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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 17th December, 2013

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Date of Decision : 6th February, 2014

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W.P.(C) 7459/2013 & CM APPL. 15956/2013

MANOHAR LAL SHARMA

... Petitioner

Through : Petitioner in person with Ms. Suman
and Mr. Sadashir Gupta, Advocates.

versus

UNION OF INDIA

... Respondent

Through : Mr. Rajeev Mehra, ASG with
Mr. Sachin Datta, CGSC,
Mr. Vineet Tayal and
Mr. Aditya Malhotra, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

N.V. RAMANA, CHIEF JUSTICE:

1. The present writ petition has been filed challenging the constitutional validity of the Representation of the People (Amendment and Validation) Act, 2013 (for short, 'impugned Amendment and Validation Act, 2013') as being *ultra vires* the Constitution of India (for short, 'the Constitution'), vitiated by *mala fides* and against the general public interest.

Amendment and Validation Act, 2013

2. At the outset, it would be appropriate to reproduce the impugned Amendment and Validation Act, 2013, which reads as under:-

"Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows—

1. **Short title and commencement.**-- (1) This Act may be called the Representation of the People (Amendment and Validation) Act, 2013.

(2) It shall be deemed to have come into force on the 10th day of July, 2013.

2. **Amendment of Section 7.**-- In the Representation of the People Act, 1951 (43 of 1951) (hereinafter referred to as the principal Act), in Section 7, in clause (b), after the words " or Legislative Council of a State", the words "under the provisions of this Chapter, and on no other ground" shall be inserted.

3. **Amendment of Section 62.**-- In Section 62 of the principal Act after the proviso to sub-section (5), the following proviso shall be inserted, namely--

"Provided further that by reason of the prohibition to vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector."

4. **Validation.**-- Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the provisions of the Representation of the People Act, 1951 (43 of 1951), as amended by this Act, shall have and shall be deemed always to have effect for all purposes as if the provisions of this Act had been in force at all material times."

3. The constitutional validity of the Act has been challenged on the following grounds:

i.) The impugned Amendment and Validation Act, 2013 is a fraud upon the Constitution and vitiated by *mala fides* as it had been enacted by political leaders to protect their vested interests by hatching a conspiracy. It was submitted that by the impugned Amendment and Validation Act, 2013, the right to contest elections has been provided to those, who are in lawful custody, by overlooking the judgment dated 10th July, 2013 of the Supreme Court in Civil Appeal Nos. 3040-3041 of 2004 titled ***Chief Election Commissioner, etc. v. Jan Chaukidar (Peoples Watch) & Ors.*** For this purpose, reliance was also placed upon Sections 4(d) and 5(c) of Representation of the People Act, 1951 (for short, ‘RP Act of 1951’). The relevant portion of ***Jan Chaukidar (Peoples Watch) & Ors.’s case (supra)*** is reproduced as under:

“6. Aggrieved, by the findings of the High Court, the appellants have filed these appeals. We have heard learned counsel for the parties and we do not find any infirmity in the findings of the High Court in the impugned common order that a person who has no right to vote by virtue of the provisions of sub-section (5) of Section 62 of the 1951 Act is not an elector and is therefore not qualified to contest the election to the House of the People or the Legislative Assembly of a State.

7. These civil appeals are accordingly dismissed. No costs.”

- ii.) It was submitted that the Parliament by the impugned Amendment and Validation Act, 2013 had virtually set aside the judgment of the Supreme Court in *Jan Chaukidar (Peoples Watch) & Ors.'s case (supra)* as the appellate court would have done in an appeal.
- iii.) It was further submitted that the impugned Amendment and Validation Act, 2013 would give fillip to criminalization of politics and would violate the fundamental right of the public at large to elect the people with good antecedents as their representatives.
- iv.) It was also submitted that the constitutional validity of Section 62(5) of the Representation of the People Act, which debarred a person in lawful custody from voting in an election was upheld by the Supreme court of India in the case of *Anukul Chandra Pradhan, Advocate, Supreme Court v. Union of India & Ors., (1997) 6 SCC 1*. The relevant portion of the judgment, relied upon by the petitioner, is as follows:

“8. There are other reasons for justifying this classification. It is well known that for the conduct of free, fair and orderly elections, there is need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a much larger police force and much greater security arrangements in the conduct of elections. Apart from the resource crunch, the other constraints relating to availability of more police force and infrastructure facilities are additional factors to justify the restrictions imposed by sub-section 5 of Section 62. A person who is in prison as a result of his own conduct and is, therefore, deprived of his liberty

during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others, who are not in prison. The classification of the persons in and out of prison separately is reasonable. Restriction on voting of a person in prison results automatically from his confinement as a logical consequence of imprisonment. A person not subjected to such a restriction is free to vote or not to vote depending on whether he wants to go to vote or not. Even he may choose not to go and cast his vote. In view of the restriction on movement of a prisoner, he cannot claim that he should be provided the facility to go and vote. Moreover, if the object is to keep the persons with criminal background away from the elections a provision imposing a restriction on a prisoner to vote cannot be called unreasonable.”

- v.) It was, lastly, submitted that the impugned Amendment and Validation Act, 2013 is beyond the legislative competence of the Parliament. It was contended that as per the constitutional provisions, the Parliament is only empowered to prescribe disqualification and not for prescribing a qualification. For this purpose, reliance was placed upon the observations of the Supreme Court in the case of *Lily Thomas v. Union of India & Ors.*, (2013) 7 SCC 653, which are as under:

“28. A reading of the aforesaid two provisions in Articles 102(1)(e) and 191(1)(e) of the Constitution would make it abundantly clear that Parliament is to make one law for a person to be disqualified for being chosen as, and for being, a member of either House of Parliament or Legislative Assembly or Legislative Council in the State. In the language of the Constitution Bench of this Court in Election Commission v. Saka Venkata Rao, Article 191(1)

which is identically worded as Article 102(1) lays down “the same set of disqualifications for election as well as for continuing as a member”. Parliament thus does not have the power under Articles 102(1)(e) and 191(1)(e) of the Constitution to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified for continuing as a member of Parliament or the State Legislature. To put it differently, if because of a disqualification, a person cannot be chosen as a Member of Parliament or State Legislature, for the same disqualification, he cannot continue as a Member of Parliament or the State Legislature. This is so because the language of Articles 102(1)(e) and 191(1)(e) of the Constitution is such that the disqualification for both a person to be chosen as a Member of a House of Parliament or the State Legislature or for a person to continue as a Member of Parliament or the State Legislature has to be the same.

... ..

30. Thus, Article 101(3)(a) provides that if a member of either House of Parliament becomes subject to any of the disqualifications mentioned in Clause (1), his seat shall thereupon become vacant and similarly Article 190(3)(a) provides that if a Member of a House of the Legislature of a State becomes subject to any of the disqualifications mentioned in Clause (1), his seat shall thereupon become vacant. This is the effect of a disqualification under Articles 102(1) and 190(1) incurred by a Member of either House of Parliament or a House of the State Legislature. Accordingly, once a person who was a member of either House of Parliament or House of the State Legislature becomes disqualified by or under any law made by Parliament under Articles 102(1)(e) and 191(1)(e) of the Constitution, his seat automatically falls vacant by virtue of

Articles 101(3)(a) and 190(3)(a) of the Constitution and Parliament cannot make a provision as in sub-Section (4) of Section 8 of the Act to defer the date on which the disqualification of a sitting member will have effect and prevent his seat becoming vacant on account of the disqualification under Article 102(1)(e) or Article 191(1)(e) of the Constitution.

... ..

33. Looking at the affirmative terms of Articles 102(1)(e) and 191(1)(e) of the Constitution, we hold that Parliament has been vested with the powers to make law laying down the same disqualifications for person to be chosen as a Member of Parliament or a State Legislature and for a sitting member of a House of Parliament or a House of a State Legislature. We also hold that the provisions of Article 101(3)(a) and 190(3)(a) of the Constitution expressly prohibit Parliament to defer the date from which the disqualification will come into effect in case of a sitting Member of a Parliament or a State Legislature. Parliament, therefore, has exceeded its powers conferred by the Constitution in enacting sub-Section (4) of Section 8 of the Act and accordingly sub-Section (4) of Section 8 of the Act is *ultra vires* the Constitution”.

