

Topic: Parliamentary Privileges Under Article 105

Name of the case: PV Narsimha Rao v. State, AIR 1998 SC 2120

Bench: Justice S.C. Agarwal and Justice A.S. Anand

Fact of the case: The Narsimha Rao government at the Centre did not enjoy majority in Lok Sabha in 1993. Vote of no-confidence was moved against the government by the opposition parties. To avert defeat on the floor of house, certain member of the ruling party gave large sum of money to a few members of the Jharkhand Mukti Morcha (JMM) to vote against the motion on the floor of the house. Consequently, no-confidence motion was defeated in the house with 251 for and 265 against. This led to two important questions as under:

Issue:

Whether by the virtue of Article 105(1) and 105(2), a member of Parliament can claim immunity from prosecution before a criminal court on a charge of bribery in relation to the proceedings in Parliament?

Whether a member of Parliament is a public servant under the prevention of corruption act, 1988?

Judgment: The five-judge bench of Supreme Court divided opinion into two.

On the first point, the majority view is that ordinary law does not apply to acceptance of bribery by a member of Parliament in relation to proceeding in Parliament. The court gave a very broad interpretation of Article 105(2). On behalf of the majority, Justice Bharucha, has stated as under:

“broadly interpreted, as we think it should be, Article 105(2) protects a member of Parliament against proceeding in court that relate to, or concern, or have a connection or nexus with anything said, or a vote given, by him in Parliament.”

The majority has ruled that while the bribe givers can claim no immunity under Article 105, the bribe takers stand on a different footing. The alleged bribe takers are set to have received monies as a motive or reward for defeating the no-confidence motion and, thus, the nexus between the bribe and a no-confidence motion is explicit. The majority judges have insisted that to enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceeding that bear and access to their speech or vote.

The reason for such a broad view is that otherwise a member who makes a speech or cast her vote that is not to the liking of powers that may be troubled by a prosecution alleging that he has been paid a bribe for the purpose. But a member who is alleged to have accepted bribe but has not voted cannot enjoy immunity under Article 105(2). Also, the members of the house who have given the bribe do not enjoy any immunity from prosecution. On this view, the majority held that four JMM members who had taken the money and put it against the motion were not guilty of corruption. But one member, Ajit Singh, who has taken the money but did not vote was held liable to be prosecuted.

But the majority judges expressed the view, narrowly interpreting Article 105(2), that the immunity under Article which can be claimed is the liability that has arisen as a consequence of the speech that has been made for the vote that has been given in the Parliament.

The minority judges have argued that the criminal liability incurred by a member of Parliament who has accepted the bribe for speaking or giving his vote in Parliament in particular manner arises independently of the making of the speech or giving of vote by member and such liability cannot be regarded as the liability in respect of anything said or any vote given in the Parliament.

On the second question mentioned above, all the judges are agreed that a member of Parliament or a State Legislature is a public servant under Section 2 (c) of the Prevention of Corruption Act, 1988, because he holds an office and he is required and authorised to carry out a public duty, viz, effectively and fearlessly representing his constituency.

Under Section 19 of the Prevention of Corruption Act, 1988 a public servant cannot be prosecuted for certain offences without the sanction of competent authority, i.e, The authority competent to remove him from office. In the case of a member of Parliament or state legislature, there exists no such competent authority capable of removing him. Therefore, the majority view is that a member can be prosecuted for such offences, but after obtaining the permission of chairman or speaker as the case maybe of the concerned house.
