *Shri Manni Lal* v. *Shri Parmai Lal and Ors.*, [1970] 2 SCC 462 and *Vidya Charan Shukla* v. *Purshottam Lal Kaushik,* [1981] 2 SCC 84. The prayer made by the respondent - Nafe Singh was opposed on behalf of the appellant. However, C the learned Designated Election Judge adjourned the hearing to 27.4.2001 and then to 3.5.2001 on which date the judgment was reserved. When the judgment in election petition was still awaited, on 1.8.2001 a Division Bench of the High Court decided the criminal appeal preferred by Nafe Singh, respondent No.1. The appeal was allowed and respondent No.1 was directed to be acquitted. The judgment of the Division Bench proceeds on its own D merits but one thing which is noticeable from the judgment of the Division Bench of the High Court dated 1.8.2001 is that the complainant and the other injured persons had come to terms with the accused (respondent No. 1), settled their differences and compromised. 15 persons, who had as witnesses supported the prosecution case at trial, had now filed their affidavits before E the Appellate Court disowning their statements earlier given by them in the trial court and stated (as the High Court has recorded in its decision), "that the parties had compromised their disputes and that the F.I.R. had been lodged on account of suspicion and at the instigation of certain persons and that no such occurrence had taken place."

F On 21.8.2001 Nafe Singh, respondent No.1 placed the appellate judgment of acquittal on record of the election petition by moving an application in that regard. On 20.12.2001 the appellant herein made a request to the Hon. Chief Justice of High Court requesting for his indulgence in getting the judgment in the election petition being pronounced. On 25.2.2002 the appellant moved an application before the learned Designated Election Judge praying G for pronouncement of judgment at an early date. The judgment was pronounced on 5.7.2002. The election petition was directed to be dismissed. Out of several findings recorded by the High Court the two, which are relevant for the purpose of this appeal, are as under:-

H (i) in view of the appeal preferred by the respondent having been

allowed his conviction and sentence passed thereon respectively dated 17.5.1999 and 19.5.1999 stood wiped out as if no conviction had taken place as is the view taken by this Court in the case of *Shri Manni Lal* (supra) and *Vidya Charan Shukla* (supra);

(ii) that on the date of his conviction Nafe Singh was a Member of Legislative Assembly and, therefore, in view of the provisions contained in sub-section (4) of Section 8 of the RPA, the conviction did not take effect for a period of three months and as within that period an appeal was preferred which was pending and not disposed of on the date of nomination and election of Nafe Singh, he was protected by the said provision and the disqualification did not take effect.

Proceedings in the appeals :

The election petitioners in both the cases have preferred these two statutory appeals under Section 116A of the RPA.

On 1.10.2002, C.A. No. 8213/2001 came up for hearing before a three-Judge Bench of this Court which expressed doubt about the correctness of the view taken in the cases of *Vidya Charan Shukla* (supra) and *Manni Lal* (Supra), the former being a three-Judge Bench decision, and, therefore, directed the matter to be placed for consideration by a Constitution Bench. The Bench also felt that the other issue arising for decision in the case as to whether the applicability of Section 8(3) of RPA would be attracted only when a person is sentenced to imprisonment for not less than 2 years for a single offence was also a question having far reaching implications and there being no decided case of this Court available on the issue, it would be in public interest to have an authoritative pronouncement by a Constitution Bench so as to settle the law, and hence directed such other question also to be placed for consideration by the Constitution Bench. The order of reference is reported as [2002] 8 SCC 79.

C.A. No. 6691/2002 came up for hearing before this Court on 7.4.2003. It was directed to be tagged with C.A. No. 8213/2001 in view of one identical question arising for decision in this appeal. This is how both the appeals have come up for hearing before this Constitution Bench.

Three questions arise for decision :-

(1) Whether an appellate judgment of a date subsequent to the date

2005(1) eILR(PAT) SC 111

of election and having a bearing on conviction of a candidate and sentence of imprisonment passed on him would have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than 2 years was disqualified from filing nomination and contesting the election on the dates of nomination and election;

(2) What is the meaning to be assigned to the expression "A person convicted of any offence and sentenced to imprisonment for not less than 2 years" as employed in sub-section (3) of Section 8 of the Representation of the People Act, 1951? Is it necessary that the term of imprisonment for not less than 2 years must be in respect of one single offence to attract the disqualification?

(3) What is the purport of sub-section (4) of Section 8 of RPA? Whether the protection against disqualification conferred by sub-section (4) on a member of a House would continue to apply though the candidate had ceased to be a member of Parliament or Legislature of a State on the date of nomination or election?

Relevant Provisions

The relevant provisions of law may be set out as under :-

Constitution of India

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

x x x

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

x x x

The Representation of the People Act, 1951

"8. Disqualification on conviction for certain offences-

x x x

(3) A person convicted of any offence and sentenced to imprisonment

for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] 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.

(4) Notwithstanding anything in sub-section (1), sub-section (2) of sub-section (3) a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court."

"100. Grounds for declaring election to be void.-(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

We have briefly stated in the earlier part of the judgment such facts relating to both the cases which are not in dispute. Before dealing with the submissions made by the learned counsel for the parties, it would be appropriate to set out briefly the relevant facts and the law laid down in the

A cases of *Shri Manni Lal* (supra) and *Vidya Charan Shukla* (supra).

Shri Manni Lal's case

Manni Lal's case (supra) is a two-Judge Bench decision of this Court. Parmai Lal, respondent No. 1 therein, filed his nomination on 9.1.1969. Two B days later, on 11.1.1969, he was convicted for an offence under Section 304 I.P.C. and sentenced to 10 years RI. On 16.1.1969 he filed an appeal against his conviction in the High Court. Polling took place on 9.2.1969. Parmai Lal was declared elected on 11.2.1969. On 30.9.1969 the appeal filed by Parmai Lal was allowed by the High Court and his conviction and sentence was set C aside. At that point of time, an election petition laying challenge to election of Parmai Lal was pending which was decided by the judgment delivered on 27.10.1969. The High Court refused to hold Parmai Lal as disqualified under Section 8(2) of RPA. Manni Lal filed an appeal in this Court. This Court held that in a criminal case, acquittal in appeal does not take effect merely from the date of the appellate order setting aside the conviction; it has the effect D of retrospectively wiping out the conviction and the sentence awarded by the lower court.