(emphasis supplied)

4. On the other hand, it was submitted by learned ASG appearing for the respondent/UOI that this writ petition was filed without properly understanding the purport underlying the impugned Amendment and Validation Act, 2013 by drawing attention to the definition of the term ‘*Elector*’, as provided in Section 2(1)(e) of the RP Act of 1951, to mean, “*A person whose name is entered in the electoral roll of that constituency for the time being in force and was not subject to any of*

the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950”.

5. It was submitted that as per Section 16(1) of the Representation of the People Act 1950 (for short, ‘RP Act of 1950), a person shall be ineligible for registration in an electoral roll as an elector if he –
 - (a) is not a citizen of India; or
 - (b) is of unsound mind and stands declared so by a competent court; or
 - (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with the elections.
6. It was pointed out that Chapter – III of Part – II of the RP Act of 1951 deals with “*Disqualifications for Membership of Parliament and State Legislatures*”. Disqualification is attracted for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State, upon conviction of certain offences.
7. It was also contended that in the case of ***Lily Thomas v. Union of India & Ors.’s case (supra)***, the Supreme Court declared Section 8(4) of the RP Act of 1951 ‘*unconstitutional*’ as it was held to be beyond the legislative competence of the Parliament. It was further submitted that even filing an appeal against the order of conviction won’t relieve the convict from disqualification.
8. Learned ASG also drew our attention to Section 62 of the RP Act of 1951 which deals with ‘*Right to Vote*’ and sub-section (5) thereof provides that a person who is confined in prison whether under a

sentence of imprisonment or transportation or otherwise or is in the lawful custody of police shall not have a right to vote.

9. The submission of the learned ASG is that Section 62 of the RP Act of 1951, as interpreted by the Patna High Court and the Supreme Court in *Jan Chaukidar (Peoples Watch) & Ors.'s case (supra)*, had serious consequences and wide ramifications leaving room for serious abuse. It was, thus, urged that keeping in view the exigency of the situation, the Parliament passed the impugned Amendment and Validation Act, 2013, and by virtue of it, a proviso was inserted after the proviso to sub-section (5) to Section 62, to the effect that "*by reason of the prohibition to vote under this sub-section, a person whose name has been entered in the electoral roll shall not cease to be an elector.*" To support his submission, an illustration was given that any candidate who is under arrest at the time of scrutiny of nomination would be ineligible to vote and would, consequently, be disqualified to contest as he would cease to be an elector. Mere arrest in a trivial, false, frivolous or vexatious case would become a ground for disqualification, prior to the impugned Amendment and Validation Act, 2013.
10. It was also pointed out that the Supreme Court upon a review petition filed by the Union of India, being Review Petition (C) No. 1784-1785/2013 in *Jan Chaukidar (Peoples Watch) & Ors.'s case (supra)* had dismissed the same on the ground that impugned Amendment and Validation Act, 2013 had been passed by the Parliament by observing as follows:

“4. As a consequence of the Amendment and Validation Act, 2013 a person does not cease to be an elector only by reason of his being in police custody or in imprisonment. It is therefore not necessary for us to consider these review petitions which are accordingly dismissed and the prayer for intervention is rejected.”

(emphasis supplied)

11. After perusing the rival contentions put forth by and on behalf of the respective parties, we are of the view that, broadly, the following issues arise for consideration in the present case:

- i) *Whether mala fides can be attributed to the Parliament?*
- ii) *Whether the Validation and Amendment Act, 2013 is legally permissible? In other words, can the Legislature make the impugned amendment by enacting a Validating Act, as contended by the petitioner?*
- iii) *Whether the Legislature can determine the terms on which the right to vote is enjoyed by the people of India?*
- iv) *Whether the impugned Amendment and Validation Act, 2013 is constitutionally valid?*

i) *Whether mala fides can be attributed to the Parliament?*

12. In so far as the allegation of *mala fides* is concerned, it is well settled proposition of law that if the Legislature is competent to pass a particular law, the motives, which impelled it to act, are really irrelevant. On the other hand, if the Legislature lacks competency, the question of motive does not arise. If the Parliament has the requisite competence to enact the impugned Act, the enquiry into the motive, which persuaded Parliament into passing the impugned Amendment

and Validation Act, 2013, would be of no use at all. In the present case, the Parliament, in our opinion, is fully competent to enact the impugned Amendment and Validation Act, 2013 by virtue of the power conferred under Article 327 read with Entry 72 of the Constitution. The said provisions of the Constitution are, for the sake of convenience, reproduced here-in-below:

“Article 327. Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all the matters, relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.”

