

Saritha S. Nair vs Hibi Eden on 9 December, 2020

Equivalent citations: AIR 2021 SUPREME COURT 483, AIR ONLINE 2020 SC 877

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Bench: V. Ramasubramanian, A.S. Bopanna, S.A. Bobde

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.10678 OF 2020

SARITHA S. NAIR

... PETITIONER(S)

VERSUS

HIBI EDEN

...RESPONDENT(S)

JUDGMENT

V. Ramasubramanian, J.

1. As against a common order passed by the High Court of Kerala throwing out 2 election petitions filed by the petitioner herein, on the ground of incurable defects, the election petitioner has come up with the above Special Leave Petition. This SLP arises out of Election Petition No.4 of 2019. Another Election Petition filed by the Madhu Balavery same petitioner against the very same common order, but arising out of Election Petition No.3 of 2019 was dismissed by this Court on 02.11.2020 for non-prosecution. Therefore, this order covers Election Petition No.4 of 2019.

2. Heard Ms. D. Geetha, learned counsel for the petitioner.

3. In the elections held to the Lok Sabha in April-May, 2019, the petitioner filed her nomination on 04.04.2019 in the Ernakulam Constituency. The petitioner was to contest as an independent candidate.

4. On 06.04.2019 the nomination of the petitioner was rejected on the ground that she was

convicted in 2 criminal cases, one in CC No.1300 of 2013 on the file of the JFMC□, Pathanamthitta and another in CC No.102 of 2014 on the file of the JFMC□, Perumbavoor. In the first case the petitioner was imposed with a punishment of imprisonment for 3 years, with a fine of Rs.45 lakhs, by a judgment dated 08.06.2015. In the second case she was imposed with a punishment of imprisonment for 3 years, with a fine of Rs.10 lakhs, by a judgment dated 16.02.2016.

5. The petitioner filed Criminal Appeal No.87 of 2015 before the Sessions Court, Pathanamthitta, against her conviction in CC No.1300 of 2013. But the appeal was dismissed and the petitioner filed a revision before the High Court in Criminal R.P.No.9 of 2018. On 04.01.2018, the High Court merely suspended the execution of the sentence and enlarged the petitioner on bail, subject to her executing a bond for Rs.5 lakhs with 2 solvent sureties and also upon her depositing Rs.10 lakhs towards the fine amount.

6. Similarly, the petitioner filed Criminal Appeal No.25 of 2017 before the Sessions Court, Ernakulam against her conviction in CC No.102 of 2014. The Appellate Court stayed the execution of the sentence on condition of the appellant executing a bond for Rs.1 lakh with 2 sureties.

7. The Returning Officer, noted in his order dated 06.04.2019 that the petitioner stood disqualified in terms of Section 8(3) of the Representation of the People Act, 1951, as the period of disqualification had not lapsed.

8. Aggrieved by the order of rejection of the nomination, the petitioner filed an appeal to the Chief Electoral Officer. Thereafter, the petitioner moved a writ petition in W.P.(C)No.11282 of 2019. But the Writ Petition was dismissed on 09.04.2019. The petitioner filed a writ appeal but the same was also dismissed on 12.04.2019.

9. Therefore, after the elections were over, the petitioner filed an election petition in Election Petition No.4 of 2019, primarily contending that the rejection of her nomination was illegal and unjustified and that such rejection materially altered the outcome of the election in which the Respondent herein was declared elected. The main contention of the petitioner in her election petition was that she had simultaneously filed a nomination in the Amethi Constituency of Uttar Pradesh and that despite disclosure of the very same information about her conviction and pendency of appeals, her nomination was accepted there. Therefore, she contended that 2 different yardsticks cannot be applied and that in any case, so long as the sentence of imprisonment remained suspended, the disqualification under Section 8(3) of the Representation of the People Act, 1951, may not be attracted.

10. It is to be noted at this stage that the petitioner filed her nomination from one more constituency, namely Wayanad Constituency and her nomination was rejected even in the said Constituency, for the very same reasons. Therefore, she filed another election petition in Election Petition No.3 of 2019 as regards the election from the Wayanad Constituency.

11. It appears that lot of defects were noticed by the Registry of the High Court in both the election petitions. The defects noticed in both the election petitions were more or less the same. But in so far

as Election Petition No.4 of 2019 is concerned, out of which the present SLP arises, the Registry noted one additional defect namely that the prayer of the petitioner was incomplete.