Bhargava, J., speaking for the Bench, observed - "It is true that the opinion has to be formed as to whether the successful candidate was disqualified on the date of his election; but this opinion is to be formed by E the High Court at the time of pronouncing the judgment in the election petition. In this case, the High Court proceeded to pronounce the judgment on 27th October, 1969. The High Court had before it the order of acquittal which had taken effect retrospectively from 11th January, 1969. It was, therefore, impossible for the High Court to arrive at the opinion that on 9th F or 11th February, 1969, respondent No. 1 was disqualified. The conviction and sentence had been retrospectively wiped out, so that the opinion required to be formed by the High Court to declare the election void could not be formed." In the opinion of Bhargava, J. the effect of acquittal by the appellate court was similar to the effect of repeal of an enactment. To quote His Lordship — "The situation is similar to one that could have come into existence G if Parliament itself had chosen to repeal Section 8(2) of the Act retrospectively with effect from 11th January, 1969 (the day of conviction of Parmai Lal). Learned counsel conceded that, if a law had been passed repealing Section 8(2) of the Act and the law had been deemed to come into effect from 11th January, 1969, he could not have possibly urged thereafter, when the point H came up before the High Court, that respondent No. 1 was disqualified on 9th

or 11th February, 1969. The setting aside of the conviction and sentence in appeal has a similar effect of wiping out retrospectively the disqualification. The High Court was, therefore, right in holding that respondent No. 1 was not disqualified and that his election was not void on that ground." On this reasoning this Court upheld the judgment of the High Court that the election of Parmai Lal was not void on the ground of his conviction on the date of the poll and the declaration of the result.

Vidya Charan Shukla's case

Vidya Charan Shukla's case (supra) is a three-Judge Bench decision of this Court. Vidya Charan Shukla was convicted and sentenced to imprisonment exceeding two years by the Sessions Court on the date of filing of nomination. Such conviction and sentence were effective on the date of election as also on the date of declaration of result. However, the execution of sentence was stayed by the High Court. The unsuccessful candidate filed an election petition and by the time the election petition came to be decided, the criminal appeal filed by Vidya Charan Shukla was allowed by the High Court and his conviction and sentence were set aside. Reliance was placed on *Manni Lal's* case (supra) and the narrow question which arose for decision before this Court was whether the case fell within the ratio of *Manni Lal's* case (supra) if the challenge was considered to be one under clause (d)(i) and (iv) of Section 100. The Court noticed the principle laid down in *Dalip Kumar Sharma* v. *State of M.P.*, [1976] 1 SCC 560, to hold that an order of acquittal, particularly one passed on merits, wipes off the conviction and sentence for all purposes and as effectively as it had never been passed and an order of acquittal annulling or voiding a conviction operates from nativity. The conviction for the offence having been quashed by the High Court in appeal it "killed the conviction not then, but performed the formal obsequies of the order which had died at birth."

Thereafter, this Court referred to the case of *Manni Lal* and expressed agreement with the view taken therein, that, once the disqualification of the returned candidate incurred on account of his conviction and sentence exceeding two years imprisonment which existed as a fact at the date of the election, is subsequently set aside by the High Court prior to the date of decision in election petition laying challenge to the validity of election under Section 100(1)(a) of RPA, the election petition must fail because the acquittal had the effect of retrospectively wiping out the disqualification as completely and effectively as if it never had existed. It did not make much difference that

A the candidate stood convicted on the date of filing nomination as also on the date of election and earned acquittal after the election so long as it was before the date of pronouncement of judgment in the election petition by the High Court.

The emphasis in *Manni Lal's* case (supra), that the opinion on the B question of disqualification had to be formed by the High Court at the time it proceeds to pronounce the judgment in the election petition and, therefore, it was by reference to the date of judgment in election petition by the High Court that the factum of disqualification was to be decided, was reiterated in *Vidya Charan Shukla's* case (supra). The acquittal had retrospective effect of C making the disqualification non-existent even at the time of scrutiny of the nominations.

However, it is pertinent to notice the dilemma which the Court faced while dealing with an argument advanced before it and dealt in paragraphs 39 and 40 of the judgment. A submission was made, what would happen if D nomination of a candidate was rejected on account of his disqualification incurred by his conviction and sentence exceeding two years imprisonment and existing as a fact on the date of scrutiny of nomination and he brought an election petition to challenge the election of the returned candidate on the ground that his nomination was improperly rejected and if by the time the election petition came to be heard and decided, the conviction of the election E petitioner was set aside in criminal appeal then, as a result of his subsequent acquittal, his conviction and sentence would stand annulled and obliterated with retrospective force and he would be justified in submitting that his nomination was illegally rejected and, therefore, the result of the election was materially affected and was liable to be set aside. The Court branded the said F submission as 'hypothetical' requiring an academic exercise which was not necessary to indulge in. It would be note-worthy, as recorded vide para 40 of the judgment in *Vidya Charan Shukla's* case, that correctness of the decision in *Manni Lal's* case was not disputed and there was no prayer made for reconsideration of the ratio of *Manni Lal's* case by a larger bench. The only submission made before the Court in *Vidya Charan Shukla's* case was that G the ratio in *Manni Lal's* case was distinguishable and hence inapplicable to the facts of *Vidya Charan Shukla's* case. In such circumstances, the Court held "we would abide by the principle of stare decisis and follow the ratio of *Manni Lal's* case."

It is writ large that the position of law may have been different and the H three-Judge bench which decided *Vidya Charan Shukla's* case could have

gone into the question of examining the correctness of the view taken in *Munni Lal's* case if only that submission would have been made.

Now we proceed to deal with the three issues posed for resolution before us.

