



Politics and Corruption

The Conviction of a Chief Minister



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*With the Special Court in Bengaluru pronouncing AIADMK general secretary, Jayalalithaa, guilty in the disproportionate assets case, she becomes the first Indian Chief Minister in office to be convicted under the Prevention of Corruption Act. The historic verdict has unseated a popularly elected Chief Minister and will have a deep impact on the politics of Tamil Nadu, says **Saptarshi Bhattacharya**.*

It took 18 years for the courts to conclude a case in which Tamil Nadu Chief Minister, Jayalalithaa, and three others were accused of amassing wealth that was disproportionate to their declared sources of income. But when it did, it wrote history.

The Special Judge, John Michael D'Cunha, sentenced Jayalalithaa and the three other co-accused – her friend, V.K. Sasikala, her nephew V.N. Sudhakaran and Sasikala's sister-in-law J. Ilavarasi – to four years in jail and slapped a fine of Rs. 100 crore on Jayalalithaa, a strong sentence by any measure. The judge found them guilty under Section 13(1)(e) of the Prevention of Corruption Act, 1988, and 120 B of the Indian Penal Code. The sentence was pronounced under Section 13(2) of the Act, which states:

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

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Apart from the fact that she will have to spend her days in jail till a higher court grants her relief, she also ceases to be the Chief Minister of Tamil Nadu by virtue of being disqualified as a Member of the Tamil Nadu Legislative Assembly. This follows a Supreme Court ruling on July 10, 2013 in the case of *Lily Thomas vs Union of India* where it ruled that any Member of Parliament (MP), Member of the Legislative Assembly (MLA) or Member of a Legislative Council (MLC) who is convicted of a crime with more than a two-year sentence would be disqualified as an elected representative on the date of conviction. Furthermore, Section 8(4) of the Representation of the People Act, which allowed elected representatives three months to appeal their conviction was declared unconstitutional by the bench comprising Justices A.K. Patnaik and S.J. Mukhopadhaya. Ms. Jayalalithaa's disqualification for six years from electoral politics will kick in after she completes her sentence.

But Jayalalithaa's woes do not end there. In line with recent Supreme Court judgments, the appellate courts do not admit appeal petitions in cases where a prison sentence and a fine is pronounced by a trial court unless the fine amount is paid. In this case, Jayalalithaa will have to move a separate petition to seek exemption from that clause stating that the fine amount was onerous, while the total disproportionate assets was worth Rs. 66.65 crore.

AIADMK leaderless, DMK cautious

The four-year jail term pronounced by the Special Court means that Jayalalithaa would have to, unless cleared by a higher court, keep away from public office for at least 10 years, undoubtedly a setback for the Dravidian party, which rides largely on the popularity of its leader. Although there is no immediate threat to the government since the AIADMK has 151 members (150 after disqualification of Jayalalithaa) in the 234-member Tamil Nadu Assembly, questions arise about the transition in governance. The party will now have to nominate a new Chief Minister to rule the State till the next assembly elections in 2016. Interestingly, this situation is nothing new for the AIADMK. For, in 2001, Jayalalithaa was ordered by the Supreme Court to step down from the post of Chief Minister after she was convicted in the TANSI land deal cases and sentenced to two years in prison a year before. A loyalist, O. Panneerselvam, a junior minister then, was sworn in as the Chief Minister on September 21, 2001. Jayalalithaa regained her seat on February 2, 2002, after the High Court cleared her name a year later. The Supreme Court, too, upheld the acquittal in 2003.

Thirteen years after she was first forced to step down from the Chief Ministerial position, Jayalalithaa and the AIADMK find themselves in a similar situation. Speculation is rife over who would be the Chief Minister of Tamil Nadu in the absence of Jayalalithaa. The AIADMK, unlike many other parties, has a monolithic structure and the entire decision-making authority is concentrated with their General Secretary.

On the other end of the political spectrum, the party's arch rival, the Dravida Munnetra Kazhagam (DMK), was cautious in its reaction. Party spokesperson, T.K.S. Elangovan, said his party was happy that justice, though delayed, was not denied. He, however, said that the judgment would not be the election agenda for the DMK.

Still smarting from a crushing defeat by the ruling AIADMK in the 2011 Assembly Elections and the Parliamentary elections in May 2014, (where the AIADMK won 37 out of 39 seats in Tamil Nadu; the DMK drew a blank), the DMK will welcome the verdict as a whiff of fresh hope. The Dravidian party will now have a chance to reclaim some of its lost ground, reeling as it is from massive corruption charges against its members, Kanimozhi, daughter of party president M. Karunanidhi, and A. Raja, former Union Minister of Communications and Information Technology. Elangovan's assertion that the DMK would rather focus on the "failures of the AIADMK government" rather than leverage on the judgment, should, therefore, be seen against this backdrop.