12. Therefore, both the election petitions were posted before the Court without being numbered. However, the Court, by order dated 29.07.2019 directed the election petitions to be numbered subject to the condition that the petitioner should address arguments on the question of curability of the defects. Thereafter, notices were issued to the Election Commission, the respective Returning Officers and the respective returned candidates.

13. It may be relevant to note at this stage that the fact that the petitioner was convicted in 2 independent criminal cases and sentenced to imprisonment for 3 years in each of those cases and the fact that though the execution of the sentence was suspended in both the cases, the conviction was not suspended, were all admitted by the petitioner herself. The case of the petitioner was that it is enough if an appellate/revisional court had suspended the sentence and not the conviction.

14. In view of the aforesaid stand of the petitioner, the High Court framed a preliminary issue on 01.10.2019 as to whether the election petitions were maintainable, when the conviction was not suspended in appeal or revision. The High Court decided to take up this preliminary issue also for consideration along with the question relating to curability of defects noticed in the election petitions.

15. Thereafter, the High Court heard the learned counsel for the petitioner and learned counsel for the returned candidates and passed an order dated 31.10.2019 rejecting both the election petitions on 2 grounds namely: □

(i) that there were incurable defects in the election petitions in terms of Section 86(1) of the Representation of the People Act, 1951; and

(ii) that the petitioner was disqualified in view of the inhibitions contained in Section 8(3) of the Act read with Article 102(1)(e) of the Constitution.

16. Aggrieved by the common order passed on 31.10.2019 in Election Petition Nos. 3 and 4 of 2019, the petitioner filed SLP(C) Diary No.4200 of 2020 and SLP(C) No.10678 of 2020. The SLP in SLP(C) Diary No.4200 of 2020, arising out of the order in Election Petition No.3 of 2019, was dismissed for non□prosecution on 02.11.2020. The present SLP arising out of Election Petition No. 4 of 2019 came up thereafter for hearing.

17. As pointed out above, the election petition of the petitioner was dismissed on 2 grounds namely (i) that it contained incurable defects; and (ii) that in any case, the petitioner admittedly suffered from a disqualification. Let us now examine the correctness of the findings of the High court in regard to these 2 issues. Issue□ (Incurability of defects)

18. On the first issue, the High court noted that some of the defects in the election petition are covered by Sections 81 and 82 and that there was no semblance of any verification in terms of

section 83 (1) (c) read with Order VI, Rule 15 of the CPC. The High court held that there were 3 defects which were incurable. They were:

- (i) Petitioner has not signed in the declaration portion of verification of the election petition;
- (ii) In verification portion, in respect of Annexures, affidavits and petitions, it is stated that the index has been verified instead of Annexures, affidavits and petitions;
- (iii) Annexures are not verified by the petitioner as mandated and instead of verification, annexures are seen certified as true copies by the petitioner and the counsel.

19. In addition to the above 3 defects, which the High Court considered as incurable in both the election petitions, the High Court noted that in Election Petition No. 4 of 2019, even the relief sought was incomplete and meaningless. Prayer (a) made in the election petition was “To declare that the election of the 5th respondent from Ernakulam Lok Sabha Constituency”. It actually meant nothing, unless the word “void” had been added thereto. Since the word “void” was not there in prayer (a), the High Court thought that the election petition had been prepared and filed in a casual manner. Coupled with this, was the fact that the election petition also contained some allegations of serious nature against the former Chief Minister of Kerala. Therefore, the High Court thought that the petitioner had malafide intentions to malign the reputation of third parties, through the election petition without proper verification and prayer and that this is nothing but a ruse for the petitioner to escape at a later stage from owning up the pleadings.

20. In other words, what weighed with the High Court were: □

- (i) Lack of proper verification;
- (ii) An incomplete prayer; and
- (iii) Allegations of serious nature made against the former Chief Minister with a possible leverage not to own up the pleadings.

To hold that the defects stated above are incurable, the High Court relied upon Sections 81, 82 and 83 read with Section 86 of the Representation of the People Act, 1951. Let us now test the correctness of the approach of the High Court, with regard to the statutory provisions.

21. Chapter □I, Part □VI of the Representation of the People Act, 1951, contains provisions for “Presentation of election petitions to High Court” and Chapter III contains provisions for “Trial of election petitions”. Section 86(1), with which Chapter □II begins, obliges the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. The dismissal of an election petition under Section 86(1) is deemed by the Explanation under Section 86(1) to be a decision under Section 98(a). Section 98 speaks about 3 types of orders that

could be passed at the conclusion of the trial of an election petition. They are: □

(i) The dismissal of the election petition; or

(ii) A declaration that the election of the returned candidate is void; or

(iii) A declaration not only that the election of the returned candidate is void, but also that the petitioner or any other candidate was duly elected.