QUESTION (1):

Under clause (a) of sub-section (1) of Section 100 of the RPA, the High Court is called upon to decide whether on the date of his election a returned candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or the RPA. If the answer be in the affirmative, the High Court is mandated to declare the election of the returned candidate to be void. The focal point by reference to which the question of disqualification shall be determined is the date of election.

It is trite that the right to contest an election is a statutory right. In order to be eligible for exercising such right the person should be qualified in the terms of the statute. He should also not be subject to any disqualification as may be imposed by the statute making provision for the elective office. Thus, the Legislature creating the office is well within its power to prescribe qualifications and disqualifications subject to which the eligibility of any candidate for contesting for or holding the office shall be determined. Article 191 of the Constitution itself lays down certain disqualifications prescribed by clauses (a) to (d) of sub-article (1) thereof. In addition, it permits, vide clause (e), any other disqualifications being provided for by or under any law made by Parliament. The Representation of People Act, 1951 is one such legislation. It provides for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State and the qualifications and the disqualifications for membership of those Houses.

Under sub-clause (i) of clause (d) of sub-section (1) of Section 100 of the RPA the improper acceptance of any nomination is a ground for declaring the election of the returned candidate to be void. This provision is to be read with Section 36(2)(a) which casts an obligation on the returning officer to examine the nomination papers and decide all objections to any nomination made, or on his own motion, by reference to the date fixed for the scrutiny of the nominations. Whether a candidate is qualified or not qualified or is disqualified for being chosen to fill the seat, has to be determined by reference to the date fixed for the scrutiny of nomination. That is the focal point. The names and number of candidates who will be in the fray is determined on the

A date of the scrutiny of the nomination papers and the constituency goes to polls. Obviously, the decision by the returning officer has to be taken on the facts as they exist on that day. The decision must be accompanied by certainty. The returning officer cannot postpone his decision nor make it conditional upon what may happen subsequent to that date. Under Section 100(1)(d)(i) of the Act the High Court has to test the correctness of the decision taken by B the returning officer and the fact whether any nomination was improperly accepted by reference to the date of the scrutiny of the nomination as defined in Section 36(2)(a). An election petition is heard and tried by a court of law. The proceedings in election petition are independent of the election proceedings which are held by the Executive. By no stretch of imagination the proceedings C in election petition can be called or termed as continuation of election proceedings. The High Court trying an election petition is not hearing an appeal against the decision of returning officer or declaration of result of a candidate.

With respect to the learned judges who decided *Shri Manni Lal's* case D (supra), the fallacy with which the judgment suffers is presumably an assumption as if the election petition proceedings are the continuation of the election proceedings. Yet, another fallacy with which the judgment, in our humble opinion, suffers is as if the High Court has to form opinion on the disqualification of a candidate at the time of pronouncing the judgment in the E election petition. That is not correct. Undoubtedly, the High Court is forming an opinion on the date of judgment in election petition but that opinion has to be formed by reference to the date of scrutiny, based not on such facts as can be fictionally deemed to have existed on a back date dictated by some subsequent event, but based on the facts as they had actually existed then, so as to find out whether the returning officer was right or wrong in his decision F on scrutiny of nomination on that date, i.e., the date of scrutiny. The correctness or otherwise of such decision by the returning officer cannot be left to be determined by any event which may have happened between the date of scrutiny and the date of pronouncement of the judgment by the High Court.

It is rather unfortunate that the correctness of the view taken in *Shri* G *Manni Lal's* case was not questioned in *Vidya Charan Shukla's* case and an attempt was made only to distinguish the case of *Shri Manni Lal.* While interpreting a provision of law and pronouncing upon the construction of a statutory provision the Court has to keep in mind that the view of the law taken by it would be applied to myriad situations which are likely to arise. H It is also well-settled that such interpretation has to be avoided as would

result in creating confusion, anomaly, uncertainty and practical difficulties in the working of any system. A submission based on this principle was advanced before the three-Judge Bench in *Vidya Charan Shukla's* case, but unfortunately did not receive the attention of the Court forming an opinion that dealing with that submission (though forceful) would amount to indulging in 'hypothetical and academic exercise'.

We may just illustrate what anomalies and absurdities would result if the view of the law taken in *Shri Manni Lal's* case and *Vidya Charan Shukla's* case were to hold the field. One such situation is to be found noted in para 39 of *Vidya Charan Shukla's* case. A candidate's nomination may be rejected on account of his having been convicted and sentenced to imprisonment for a term exceeding two years prior to the date of scrutiny of nomination. During the hearing of election petition if such candidate is exonerated in appeal and earns acquittal, his nomination would be deemed to have been improperly rejected and the election would be liable to be set aside without regard to the fact whether the result of the election was materially affected or not.Take another case. Two out of the several candidates in the election fray may have been convicted before the date of nomination. By the time the election petition comes to be decided, one may have been acquitted in appeal and the conviction of other may have been upheld and by the time an appeal under Section 116A of the RPA preferred in this Court comes to be decided, the conviction of one may have been set aside and, at the same time, the acquittal of the other may also have been set aside. Then the decision of the High Court in election petition would be liable to be reversed not because it was incorrect, but because something has happened thereafter. Thus, the result of election would be liable to be avoided or upheld not because a particular candidate was qualified or disqualified on the date of scrutiny of nominations or on the date of his election, but because of acquittal or conviction much after those dates. Such could not have been the intendment of the law.

We are also of the opinion that the learned judges deciding *Shri Manni Lal's* case (supra) were not right in equating the case of appellate acquittal with the retrospective repeal of a disqualification by statutory amendment.

In *Vidya Charan Shukla's* case (supra) *Dalip Kumar Sharma's* case (supra) has been relied upon which, in our opinion, cannot be applied to a case of election and election petition.