A day of frayed tempers

On the eve of the judgment, elaborate security arrangements were in place in Tamil Nadu and in Bangalore, where the verdict was delivered. Following the verdict, the media reported that the situation was tense in Srirangam, Jayalalithaa's Assembly constituency, and in various parts of Tamil Nadu, including the capital, Chennai.

The day started on a mixed note for the supporters of both main parties in the State. If the AIADMK workers put up a show of enthusiasm, DMK party workers were matter-of-fact, awaiting the judgment. With every passing hour of the delay in the judgment, expected since around noon, the outpouring of emotions moved drastically. While AIADMK workers, who were jubilant in the forenoon turned violent in the latter part of the day, the DMK's loyalists broke into celebrations.

The violence prompted police deployment in sensitive areas, particularly in the neighbourhoods of the leaders of the DMK.

Many shopkeepers across the State downed shutters voluntarily and AIADMK cadre turned violent and took to the streets, pelting stones, blocking roads and damaging windshields of vehicles while the police remained spectators. Bus services were suspended in many places, with people fearing violence in the wake of the verdict.

Earlier judgments showed the way

The prosecution arguments began against the backdrop of a large body of evidence collected meticulously by the investigating agency. Based on depositions by 259 prosecution witnesses, the Special Court had framed 1,339 questions. Jayalalithaa deposed before the court in October-November, 2011 and answered all the questions over four appearances.

The prosecution based its arguments on the verdicts in three earlier cases in the Supreme Court. One was the *State of Madhya Pradesh vs Awadh Kishore Gupta* case in 2004 which stated that a public servant's income can only be proportionate to the returns that he receives from his service, investment or property. The prosecution argued that Jayalalithaa had declared that she was drawing Re. 1 as salary for the first 27 months of her term. Though she could have accumulated assets in her profession as an actor, it wasn't sufficient to explain the quantum of assets. Moreover, the co-accused were not engaged in any profession that justified their income. Sasikala declared herself to be a mushroom cultivator. In five years, they bought 32 companies and the co-accused were all directors in those companies.

The second case pertained to *P. Nallammal vs State* represented by Inspector of Police (1999) where the defendant attributed the excess wealth to dowry. The court had ruled that dowry was not a legal source of income and hence, the wealth was illegal. Jayalalithaa, in her defence, had stated that the Rs. 20 crore transferred to bank accounts of *Namadhu MGR*, the AIADMK's newspaper, was actually money given as subscription deposits by a large number of party workers. The prosecution argued that the subscription deposits were collected for *Namadhu MGR* without any clearance from the Reserve Bank of India. Besides, the defence had examined only a handful of persons who had paid the subscription although the number of deposits ran to several thousands.

The third case that the prosecution cited was *Lalu Prasad vs State* (1998 disproportionate assets case) which ruled that Income Tax (I-T) returns were not relevant to criminal proceedings. In their defence, Jayalalithaa and the co-accused had argued that all of them had submitted pre-dated I-T returns for the 1991-96 period. They said that the income had been explained and these I-T returns needed to be taken into consideration. The prosecution argued that I-T return filings were not binding on criminal proceedings as the Income Tax department was only concerned about the quantity of money while the Prevention of Corruption Act dealt with the quality of the money. Moreover, Jayalalithaa and the co-accused had not filed their Income Tax returns contemporaneously.

Charges against Jayalalithaa and others

The Special Court had framed three main charges against Jayalalithaa and the co-accused: First, she, being a public servant between July 1, 1991 and April 30, 1996, conspired with Sasikala, Sudhakaran and Ilavarasi to illegally acquire properties and pecuniary resources in Chennai and other places in Tamil Nadu to the tune of Rs. 66,65,20,395, in their names and in the names of 32 business concerns started in their names that was disproportionate to their known sources of income. Second, Jayalalithaa, in pursuance of the said conspiracy, as the Chief Minister of the State, had acquired properties and pecuniary resources in her name and the name of the co-accused disproportionate to the known sources of income and had failed to account for the same. Third, the co-accused had intentionally aided her in the possession of properties and pecuniary resources disproportionate to her known sources of income and for which she could not satisfactorily account, holding a substantial portion of the resources and property in their names.

The case started as a private complaint on June 14, 1996 by Subramanian Swamy, currently a leader in the Bharatiya Janata Party (BJP). Subsequently, on June 18, 1996, the DMK government directed the Directorate of Vigilance and Anti-Corruption (DVAC) to proceed on the complaint. [See box: Resources: Jayalalitha Wealth Case: Timeline of events].

A case that occupied the State for 18 years has now come to an end with the conviction of a Chief Minister. Much of how the political dynamics of Tamil Nadu – where the ruling AIADMK and the DMK have alternated in power since March 6, 1967 – will change, if at all, will depend on how the ruling party makes the key transition from being a party that rode on the charisma of a strong leader to one that can effectively manage its latest crisis at the helm.

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