22. It is important to note that the above 3 different types of decisions under Section 98, can be rendered by the High Court only at the conclusion of the trial. But the dismissal under Section 86(1) is an exception. The reference in the Explanation under Section 86(1) to Section 98(a), makes it clear that the power of the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117, is available at the pre-trial stage.

23. As stated earlier, the procedure for presentation of election petitions to the High Court are dealt with in Sections 80 to 84 falling in Chapter II of Part VI. For our present purpose, Sections 81(3), 83(1), 83(2) and 84 are relevant.

24. Section 81(3) makes it mandatory for every election petition to be accompanied by as many copies as there are respondents. Every such copy is required to be attested by the petitioner under his own signature to be a true copy of the petition. Section 81(3) reads as follows: □“81. Presentation of petitions. (1)....

(2) Omitted (3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

25. Section 83 speaks about: □

(i) The contents of the election petition;

(ii) The signature and verification of the election petition; and

(iii) The signature and verification of any schedule or annexure to the election petition.

Section 83 reads as follows : □“83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.] (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

26. Section 84 indicates the relief/reliefs that could be claimed in an election petition. It reads as follows: □“84. Relief that may be claimed by the petitioner.— A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.”

27. In the trial of an election petition, the High Court is bound to follow the procedure as applicable to the trial of suits under the Code of Civil Procedure, 1908, as nearly as may be. This is by virtue of Section 87(1). The provisions of Indian Evidence Act, 1872 are made applicable in all respects to the trial of all elections petitions, under Section 87(2). Section 87 reads as follows: □“87. Procedure before the High Court.—(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.”

28. It is relevant to note that the Act keeps in two separate compartments □

(i) the presentation of election petitions; and

(ii) the trial of election petitions.

The presentation of election petitions is covered by Sections 80 to 84 falling in Chapter □I. The trial of election petitions is covered by Sections 86 to 107 and they are contained in Chapter □II.

29. This compartmentalization, may be of significance, as seen from 2 facts namely: □

(i) That under Section 80 no election shall be called in question except by an election petition presented in accordance with the provisions of “this part”; and

(ii) That a limited reference is made to the provisions of the Code of Civil Procedure, 1908 in Chapter II, only in places where signature and verification are referred to.

30. In so far as presentation of election petitions is concerned, Chapter II is a complete code. This is because, the various provisions of Chapter II cover all aspects of the presentation of an election petition, such as:□

(i) The person(s) who is/are entitled to file;

(ii) Person(s) who could be joined as respondents;

(iii) The types of different reliefs that can be sought;

(iv) The grounds on which such reliefs could be sought;

(v) Period of limitation for filing an election petition;

(vi) The court where the petition could be filed;

(vii) Contents of such petition; and

(viii) Format of the election petition and the manner in which it is to be signed and verified.

31. Some of the rules contained in Chapter II are inflexible and inviolable. But some may not be. Whether the manner of signing and verifying an election petition is an inflexible rule, is what is to be seen here.

32. Section 83 (1) (c) mandates that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of pleadings. Signing a petition and verifying the petition are 2 different aspects. While Order VI, Rule 14 deals with the signing of the petition, Order VI, Rule 15 deals with the verification of pleading. Rule 14 mandates that every pleading shall be signed by the party as well as the pleader, if any. But the proviso carves out an exception by stating that where a party is unable to sign the pleading, by reason of absence or for other good cause, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. Order VI, R.14 reads as follows:□“14. Pleading to be signed.□Every pleading shall be signed by the party and his pleader(if any):

Provided that where a party pleading is, by reason of absence or for other good cause; unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.”

33. Order VI, R.15 which speaks about verification of pleadings reads as follows: “15. Verification of pleadings. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

34. It is to be noted that Sub-rule (1) of Rule 15 of Order VI also permits the verification of pleading to be done by a person other than the party pleading, provided it is proved to the satisfaction of the Court that such other person was acquainted with the facts of the case.

35. Section 86(1) empowers the High Court to dismiss an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117 and it does not include Section 83 within its ambit. Therefore, the question whether or not an election petition which does not satisfy the requirements of Section 83, can be dismissed at the pre-trial stage under section 86(1), has come up repeatedly for consideration before this Court. We are concerned in this case particularly with the requirement of Clause (c) of Sub-section (1) of Section 83 and the consequence of failure to comply with the same.