Dalip Kumar Sharma's case (supra) is a case of conviction under Section 303 I.P.C.. One P was murdered on 24.10.1971. The accused was sentenced

2005(1) eILR(PAT) SC 111

A to life imprisonment on 18.5.1972. On 20.6.1973 the accused committed the murder of A and was convicted for such murder on 24.1.1974 and sentenced to death under Section 303 I.P.C. In appeal against conviction for the murder of P, the accused was acquitted on 27.2.1974. On the same day the High Court confirmed the death sentence of the accused under Section 303 I.P.C. holding that on the date on which the accused had committed the murder of B A he was undergoing sentence of life imprisonment for the murder of P. In appeal preferred before this Court, it was held that the death sentence could not be upheld inasmuch as the accused had stood acquitted from the offence of the first murder and the acquittal in an appeal had the effect of wiping out the conviction in the first murder. The mandatory sentence of death by C reference to Section 303 I.P.C. for the second offence could not be maintained.

Four factors are relevant. Firstly, the sentence of death was passed in judicial proceedings and the appeal against the judgment of the trial court being a continuation of those judicial proceedings, the court was not powerless to take note of subsequent events. The sentence of death was passed based D on an event which had ceased to exist during the pendency of the appeal. The court was, not only, not powerless but was rather obliged to take note of such subsequent event, failing which a grave injustice would have been done to the accused. Secondly, the court interpreted Section 303 I.P.C. which speaks of a person "under sentence of imprisonment for life" as meaning a person E under an operative, executable sentence of imprisonment for life. A sentence once imposed but later set aside is not executable and, therefore, ceases to be relevant for the purpose of Section 303 I.P.C. Thirdly, the focal point was the date of conviction when the court is called upon to pronounce the sentence. Fourthly, it is pertinent to note that the well established proposition which the court pressed into service was that — "a court seized of a proceeding must F take note of events subsequent to the inception of that proceeding", which position, the court held, is applicable to civil as well as criminal proceedings with appropriate modifications. The emphasis is on the events happening subsequent to the inception of that proceeding. In the cases at hand, the principle laid down in *Dalip Kumar Sharma's* case (supra) will have no G application inasmuch as the validity of nomination paper is to be tested by deciding qualification or disqualification of the candidate on the date of scrutiny and not by reference to any event subsequent thereto.

The decision of this Court in *Amrit Lal Ambalal Patel* v. *Himathbhai Gomanbhai Patel and Anr.*, AIR (1968) SC 1455, lends support to the principle H that the crucial date for determining whether a candidate is not qualified or

is disqualified is the date of scrutiny of nominations and a subsequent event which has the effect of wiping out the disqualification has to be ignored. A

An appellate judgment in a criminal case, exonerating the accused-appellant, has the effect of wiping out the conviction as recorded by the Trial Court and the sentence passed thereon is a legal fiction. While pressing into service a legal fiction it should not be forgotten that legal fictions are created only for some definite purpose and the fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. A legal fiction pre-supposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to their logical extent having due regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the purpose of the legal fiction (See, the majority opinion in *Bengal Immunity Co.* v. *State of Bihar,* AIR (1955) SC 661). P.N. Bhagwati, J., as his Lordship then was, in his separate opinion concurring with the majority and dealing with the legal fiction contained in the Explanation to Article 286 (1) (a) of the Constitution (as it stood prior to Sixth Amendment) observed "Due regard must be had in this behalf to the purpose for which the legal fiction has been created. If the purpose of this legal fiction contained in the Explanation to Article 286 (1) (a) is solely for the purpose of sub-clause (a) as expressly stated it would not be legitimate to travel beyond the scope of that purpose and read into the provision any other purpose howsoever attractive it may be. The legal fiction which was created here was only for the purpose of determining whether a particular sale was an outside sale or one which could be deemed to have taken place inside the State and that was the only scope of the provision. It would be an illegitimate extension of the purpose of the legal fiction to say that it was also created for the purpose of converting the inter-State character of the transaction into an intra-State one." His Lordship opined that this type of conversion would be contrary to the express purpose for which the legal fiction was created. These observations are useful for the purpose of dealing with the issue in our hands. Fictionally, an appellate acquittal wipes out the trial court conviction; yet, to hold on the strength of such legal fiction that a candidate though convicted and sentenced to imprisonment for two years or more was not disqualified on the date of scrutiny of the nomination, consequent upon his acquittal on a much later date, would be an illegitimate extension of the purpose of the legal fiction. However, we hasten to add that in the present case the issue is not so much as to the applicability of the legal fiction; the B C D E F G H

A issue concerns more about the power of the Designated Election Judge to take note of subsequent event and apply it to an event which had happened much before the commencement of that proceeding in which the subsequent event is brought to the notice of the Court. An election petition is not a continuation of election proceedings.

B We are clearly of the opinion that *Shri Manni Lal's* case (supra) and *Vidya Charan Shukla's* case (supra) do not lay down the correct law. Both the decisions are, therefore, overruled.

The correct position of law is that nomination of a person disqualified within the meaning of sub-section (3) of Section 8 of the RPA on the date C of scrutiny of nominations under Section 36(2)(a) shall be liable to be rejected as invalid and such decision of the returning officer cannot be held to be illegal or ignored merely because the conviction is set aside or so altered as to go out of the ambit of Section 8(3) of the RPA consequent upon a decision of a subsequent date in a criminal appeal or revision.

D What is relevant for the purpose of Section 8(3) is the actual period of imprisonment which any person convicted shall have to undergo or would have undergone consequent upon the sentence of imprisonment pronounced by the Court and that has to be seen by reference to the date of scrutiny of nominations or date of election. All other factors are irrelevant. A person E convicted may have filed an appeal. He may also have secured an order suspending execution of the sentence or the order appealed against under Section 389 of the Code of Criminal Procedure 1973. But that again would be of no consequence. A Court of appeal is empowered under Section 389 to order that pending an appeal by a convicted person the execution of the F sentence or order appealed against be suspended and also, if he is in confinement, that he be released on bail or bond. What is suspended is not the conviction or sentence; it is only the execution of the sentence or order which is suspended. It is suspended and not obliterated. It will be useful to refer in this context to a Constitution Bench judgment of this Court in *Sarat Chandra Rabha and Ors.* v. *Khagendranath Nath and Ors.*, [1961] 2 SCR G 133. The convict had earned a remission and the period of imprisonment reduced by the period of remission would have had the effect of removing disqualification as the period of actual imprisonment would have been reduced to a period of less than two years. The Constitution Bench held that the remission of sentence under Section 401 of Criminal Procedure Code (old) and his release from jail before two years of actual imprisonment would not H

reduce the sentence into one of a period of less than two years and save him from incurring the disqualification. "An order of remission does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court."