“Union List / List – I:

... ..

72. Elections to Parliament, to the Legislatures of States and to the Offices of President and Vice-President; the Election Commission.”

13. We may also notice here certain Acts passed under this Entry, which are as follows:

- a) The Representation of the People Act, 1950;
- b) The Representation of the People Act, 1951;
- c) The Delimitation Act, 1972;
- d) The Presidential and Vice-Presidential Elections Act, 1952;
and
- e) Some portions of other Acts, namely, Government of the Union Territories Act, 1963, Government of National Capital Territory of Delhi Act, 1991.

14.It is, thus, evident from the above that the impugned Amendment and Validation Act, 2013 was passed by the Parliament by virtue of the powers conferred under the provisions of the Constitution.

15.It needs no reiteration that *mala fides* cannot be attributed to the Parliament / Legislature, as has been held by the Apex Court in a catena of decisions. It has been held by the Apex court in ***K. Nagaraj and Ors. v. State of Andhra Pradesh and Anr., (1985) 1 SCC 523*** that, “*The Ordinance-making power, being a legislative power, the argument of mala fides is misconceived. The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Its reasons for passing a law are those that are stated in the Objects and Reasons and if no reasons are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation*”.

16.It has been held by the Supreme Court in ***Dharam Dutt and Ors. v. Union of India and Ors., (2004) 1 SCC 712*** as under:

“16. Though the petition alleges the impugned Act (with the history of preceding ordinances) to be the outcome of political malice, no particulars thereof have been given by the writ petitioner. However, that aspect need not be deliberated upon any further in view of two Constitution Bench decisions of this Court. It has been held in K.C. Gajapati Narayan Deo v. State of Orissa, AIR 1953 SC 375 : 1954 SCR 1 and in Board of Trustees, Ayurvedic and Unani Tibia College v. State of Delhi (now Delhi Admn.), AIR 1962 SC 458 : 1962 Supp (1) SCR 156 that the doctrine of colourable legislation does not involve any

question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of the competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. We will, therefore, concentrate on the legislative competence of Parliament to enact the impugned legislation. If Parliament has the requisite competence to enact the impugned Act, the enquiry into the motive which persuaded Parliament into passing the Act would be of no use at all.

(emphasis supplied)

17. In *K.C. Gajapati Narayan Deo & Ors. v. State of Orissa, (1954) SCR 1*, and in *Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. State of Delhi (Now Delhi Administration) & Anr., 1962 Supp.(1) SCC 156*, it has been held that “*The doctrine of Colourable Legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of the competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. We will, therefore, concentrate on the legislative competence of Parliament to enact the impugned legislation. If the Parliament has the requisite competence to enact the impugned Act, the enquiry into the motive which persuaded the Parliament into passing the Act would be of no use at all*”.

18. Hence, there is no merit in the submission raised by the petitioner

that the impugned Amendment and Validation Act, 2013 is a fraud upon the Constitution.

ii) *Whether the Validation and Amendment Act is legally permissible? Can the Legislature make the impugned amendment by enacting a Validating Act?*

19. A competent Legislature can always validate a law, which has been declared by Courts to be invalid, provided the infirmities and vitiating factors noticed in the declaratory judgment are removed or cured and such a validating law can also be made retrospectively. If in the light of such validating and curative exercise made by the Legislature, the earlier judgment becomes irrelevant and unenforceable, that cannot be called an impermissible legislative overruling of the judicial decision. It is necessary that the Legislature should be able to cure defects in statutes. (See *K. Sankaran Nair v. Devaki Amma Malathy Amma*, (1996) 11 SCC 428).