36. In *Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore*¹, a preliminary objection to the maintainability of the election petition was raised on the ground that the verification was defective. The verification stated that the averments made in some paragraphs of the petition were true to the personal knowledge of the petitioner and the averments in some other paragraphs were verified to be true on advice and information received from legal and other sources. There was no statement that the advice and information received by the election petitioner were believed by him to be true. Since this case arose before the amendment of the Act under Act 47 of 1966, the election petition was dealt with by the Tribunal. The Tribunal held the defect in the verification to be a curable defect. The view of the Tribunal was upheld by this Court in 1 AIR (1964) SC 1545 *Murarka Radhey Shyam Ram Kumar* (supra). This Court held that “it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure for the verification of pleadings as required by Clause (c) of Sub-section (1) of Section 83 is fatal to the maintainability of the petition”.

37. The ratio laid down in *Murarka* was reiterated by a three member Bench of this Court in *F.A. Sapa vs. Singora*² holding that “the mere defect in the verification of the election petition is not fatal to the maintainability of the petition and the petition cannot be thrown out solely on that ground”. It was also held in *F.A. Sapa* that “since Section 83 is not one of the three provisions mentioned in Section 86(1), ordinarily it cannot be construed as mandatory unless it is shown to be an integral part of the petition under Section 81”.

38. In F.A. Sapa (supra) this Court framed two questions in paragraph 20 of the Report, as arising for consideration. The first 2 (1991) 3 SCC 375 question was as to what is the consequence of a defective or incomplete verification. While answering the said question, this Court formulated the following principles: –

(i) A defect in the verification, if any, can be cured

(ii) It is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true

(iii) If the respondent desires better particulars in regard to such averments or allegations, he may call for the same, in which case the petitioner may be required to supply the same and

(iv) The defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under section 81(3) as indicated earlier.”

39. It was also held in F.A. Sapa (supra) that though an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial, the defective verification of a defective affidavit may not be fatal. This Court held that the High Court should ensure its compliance before the parties go to trial. This decision was followed by another three-member Bench in R.P. Moidutty vs. P.T. Kunju Mohammad³.

40. In Sardar Harcharan Singh Brar vs. Sukh Darshan Singh⁴, this Court held that though the proviso to Section 83(1) is couched in a mandatory form, requiring a petition alleging corrupt practice to be accompanied by an affidavit, the failure to comply with the requirement cannot be a ground for dismissal of an election petition in limine under Section 86(1). The Court reiterated that non-compliance with the provisions of Section 83 does not attract the consequences envisaged by Section 86(1) and that the defect in the verification and the affidavit is a curable defect. The following portion of the decision is of significance:

“14. xxxx Therefore, an election petition is not liable to be dismissed in limine under Section 86 of the Act, for alleged non-compliance with provisions of Section 3 (2000) 1 SCC 481 4 (2004) 11 SCC 196 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.”

41. In K.K. Ramachandran Master vs. M.V. Sreyamakumar⁵, this Court followed F.A. Sapa (supra) and Sardar Harcharan Singh Brar (supra) to hold that defective verification is curable. The Court again reiterated that the consequences that may flow from a defective affidavit is required to be

judged at the trial of an election petition and that such election petition cannot be dismissed under Section 86(1).

42. Though all the aforesaid decisions were taken note by a two-member Bench in P.A. Mohammed Riyas vs. M.K. Raghavan⁶, the Court held in that case that the absence of proper verification may lead to the conclusion that the provisions of Section 81 had not been fulfilled and that the cause of action for the election petition would remain incomplete. Such a view does not appear to be in conformity with the series of decisions referred to in the previous ⁵ (2010) 7 SCC 428 ⁶ (2012) 5 SCC 511 paragraphs and hence P.A. Mohammed Riyas cannot be taken to lay down the law correctly. It appears from the penultimate paragraph of the decision in P.A. Mohammed Riyas (supra) that the Court was pushed to take such an extreme view in that case on account of the fact that the petitioner therein had an opportunity to cure the defect, but he failed to do so. Therefore, P.A. Mohammed Riyas (supra) appears to have turned on its peculiar facts. In any case P.A. Mohammed Riyas was overruled in G.M.Siddeshwar vs. Prasanna Kumar⁷ on the question whether it is imperative for an election petitioner to file an affidavit in terms of Order VI Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1). As a matter of fact, even the filing of a defective affidavit, which is not in Form 25 as prescribed by the Rules, was held in G.M. Siddeshwar to be a curable defect and the petitioner was held entitled to an opportunity to cure the defect.