In *B.R. Kapur* v. *State of T.N. and Anr.*, [2001] 7 SCC 231, a similar question, though in a little different context, had arisen for the consideration of the Constitution Bench. Vide para 44, the Court did make a reference to *Vidya Charan Shukla's* case but observed that it was a case of an election petition and, therefore, did not have a bearing on the construction of Article 164 of the Constitution which was in issue before the Constitution Bench. Obviously the consideration of the correctness of the law laid down in *Vidya Charan Shukla's* case was not called for. However, still the Constitution Bench has made a significant observation which is very relevant for our purpose. The Constitution Bench observes (vide para 44) - "There can be no doubt that in a criminal case acquittal in appeal takes effect retrospectively and wipes out the sentence awarded by the lower court. This implies that the stigma attached to the conviction and the rigour of the sentence are completely obliterated, but that does not mean that the fact of the conviction and sentence by the lower court is obliterated until the conviction and sentence are set aside by an appellate court. *The conviction and sentence stand pending the decision in the appeal and for the purposes of a provision such as Section 8 of the Representation of the People Act are determinative of the disqualifications provided for therein*" (emphasis supplied). To the same effect are observations contain in para 40 also.

We are, therefore, of the opinion that an appellate judgment of a date subsequent to the date of nomination or election (as the case may be) and having a bearing on conviction of a candidate or sentence of imprisonment passed on him would not have the effect of wiping out disqualification from a back date if a person consequent upon his conviction for any offence and sentenced to imprisonment for not less than two years was actually and as a fact disqualified from filing nomination and contesting the election on the date of nomination or election (as the case may be).

2005(1) eILR(PAT) SC 111

A *Question No. (2)*

What is the meaning to be assigned to the expression "sentence to imprisonment for not less than 2 years" as occurring in Sec. 8(3) of the RPA? In a trial a person may be charged for several offences and held guilty. He may be sentenced to different terms of imprisonment f r such different B offences. Individually the term of imprisonment may be less than 2 years for each of the offences, but collectively or taken together or added to each other the total term of imprisonment may exceed 2 years. Whether the applicability of Section 8(3) above said would be attracted to such a situation.

C Section 31 of the Code of Criminal Procedure, 1973 is relevant to find an answer for this. It provides as under :-

"31. Sentence in cases of conviction of several offences at one trial. —

D (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments, prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other E in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to F inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that —

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

G

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of H the consecutive sentences passed against him under this section shall

be deemed to be a single sentence." A

It is competent for a criminal court to pass several punishments for the several offences of which the accused has been held guilty. The several terms of imprisonment to which the accused has been sentenced commence one after the other and in such order as the court may direct, unless the court directs that such punishments shall run concurrently. Each of the terms of B imprisonment to which the accused has been sentenced for the several offences has to be within the power of the court and the term of imprisonment is not rendered illegal or beyond the power of the court merely because the total term of imprisonment in the case of consecutive sentences is in excess of the punishment within the competency of the court. For the purpose of appeal by C a convicted person it is the aggregate of the consecutive sentences passed against him which shall be deemed to be a single sentence. The same principle can be held good and applied to determining disqualification. Under sub-section (3) of Section 8 of the RPA the period of disqualification commences from the date of such conviction. The disqualification continues to operate for a further period of six years calculated from the date of his release from D imprisonment. Thus, the disqualification commences from the date of conviction whether or not the person has been taken into custody to undergo the sentence of imprisonment. He cannot escape the effect of disqualification merely because he has not been taken into custody because he was on bail or was absconding. Once taken into custody he shall remain disqualified E during the period of imprisonment. On the date of his release would commence the period of continued disqualification for a further period of six years. It is clear from a bare reading of sub-section (3) of Section 8 of the RPA that the actual period of imprisonment is relevant. The provisions of Section 8 of the Representation of People Act, 1951 have to be construed in harmony with the provisions of the Code of Criminal Procedure, 1973 and in such manner F as to give effect to the provisions contained in both the legislations. In the case of consecutive sentences the aggregate period of imprisonment awarded as punishment for the several offences and in the case of punishments consisting of several terms of imprisonment made to run concurrently, the longest of the several terms of imprisonment would be relevant to be taken G into consideration for the purpose of deciding whether the sentence of imprisonment is for less than 2 years or not.

It was submitted by Shri K.K. Venugopal, the learned Senior Counsel for the respondent in C.A. No. 8213/2001, that the phrase "any offence" as occurring in Section 8(3) of the RPA should be interpreted to mean a single H

2005(1) eILR(PAT) SC 111

offence and unless and until the term of imprisonment for any one of the offences out of the several offences for which the accused has been convicted and sentenced is 2 years or more, the disqualification enacted under Section 8(3) would not be attracted. We are not impressed.

In *Shri Balaganesan Metals* v. *M.N. Shanmugham Chetty and Ors.*, [1987] 2 SCC 707, the word "any" came up for consideration of this Court. It was held that the word "any" indicates "all" or "every" as well as "some" or "one" depending on the context and the subject matter of the statue. Black's Law Dictionary was cited with approval.

In Black's Law Dictionary (sixth Edition) the word 'any' is defined (at p. 94) as under:-"

> "**Any**. Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity.
>
> One or some (indefinitely).
>
> "Any" does not necessarily mean only one person, but may have reference to more than one or to many.
>
> Word "Any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute.
>
> It is often synonymous with "either", "every", or "all". Its generality may be restricted by the context; thus, the giving of a right to do some act "at any time" is commonly construed as meaning within a reasonable time; and the words "any other" following the enumeration of particular classes are to be read as "other such like," and include only others of like kind or character."