20. It has been held that the Legislature is competent to pass a new law or amend the existing law, to remove the unconstitutionality or illegality and then provide that anything done under the offending law shall be deemed to have been done under the new law and subject to its provisions. [See *Commentary on the Constitution of India*, 8th Edition 2007 by Durga Das Basu]

21. In *Rai Ramakrishna v. State of Bihar*, AIR 1963 SC 1667, it was held that if a law passed by the legislature is struck down by the Courts as being invalid for one infirmity or the other, it would be competent for the appropriate legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier

law effective from the date when it was passed.

22. It is settled principle of law that the Legislature can change the basis on which a decision is given by the Court and, thus, change the law in general, which will affect a class of persons and events at large. The Legislature can render judicial decisions ineffective by enacting a valid law on the topic within its legislative field, fundamentally altering or changing its character retrospectively. The changed or altered conditions should be such that the previous decision would not have been rendered by the Court; if those conditions had existed at the time of declaring the law as invalid.

23. In *ITW Signode India Ltd. v. Collector of Central Excise*, (2004) 3 SCC 48, the Supreme Court held that a validating Act removes actual or possible voidness, disability or other defect by confirming the validity of anything which is or may be invalid.

24. Through the impugned Validation and Amendment Act, 2013, it is apparent, the Parliament has sought to widen the definition of “*Elector*”, which is more in the nature of curing the defects pointed out by the Court(s) and to obviate any difficulties that have arisen during the course of implementation of the provisions of the RP Act of 1951, post the judgment of the Supreme Court.

iii) *Right to vote is not a constitutional right; it is only a statutory right.*

25. It is trite that ‘*right to vote*’ is not a fundamental right or constitutional right, but is only a statutory right. The Legislature can determine the terms on which the right to vote is enjoyed by the

people of India. Section 62(5) of the RP Act of 1951 explicitly states, “*No person shall vote at any election, if he is confined in a prison ... or is in the lawful custody of the police.*” The constitutional validity of said Section was upheld by the Supreme Court in ***Ankul Chandra Pradhan, Advocate, Supreme Court v. Union of India and Ors., (1997) 6 SCC 1***, by holding as under:

“9. It may also be mentioned that the nature of right to vote has been held to be a statutory right and not a common law right because of which it depends on the nature of right conferred by the statute. In *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency (1952 SCR 218)* (SCC at p. 236), the Constitution Bench held –

“The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.”

10. In *Jamuna Prasad Mukhariya v. Lachi Ram* (SCC at p. 610), the Constitution Bench reiterated its earlier decisions by holding that –

“The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute.

11. In *Jyoti Basu v. Debi Ghosal* (SCC at p. 696), the Hon’ble Apex Court held that –

“7. The nature of the right to elect, the right to be elected and the right to dispute an election and the scheme of the constitutional and statutory provisions in

relation to these rights have been explained by the Court in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency*, 1952 SCR 218 and *Jagan Nath v. Jaswant Singh*, 1954 SCR 892 = AIR 1954 SC 210. We proceed to state what we have gleaned from what has been said, so much as necessary for this case.

8. The right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation.”

26. The right to vote is subject to the limitations imposed by the statute, which can be exercised only in the manner provided by the statute and that challenge to any provision in the statute prescribing the nature of right to elect cannot be made with reference to a fundamental right in the Constitution. The very basis of challenge to the validity of sub-Section (5) of Section 62 of the RP Act of 1951 was, therefore, held to be not available.