⁷ (2013) 4 SCC 776

43. The upshot of the above discussion is that a defective verification is a curable defect. An election petition cannot be thrown out in limine, on the ground that the verification is defective.

44. Therefore, the High Court committed a grave error in holding the 3 defects mentioned in paragraph 18 hereinabove as incurable. The defects are curable and as rightly contended by the learned counsel for the petitioner, an opportunity to cure the defects ought to have been given. Instead, the election petition was posted before Court without numbering, in view of the defects noticed. The Court directed the petition to be numbered subject to arguments on the curability of defects. Thereafter notices were issued to the respondents in the election petition and finally the order impugned herein was passed after hearing both sides. The High Court did not even rely upon any rule framed by the High court to follow the said procedure.

45. The Rules of the High Court of Kerala, 1971 contains a set of Rules from Rule Nos.207 to 219 in Chapter XVI. These Rules govern the procedure for institution and trial of election petitions. Rule 210 of these rules reads as follows: “210.Summons. Immediately after registering, the petition shall be placed before the Judge for such orders as may be required to be passed under Section 86 of the Act. If the petition is not dismissed under Section 86(1) of the Act, a summons, on the direction of the Judge shall be issued to the respondents to appear before the High Court on a fixed date and answer the claim or claims made in the petition. Such date shall not be earlier than three weeks from the date of the issue of the summons. The summons shall be for written statement and settlement of issues and shall be served on the respondents by the process staff of the High Court or

the District Courts, all steps being taken to effect service with the utmost expedition.”

46. The manner in which Rule 210 has been worded gives an impression as though an election petition should be placed before the Judge, immediately after it is registered, for passing Orders under Section 86(1). If the petition is not dismissed under Section 86(1), summons should be issued to the respondents on the direction of the Judge. In the case on hand the learned designated Judge before whom the election petition was listed as defective, chose to issue summons to the respondents, calling upon them to argue on the curability of defects as well as the maintainability of the petition. There is nothing to indicate in the Rules that the learned designated Judge was powerless to return the petition to the petitioner for curing the defects.

47. The procedure adopted by the High Court of Kerala cannot be approved. The High Court was wrong in thinking that the defective verification of the election petition was a pointer to the game plan of the election petitioner to disown the pleadings at a later stage, especially after making serious allegations against the former Chief Minister. If only the High Court had given an opportunity to the petitioner to cure the defects in the verification and if, despite such an opportunity, the petitioner had failed to come up with a proper verification, the High Court could have then held the petitioner guilty of playing hide and seek. The failure of the High Court to give an opportunity to cure the defects is improper.

48. The defect in the prayer made by the petitioner was also a curable defect, as the words “as void” were omitted to be included, making the prayer as it existed, meaningless. It is true that the election petitioner should have been more careful and diligent in incorporating an appropriate relief and making a proper verification. But no motives could have been attributed to the petitioner, only because she made serious allegations against someone. Hence we hold on the first issue that the defects in the verification and prayer made by the petitioner were curable and an opportunity ought to have been given to the petitioner to cure the defects. Issue□2 (effect of punishment by criminal court)

49. That takes us to the next issue regarding the punishments imposed upon the petitioner in two criminal cases and the suspension of execution of sentence alone granted by the appellate/revisional Courts.

50. Admittedly the petitioner was imposed with a punishment of imprisonment for a period not less than two years in two independent criminal cases. Therefore, her case is covered by Section 8(3) of the Act.

51. What was suspended by the appellate Court in one case and the revisional Court in another case was only the execution of the sentence of imprisonment and not the conviction. The contention of the petitioner is that the suspension of the sentence was sufficient to save her from the applicability of Section 8(3).

52. But we do not think so. Section 8(3) reads as follows:

“Disqualification on conviction for certain offences. (1) ... (2) ... (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.”

53. It is seen from a reading of Section 8(3) that it deals with two aspects namely (i) the conditions for disqualification; and (ii) the period of disqualification. The conditions for disqualification are (i) conviction for any offence other than an offence referred to in Sub-sections (1) and (2); and (ii) sentence of imprisonment for not less than two years.

54. In so far as the period of disqualification is concerned, Section 8(3) says that the disqualification will commence from the date of conviction. This is made clear by the usage of the words “shall be disqualified from the date of such conviction”. It is needless to state that the words “the date” appearing in Section 8(3) refers to the event of conviction and it is post facto. The disqualification which commences from the date of conviction, continues till the expiry of a period of six years from the date of his release.