The word 'any' may have one of the several meanings, according to the context and the circumstances. It may mean 'all'; 'each'; 'every'; 'some'; or 'one or many out of several'. The word 'any' may be used to indicate the quantity such as 'some', 'out of many', 'an infinite number'. It may also be used to indicate quality or nature of the noun which it qualifies as an adjective such as 'all' or 'every'. (See the Law Lexicon, P. Ramanatha Aiyar, Second Edition, at p.116). Principles of Statutory Interpretation by Justice G.P.Singh (9th Edition, 2004) states (at p.302) "When a word is not defined in the Act

itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that "the meanings of words and expressions used in an Act must take their colour from the context in which they appear". Therefore, "when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers".

In Section 8(3) of the RPA, the word 'any' has been used as an adjective qualifying the word 'offence' to suggest not the number of offence but the nature of the offence. A bare reading of sub-Section (3) shows that the nature of the offence included in sub-Section (3) is 'any offence other than any offence referred to in sub-Section (3) (of Section 8)'. The use of adjective 'any' qualifying the noun 'offence' cannot be pressed in service to countenance the submission that the sentence of imprisonment for not less than two years must be in respect of a single offence.

Sub-section (3) in its present form was introduced in the body of the RPA by Act No.1 of 1989 w.e.f. 15.3.1989. The same Act made a few changes in the text of sub-section (4) also. The Statement of Objects and Reasons accompanying Bill No.128 of 1988 stated, *inter alia*, "Section 8 of the Representation of the People Act, 1951 deals with disqualification on the ground of conviction for certain offences. It is proposed to include more offences in this section so as to prevent persons having criminal record enter into public life". (See the Gazette of India Extraordinary, Part II, Section 2, pp.105, 114). The intention of Parliament is writ large; it is to widen the arena of Section 8 in the interest of purity and probity in public life.

The purpose of enacting disqualification under Section 8(3) of the RPA is to prevent criminalization of politics. Those who break the law should not make the law. Generally speaking, the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics, and the House—a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election. Thus, Section 8 seeks to promote freedom and fairness at elections, as also law and order being maintained while the elections are being held. The provision has to be so meaningfully construed as to effectively prevent the

2005(1) eILR(PAT) SC 111

A mischief sought to be prevented. The expression 'a person convicted of any offence' has to be construed as 'all offences of which a person has been charged and held guilty at one trial'. The applicability of the expression "sentenced to imprisonment for not less than 2 years" would be decided by calculating the total term of imprisonment for which the person has been sentenced.

B

Shri K.K. Venugopal, learned senior counsel appearing for respondent in one of the appeals, submitted that Section 8 of the RPA is a penal provision and, therefore, should be construed strictly. We find it difficult to countenance the submission. Contesting an election is a statutory right and qualifications C and disqualifications for holding the office can be statutorily prescribed. A provision for disqualification cannot be termed a penal provision and certainly cannot be equated with a penal provision contained in a criminal law. If any authority is needed for the proposition the same is to be found in *Lalita Jalan and Anr.* v. *Bombay Gas Co. Ltd. and Ors.*, [2003] 6 SCC 107 which has held Section 630 of the Companies Act, 1956 not to be a penal provision. D The Court has gone on to say, "the principle that statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application which must necessarily be observed in every case."

In the case of P. Jayarajan the sentences of imprisonment were to run consecutively in terms of the judgment of the trial court. The periods of E sentences of imprisonment for different offences shall have to be totalled up. On such totalling, the total term for which P. Jayarajan would have remained in Jail did exceed a period of 2 years and consequently attracted the applicability of Section 8(3) of the RPA which cast a disqualification upon P. Jayarajan on the date of scrutiny of the nomination papers. His nomination F could not have been accepted by the returning officer and he was not right in holding him not disqualified. In the light of the view of the law taken by us on Question-1 above, the subsequent event of the several terms of imprisonment having been directed by the appellate court to run concurrently on a date subsequent to the date of scrutiny is irrelevant and liable to be ignored.

G

Question No. (3)

A comparative reading of sub-sections (3) and (4) of Section 8 of the RPA shows that Parliament has chosen to classify candidates at an election into two classes for the purpose of enacting disqualification. These two classes

H

are : (i) a person who on the date of conviction is a member of Parliament or Legislature of a State, and (ii) a person who is not such a member. The persons falling in the two groups are well defined and determinable groups and, therefore, form two definite classes. Such classification cannot be said to be unreasonable as it is based on a well laid down differentia and has nexus with a public purpose sought to be achieved. A B

Once the elections have been held and a House has come into existence, it may be that a member of the House is convicted and sentenced. Such a situation needs to be dealt with on a different footing. Here the stress is not merely on the right of an individual to contest an election or to continue as a member of a House, but the very existence and continuity of a House democratically constituted. If a member of the House was debarred from sitting in the House and participating in the proceedings, no sooner the conviction was pronounced followed by sentence of imprisonment, entailing forfeiture of his membership, then two consequences would follow. First, the strength of membership of the House shall stand reduced, so also the strength of the political party to which such convicted member may belong. The Government in power may be surviving on a razor edge thin majority where each member counts significantly and disqualification of even one member may have a deleterious effect on the functioning of the Government. Secondly, bye-election shall have to be held which exercise may prove to be futile, also resulting in complications in the event of the convicted member being acquitted by a superior criminal court. Such reasons seem to have persuaded the Parliament to classify the sitting members of a House into a separate category. Sub-section (4) of Section 8, therefore, provides that if on the date of incurring disqualification a person is a member of a House, such disqualification shall not take effect for a period of 3 months from the date of such disqualification. The period of 3 months is provided for the purpose of enabling the convicted member to file an appeal or revision. If an appeal or revision has been filed putting in issue the conviction and/or the sentence which is the foundation of disqualification, then the applicability of the disqualification shall stand deferred until such appeal or application is disposed of by the court in appeal or revision. C D E F G