27. Through the impugned Amendment and Validation Act, 2013, the Parliament seeks to amend the definition of the term “*Disqualified*” as defined under Section 7(b) of the RP Act of 1951 and incorporated proviso to sub-Section (5) of Section 62, which deals with “*right to vote*”. The impugned Amendment and Validation Act, 2013 does not deal with disqualification on account of conviction under certain offences as prescribed under Chapter – III of Part – II of the RP Act of 1951. The Supreme Court dealt with the case of disqualification

incurred by an individual due to conviction after trial of the offences, for which, he is charge-sheeted. Para 32 of the judgment in *Lily Thomas's case (supra)* reads as follows:

“32. The result of our aforesaid discussion is that the affirmative words used in Articles 102(1)(e) and 191(1)(e) confer power on Parliament to make one law laying down the same disqualifications for a person who is to be chosen as Member of either House of Parliament or as a Member of the Legislative Assembly or Legislative Council of a State and for a person who is a sitting Member of a House of Parliament or a House of the State Legislature and the words in Articles 101(3)(a) and 190(3)(a) of the Constitution put express limitations on such powers of Parliament to defer the date on which the disqualifications would have effect. Accordingly, sub-Section (4) of Section 8 of the Act which carves out a saving in the case of sitting Members of Parliament or State Legislature from the disqualifications under sub-sections (1), (2) and (3) of Section 8 of the Act or which defers the date on which the disqualification will take effect in the case of a sitting Member of Parliament or a State Legislature is beyond the powers conferred on Parliament by the Constitution.”

28. The said judgment only dealt with Articles 101(3)(a), 102(1)(e), 190(3)(a) and 191(1)(e) of the Constitution, apart from Section 8(4) of the RP Act of 1951; whereas, through the impugned Amendment and Validation Act, 2013, the Parliament has only dealt with Sections 7(b) and 62(5) of the RP Act of 1951. As such, the judgment in *Lily Thomas's case (supra)* would have no application in this case.

iv) Constitutional validity of a statute.

29. There can be no quibble with the proposition that an enacted law can be declared unconstitutional on the following grounds:

- (i) Lack of legislative competence;
- (ii) Violation of Part – III of the Constitution; and
- (iii) Arbitrariness of the law.

30. In order to examine the constitutionality or otherwise of a statute and/or any of its provisions, one of the most relevant consideration is the object and reasons as well as the legislative history of the statute. It would help the Court in arriving at a more objective and just approach. It would be imperative for the Court to examine the reasons for enactment of a particular statute/provision so as to find out its ultimate impact vis-à-vis other constitutional provisions.

31. The legislative competence of the Parliament does not come from Articles 102 and 191, but from Articles 246 and 327 read with Entry 72 of List – I, Schedule – VII of the Constitution, according to which, the Parliament is competent to enact laws with respect to the issues mentioned therein. Thus, one of the criteria for determining the constitutional validity of a law, i.e., the competence of the law-making authority, would depend on the ambit of the legislative power and limitation imposed thereon as also on the mode of exercise of such power. In fact, the RP Act of 1951 was also an enactment, which was enacted by the Parliament by exercising such a power flown from Articles 246 and 327 read with Entry 72 of the List – I of the Constitution.

32. The above leaves no room for doubt that the Constitution recognized the need for changes in law relating to elections from time to time and entrusted the Parliament with the responsibility as also the requisite power to bring in legislative measures as and when required in such

respect, which would include the power to amend the existing law.

33. In *Hari Prasad Mul Shankar Trivedi v. V.B. Raju (1974) 3 SCC 415*, the Apex Court held as under:

“24. ... Article 327 gives full powers to Parliament subject to provisions of the Constitution to make laws with respect to all matters relating to or in connection with election including preparation of electoral rolls.”

34. Further, the Parliament has the power, rather an exclusive one, under Article 246 of the Constitution to make laws with respect to any of the matters enumerated in the Union List of the Schedule – VII. In exercise of such a power, the Parliament has enacted the impugned Amendment and Validation Act, 2013 and the same cannot be held to be beyond its legislative competence.

35. We draw strength from the observations of the Supreme Court in the case of *Charanlal Sahu v. Union of India (1990) 1 SCC 614* to the effect that in judging the constitutional validity of the Act, the subsequent events, namely, how the Act has worked out have to be looked into.

36. In view of the aforesaid, there is no legal basis to hold the impugned Amendment and Validation Act, 2013 as unconstitutional.

Petitioner's plea that criminalisation of politics would gain momentum as the impugned Amendment and Validation Act, 2013 is a case of remedy being worse than the disease.