55. In other words, the date of conviction is what determines the date of commencement of the period of disqualification. However, it is date of release which determines the date on which the disqualification will cease to have effect.

56. When viewed in that context, it will be clear that the mere suspension of the execution of the sentence is not sufficient to take the rigour out of Section 8(3).

57. In fact, a Constitution Bench of this Court held in *B.R. Kapur vs. State of Tamil Nadu*⁸ that an order of the appellate/revisional Court suspending the sentence of imprisonment has to be read in the context of Section 389 of the Code of Criminal Procedure and that under the said provision, what is suspended is only the execution of the sentence and not the sentence itself. The Constitution Bench made it clear that the suspension of the execution of the sentence would not alter or affect the conviction and that therefore such a person would remain disqualified under Section 8(3). In fact, in *B.R. Kapur (supra)* a person whose nomination was rejected on the ground of disqualification, got 8 (2001) 7 SCC 231 elected as the leader of the party which secured majority in the elections and became the Chief Minister and hence Article 164 was pressed into service. But even the same was rejected on the ground that a person who was disqualified from contesting the elections, cannot take the route of Article 164.

58. A contention was raised in *B.R. Kapur (supra)* that the sitting members of Parliament or Legislatures are granted by Section 8(4) of the Act, with a protection against removal from office, during the pendency of their appeal or revision against conviction and that it is violative of the guarantee of equality under the Constitution, if the class of persons getting convicted before elections are placed at a disadvantageous position than the class of persons who are convicted after getting elected to the Parliament or the State Legislatures. But the Constitution Bench rejected this contention in *B.R. Kapur (supra)* on the ground that the constitutional validity of Sub-section (4) of

Section 8 was not in question.

59. Possibly taking cue from what was observed in B.R. Kapur (in Para 38 and 39 of the Report), a challenge was made to Section 8(4) in Lily Thomas vs. Union of India⁹, on the ground that it is ultra vires the Constitution. While declaring the said provision to be unconstitutional, this Court held in Lily Thomas (supra) that a Member of Parliament or the State Legislature who suffers a frivolous conviction, will not be remediless. Taking note of the decisions in Rama Narang vs. Ramesh Narang¹⁰ and Ravikant S. Patil vs. Sarvabhoma S. Bagali¹¹, this Court held in Lily Thomas (supra) that the appellate Court has ample powers under Section 389(1) of the Code, to stay the conviction as well as the sentence and that wherever a stay of conviction itself has been granted, the disqualification will not operate.

60. Just as the observations made in B.R. Kapur (supra) led to a challenge to Section 8(4) of the Act in Lily Thomas (supra), the discussion in Lily Thomas (supra) about the power of the appellate Court to stay the conviction as well as the execution of sentence, led to another bout of litigation. In Lok Parhari vs. Election Commissioner of India¹², the petitioner sought a declaration that 9 (2013) 7 SCC 653 10 (1995) 2 SCC 513 11 (2007) 1 SCC 673 12 (2018) AIR 4675 even a stay of conviction by the appellate Court will not have the effect of wiping out the disqualification. The contention of the petitioner was that the law does not provide for stay of conviction. But this Court rejected the challenge on the ground that the decisions in Rama Narang (supra) and Lily Thomas (supra) clinched the issue in this regard.

61. Therefore, in effect, the disqualification under Section 8(3) will continue so long as there is no stay of conviction. In the case on hand, the petitioner could not obtain a stay of conviction but obtained only a stay of execution of the sentence. Hence her nominations were validly rejected by the Returning Officer. Merely because the Returning Officer in Amethi Constituency committed an error in overlooking this fact, the petitioner cannot plead estoppel against statutory prescription.

CONCLUSION

62. Therefore, in fine, we hold that the petitioner was disqualified from contesting the elections in terms of Section 8(3) of the Act. In such circumstances, she could not have maintained an election petition as “a candidate at such election” in terms of Section 81(1). Therefore, the High Court was right in not venturing into an exercise in futility, by taking up the election petition for trial, though the High Court was wrong in rejecting the election petition on the ground of existence of incurable of defects.

63. In view of the above, the Special Leave Petition is dismissed. There will be no order as to costs.

.....CJI (S.A. Bobde)J. (A.S. Bopanna)J.
(V. Ramasubramanian) New Delhi December 9, 2020