In *Shibu Soren* v. *Dayanand Sahay and Ors.*, [2001] 7 SCC 425, a three-Judge Bench of this Court was seized of the question of examining a disqualification on account of the person at that time holding an office of profit. The Court held that such a provision is required to be interpreted in a realistic manner having regard to the facts and circumstances of each case H

A and the relevant statutory provisions. While "a strict and narrow construction" may not be adopted which may have the effect of "shutting of many prominent and other eligible persons to contest elections" but at the same time "in dealing with a statutory provision which imposes a disqualification on a citizen, it would not be unreasonable to take merely a broad and general view and ignore the essential points". What is at stake is the right to contest an B election and hold office. "A practical view, not pedantic basket of tests" must, therefore, guide courts to arrive at appropriate conclusion. The disqualification provision must have a substantial and reasonable nexus with the object sought to be achieved and the provision should be interpreted with the flavour of reality bearing in mind the object for enactment.

C

Sub-section (4) operates as an exception carved out from sub-sections (1), (2) and (3) of Section 8 of the RPA. Clearly the saving from the operation of sub-sections (1), (2) and (3) is founded on the factum of membership of a House. The purpose of carving out such an exception is not to confer an advantage on any person; the purpose is to protect the House. Therefore, sub-D section (4) would cease to apply no sooner the House is dissolved or the person has ceased to be a member of that House. Any other interpretation would render sub-section (4) liable to be annulled as unconstitutional. Once a House has been dissolved and the person has ceased to be a member, on the date of filing the nomination there is no difference between him and any E other candidate who was not such a member. Treating such two persons differently would be arbitrary and discriminatory and incur the wrath of Article 14. A departure from the view so taken by us would also result in anomalous consequences not intended by the Parliament.

Conclusion

F

To sum up, our findings on the questions arising for decision in these appeals are as under:-

1. The question of qualification or disqualification of a returned candidate within the meaning of Section 100(1)(a) of the Representation of the People G Act, 1951 (RPA, for short) has to be determined by reference to the date of his election which date, as defined in Section 67A of the Act, shall be the date on which the candidate is declared by the returning officer to be elected. Whether a nomination was improperly accepted shall have to be determined for the purpose of Section 100(1)(d)(i) by reference to the date fixed for the scrutiny of nomination, the expression, as occurring in Section 36(2)(a) of H the Act. Such dates are the focal point for the purpose of determining whether

the candidate is not qualified or is disqualified for being chosen to fill the seat in a House. It is by reference to such focal point dates that the question of disqualification under sub-sections (1), (2) and (3) of Section 8 shall have to be determined. The factum of pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates referred to hereinabove. The decisive dates are the date of election and the date of scrutiny of nomination and not the date of judgment in an election petition or in appeal thereagainst.

2. For the purpose of attracting applicability of disqualification within the meaning of "a person convicted of any offence and sentenced to imprisonment for not less than two years", - the expression as occurring in Section 8(3) of the RPA, what has to be seen is the total length of time for which a person has been ordered to remain in prison consequent upon the conviction and sentence pronounced at a trial. The word 'any' qualifying the word 'offence' should be understood as meaning the nature of offence and not the number of offence/offences.

3. Sub-section(4) of Section 8 of the RPA is an exception carved out from sub-sections (1), (2) and (3). The saving from disqualification is preconditioned by the person convicted being a Member of a House on the date of the conviction. The benefit of such saving is available only so long as the House continues to exist and the person continues to be a Member of a House. The saving ceases to apply if the House is dissolved or the person ceases to be a Member of the House.

Result

For the foregoing reasons, Civil Appeal No.8213 of 2001, *K. Prabhakaran* v. *P. Jayarajan,* is allowed. The judgment of the High Court dated 5.10.2001 is set aside. The election petition filed by the appellant is allowed. The election of the respondent P. Jayarajan from No.14 Kuthuparamba Assembly Constituency to the Kerala State Legislative Assembly, which was declared on 13.5.2001, is set aside. The respondent No.1 shall bear the costs of the appellant throughout.

Civil Appeal No.6691 of 2002 is also allowed. The judgment of the High Court dated 5.7.2002 is set aside. The election petition filed by the appellant shall stand allowed. The election of the respondent Nafe Singh

2005(1) eILR(PAT) SC 111

A from 37-Bahadurgarh Assembly Constituency is declared void as he was disqualified from being a candidate under Section 8(3) of the Representation of the People Act, 1951. The respondent No.1 shall bear the costs of the appellant throughout.

K.G. BALAKRISHNAN, J. I had the advantage of reading the B Judgment in draft prepared by noble and learned Brother, Lahoti, CJ, and I regret that I am unable to agree with the interpretation placed on Section 8(3) of the Representation of People s Act, 1951. On all other points, I respectfully agree with the decision.

C Under Section 8(3) of the Representation of the People's Act, 1951, a person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-Section (1) or sub-Section (2)] 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. If at the time of the scrutiny of the nomination papers, a person concerned D was found disqualified, his nomination paper will be rejected and he would be unable to contest the election. Under Section 100 of the Representation of People's Act, 1951, any improper acceptance of nomination is a valid ground for declaring the election void, if the result of the election, insofar as it concerns the returned candidate, has been materially affected.

E The question for consideration is whether in a case where the accused person has been convicted on various counts and the total period of the sentence of imprisonment is two years or more and the Magistrate orders the sentence of imprisonment for various periods to run consecutively, and if the total period of such imprisonment to which the person convicted will have to F undergo is two years or more, whether he could be disqualified under Section 8(3) of the Representation of People's Act. In other words, even if the sentence of imprisonment does not exceed two years or more for any one of the offences for which he is convicted, whether still he could be disqualified under Section 8(3) of the Representation of the People's Act, 1951 based on the order of the Magistrate/Judge to the effect that the sentence on various G counts shall run consecutively.