37. This Court is also of the view that the petitioner's plea to bar any person who is in jail or in police custody from contesting an election on the ground that it would lead to criminalisation of politics is a case

of the remedy being worse than the disease. Extending curtailment of the right to vote of a person in prison to the right to stand in election would, in our opinion, leave the door open for practice of '*vendetta politics*' by ruling parties. All that a politician/ ruling party-in-power would need to do to prevent rivals from contesting an election, is to ask the police to file a case and to arrest the rivals.

38. During the Rajya Sabha debate on the impugned Amendment and Validation Act, 2013, the Leader of Opposition stressed that police cannot become the final arbiter as to who can contest and who cannot contest. The relevant extracts of the Law Minister's and Leader of Opposition's statement(s), as available on the website <http://rajyasabha.nic.in>, are reproduced here-in-below:-

A) Law Minister's statement while introducing the impugned Bill:

"... As I have already indicated to you, these are two separate statutory rights. The right to vote is subject to limitations under Section 62(5) of 1951 Act; the right to be on the electoral roll is also subject to limitations under Section 16 of the 1950 Act. Under the 1950 Act, your name can only be removed from the electoral register if you are convicted of an offence either under Section 123 of the Representation of the People Act or other offences under the Representation of the People Act, namely, Sections 8(1), 8(2) and 8(3). If you are not convicted, you are entitled to be on the electoral roll, and if you are entitled to be on the electoral roll, you can file your nomination paper notwithstanding the fact that you are in lawful custody of the police. Because being in the lawful custody of the police does not mean that you are convicted of an offence, does not mean that you are a criminal, does not mean that you are subject to any disqualification under Section 16 of the 1950 Act. ... So, even though I may not be entitled to vote under Section 62(5), I do not cease to be an elector,

which means, I can still file my nomination paper. You know very well that there are several instances where several political parties put up candidates who may be in prison but who are not convicted and undergoing trial because the rule of law in any progressive democracy is that you are innocent till you are proved guilty. ... Therefore, several political parties have actually had candidates who had been in jail but who had actually filed their nomination paper and have got elected while being in jail. ..."

B) Leader of Opposition's statement:

"Suppose police picks up somebody. And it is not that it is uncommon; it has happened in the past whereby introducing some action people have been debarred and disabled from contesting. Therefore, are we going to risk our democracy becoming dependent of the police? Police is a State subject. If the police has to pick up some people on the eve of nominations, then they lose their right to vote; they lose their right to contest. I remember one State Assembly, I mentioned it earlier also, Jammu & Kashmir in 1957, 1962 and 1967. Find out the number of candidates who were elected unopposed and how were they elected unopposed. ... Therefore, we don't want that kind of a situation to be reached where the police becomes the final arbiter. Therefore, even if you are arrested and kept in police custody, even if there is no chargesheet against you and even if no chargesheet is ever filed against you, if on that crucial date you are in custody, then you have lost your vote. ... By being in custody for a day, I lose my vote! ..."

Impugned Amendment and Validation Act, 2013 is consistent with the principle of universal suffrage and the presumption of innocence of the accused until proven guilty

39. In our opinion, one must distinguish between convicted prisoners on the one hand and the undertrials on the other. Further, as our criminal justice system is based on the principle of '*innocent until proven*

guilty', we cannot presume our undertrials in custody to be guilty as far as right to contest elections is concerned. In fact, Rule 84(2) of the United Nations Standard Minimum Rules for Treatment of Prisoners mandates that prisoners who have not been convicted should be presumed as innocent and treated as such.

40. Consequently, we are of the opinion that the impugned Amendment and Validation Act, 2013 is consistent with the principle of universal and equal suffrage and the presumption of innocence of the accused until proven guilty.

Conclusion:

41. In view of the above, we are of the view that the impugned Amendment and Validation Act, 2013 is within the legislative competence of the Parliament. In fact, by the impugned Amendment and Validation Act, 2013, the Parliament has by explicit words overruled the intent which had been read by implication by the Courts into Section 62(5) and consequently, changed the basis of "*Court's decision*" and is, thus, valid.

42. Accordingly, the present writ petition and pending application being bereft of merits are dismissed, but with no order as to costs.

CHIEF JUSTICE

FEBRUARY 06, 2014

MANMOHAN, J.