The argument of the learned counsel for the appellant in Civil Appeal No. 8213 of 2001 is that it is the total period of the sentence on various counts which is material and in the instant case, the respondent was found guilty of offences on six counts. For the offence under Section 143 read with H Section 149 IPC, he was sentenced to undergo R.I. for a period of one year

while for the offence under Section 3(2)(e) of the Prevention of the Damage of the Public Property Act, 1984, he was sentenced to undergo R.I. for a period of one year, and for various other offences he had been sentenced to imprisonment for a period ranging from one month to six months and as the Judicial Magistrate First Class directed that the sentences on various counts shall run consecutively. It is argued by the appellant's learned Counsel that the respondent is convicted and sentenced to imprisonment for a period of more than two years and therefore disqualified under Section 8(3) of the Representation of People's Act, 1951. The question for consideration is whether the respondent in Civil Appeal No. 8213 of 2001 had been convicted for any offence and sentenced to imprisonment for not less than two years. I am unable to subscribe to the contention advanced by the appellant's learned Counsel that the word "any" used in Section 8(3) of the Representation of the People's Act, 1951 should be construed so as to mean "more than one" or "all" or in a sense of plurality. It is also difficult to construe the words "not less than two years" used in Section 8(3) of the Representation of the People's Act by giving emphasis to the total period of imprisonment that a convict may undergo if all the periods of imprisonment for various offences are put together, when it is ordered to run consecutively.

From the words used in the first part of Section 8(3), viz. "a person convicted of any offence", it is clear that in order to incur disqualification, the person must have been convicted of any offence and sentenced to imprisonment for not less than two years. Out of the offences on six counts, for which the respondent had been found guilty, if all of them are taken individually, the respondent is not a person convicted of any offence, for which the sentence imposed on him is more than two years.

In the case of the respondent, the Magistrate ordered that the sentence on various counts shall run consecutively. That does not mean that the respondent had been convicted of any offence, for which the sentence of imprisonment is two years or more. The direction for the sentence to run concurrently or consecutively is a direction as to the mode in which the sentence is to be executed. That does not affect the nature of the sentence. It is also important to note that in the Code of Criminal Procedure, there are no guidelines or specific provisions to suggest under what circumstances the various sentences of imprisonment shall be directed to run concurrently or consecutively. There are no judicial decisions, to my knowledge, by superior courts laying down the guidelines as to what should be the criteria for directing the convict to undergo imprisonment on various counts concurrently or

A consecutively. In certain cases, if the person convicted is a habitual offender and he had been found guilty of offences on various counts and it is suspected that he would be a menace if he is let loose on the society, then the Court would direct that such person shall undergo the imprisonment consecutively. Merely because the Magistrate ordered that the sentence shall run consecutively, and the aggregate period exceeds two years or more, a person B convicted would not incur the disqualification under Section 8(3) of the Representation of the People's Act, 1951. If that be so, a Magistrate may order the sentence on various counts to run concurrently in one case and for the same type of offences, if another Magistrate directs the sentence on various counts to run consecutively, the person in the latter case would incur C the disqualification whereas the former will not have any such disqualification under Section 8(3) of the Representation of the People's Act, 1951. The disqualification under Section 8(3) of the Representation of the People's Act, 1951 shall not be solely dependent on the direction as to the mode in which the sentence is to be executed, especially when there are no statutory or judicial guidelines in this regard.

D

Moreover, if the argument of the appellant's learned Counsel is to be accepted, the words used in Section 8(3) of the Representation of People's Act, 1951 are inadequate and the Legislature would have expressed its intention by stating that the total period of the sentence on various counts shall be E taken into consideration to consider whether the imprisonment is for two years or more.

Section 8(3) of the Representation of People's Act, 1951 is a provision by which a person is disqualified from contesting the election. These words are to be strictly interpreted and if only the person squarely comes within the F four corners of the ordinary meaning of the words used in the section, the disqualification could be used against him. If he has not been convicted for any offence, for not less than two years, he is not liable to be disqualified from contesting the election. Of course, the criminalization of politics has become a serious problem to be tackled and nobody would dispute that it affects the very foundation of our democratic institutions, but that by itself G is not sufficient to interpret the words in a very expansive manner so as to include within its ambit the persons who are strictly not coming within its purview, especially when the disqualification is not only from contesting the election and the disqualification would continue for a further period of six years since the release.

H It is the gravity of the offence that matters and not the conviction for

various minor offences and the total period of two years or more to be calculated by putting together all sentences for various minor offences. "Any offence" used in Section 8(3) of the Representation of People's Act, 1951 is to be taken as "out of many offences" and the respondent in Civil Appeal No. 8213 of 2001 has not been convicted for any offence, for which the imprisonment is for a period of not less than two years and he was not disqualified and, in my opinion, the High Court rightly decided the question in his favour. The Election Petition filed by the appellant in Civil Appeal No. 8213 of 2001 was rightly rejected. Civil Appeal No. 8213 of 2001 is liable to be dismissed.

A B

ORDER

C

In view of the majority opinion, Civil Appeal No.8213 of 2001, *K. Prabhakaran* v. *P. Jayarajan*, is allowed. The judgment of the High Court dated 5.10.2001 is set aside. The election petition filed by the appellant is allowed. The election of the respondent P. Jayarajan from No.14 Kuthuparamba Assembly Constituency to the Kerala State Legislative Assembly, which was declared on 13.5.2001, is set aside. The respondent No.1 shall bear the costs of the appellant throughout.

D

Civil Appeal No.6691 of 2002 is also allowed. The judgment of the High Court dated 5.7.2002 is set aside. The election petition filed by the appellant shall stand allowed. The election of the respondent Nafe Singh from 37-Bahadurgarh Assembly Constituency is declared void as he was disqualified from being a candidate under Section 8(3) of the Representation of the People Act, 1951. The respondent No.1 shall bear the costs of the appellant throughout.

E

F

Appeals allowed.