

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 15.03.2019

Orders Pronounced on : 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No. 452 of 2019

and

W.M.P. Nos. 471, 474 and 475 of 2019

Mr.Ashok Anand ... Petitioner

Versus

1. The Secretary,
Ministry of Home Affairs,
Government of India, North Block,
Cabinet Secretariat, Raisina Hills,
New Delhi-110 001.
2. The Election Commission of India,
Represented by its
Chief Election Commissioner,
having his office at
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.
3. The Chief Electoral Officer,
Union Territory of Puducherry,
having his office at
Villanur Road,
Reddiarpalayam,
Puducherry-605 010.
4. The Secretary, Legislative Assembly,
Union Territory of Puducherry,
Puducherry.
5. The Speaker,
Puducherry Legislative Assembly,
having his office at
The Secretariat,
Puducherry-605 001.

6. The Chief Secretary,
Government of Union Territory of Puducherry,
Goubert Avenue, Beach Road,
Puducherry-605 001.

7. State represented by
Inspector of Police,
SPD : CBI : ACB, Chennai,
Through Public Prosecutor for CBI, Chennai,
(RC MAI 2006 A 0001)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorariafied Mandamus to call for the records from the respondents 5 and 6, insofar as it relates to the order passed by them by publication in The Gazette of Puducherry, Part-1 Extraordinary No.156, dated 8th November 2018, under Section 8 of the Representation of the People Act, 1951 (Act 43 of 1951) read with Sub-Clause (e) of Clause (1) of Article 102 of the Constitution of India read with Section 14(1) of the Government of Union Territories Act, 1963 disqualifying the petitioner from being a Member of the Puducherry Legislative Assembly from the date of conviction, i.e. 30th October 2018, by the learned Special Judge for Prevention of Corruption Act, 1988 (Principal District and Sessions Judge), Puducherry made in Special C.C.No.1 of 2008 and quash the said order as wholly without jurisdiction, null and void and direct the respondents to restore the petitioner's Membership of the Puducherry Legislative Assembly with all privileges, perquisites, salary, continuity of service as member of The Puducherry Assembly Constituency till his period of Election with all service and monetary benefits, privileges and facilities as applicable to the elected Member of the Puducherry Legislative Assembly.

For petitioner: Mr. J. Raja Kalifulla, Senior Counsel for
Mr. M.S. Govindarajan

For respondents: Mr. S.S. Pajaniradja, CGSC for R-1

Mr. Niranjan Rajagopalan for
M/s. G.R. Associates for RR-2 and 3

Mr. AR. L. Sundaresan, Senior Counsel for
Mr. D. Ravichandran, Addl. G.P. (Puducherry) for R4

No appearance for R-5

Mr. A. Gandhiraj, Govt. Pleader (Puducherry) for R6

Mr. K. Srinivasan, Spl. P.P. (CBI) for R-7

ORDER

R. SUBBIAH, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorariafied Mandamus to call for the records from the respondents 5 and 6, insofar as it relates to the order passed by them published in The Gazette of Puducherry, Part-1 Extraordinary No.156, dated 8th November 2018, under Section 8 of the Representation of the People Act, 1951 (Act 43 of 1951) read with Sub-Clause (e) of Clause (1) of Article 102 of the Constitution of India read with Section 14(1) of the Government of Union Territories Act, 1963 disqualifying him from being a Member of the Puducherry Legislative Assembly from the date of conviction, i.e. 30th October 2018, by the learned Special Judge for Prevention of Corruption Act, 1988 (Principal District and Sessions Judge), Puducherry made in Special C.C.No. 1 of 2008 and quash the said order as wholly without jurisdiction, null and void and direct the respondents to restore the petitioner's Membership of the Puducherry Legislative Assembly with all privileges, perquisites, salary, continuity of service as member of The Puducherry Assembly Constituency till his period of Election with all service and monetary benefits, privileges and facilities as applicable to the elected Member of the Puducherry Legislative Assembly.

2. The case of the petitioner is that he is a native of Puducherry. He had completed B.E. Degree and was engaged in business activities besides running a Residential School in Poraiyur Village, Villianur in Pudhcerry, where more than 6400 students are studying. He was elected as a Member of Puducherry Legislative Assembly in the General Election held in May 2011 from No.9, Thattanchavady Assembly Constituency. He was again re-elected from the same Constituency in the General Election held in May 2016. He was sworn in as a Member of Legislative Assembly (MLA) by the fifth respondent and he was discharging his duties as such. His tenure as a Member is to expire during May 2021 or until the Legislative Assembly is dissolved earlier by any other reason.

3. In the year 2006, long before the petitioner became MLA, the Deputy Superintendent of Police, CBI : SPE : ACB, Chennai, registered a first information report against the petitioner's father Mr. Anandane, who was employed as Superintending Engineer, Puducherry, alleging possession of assets disproportionate to his known source of income in his name and in the name of his family members. After enquiry, a charge sheet was laid before the Special Judge (under Prevention of

Corruption Act) and Principal Sessions Judge, Puducherry, against his father Mr. Anandane (first accused) for the alleged offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. The petitioner and his mother were also implicated as Accused Nos.2 and 3 in that case and charged for the offence under Section 109 IPC read with Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act. The case was taken on file as Special Calendar Case No.1 of 2008 on the file of the Special Judge (under Prevention of Corruption Act) and Principal Sessions Judge, Puducherry.

4. It is the further case of the petitioner that his father was employed as General Manager in a Public Sector Undertaking called PASIC, which is also a Government of Puducherry undertaking. Subsequently, the petitioner's father also held the post of Executive Engineer and Superintending Engineer, Public Works Department, Government of Puducherry. During the period of such employment, from 01.01.1997 to 07.01.2006, the petitioner's father was alleged to have acquired assets disproportionate to his known source of income and has been in possession of pecuniary resources or property in his name and in the name of his family members, i.e. his son (petitioner herein), A-2 and A-3 Mrs. Vijayalakshmi, petitioner's mother. The said Mrs. Vijayalakshmi died during the pendency of the case and the case against her was therefore dropped as abated. The allegation against the petitioner was that he abetted A-1 in the commission of the said offence and therefore was charged for the alleged offence under Section 109 IPC read with Section 13(2) and 13(1)(e) of the Prevention of Corruption Act. The learned Special Judge for Prevention of Corruption Act (Principal District and Sessions Judge), Puducherry, in Special C.C. No.1 of 2008, by judgment dated 30.10.2018, convicted A-1 and sentenced him to undergo one year rigorous imprisonment under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and to pay a fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for three months. The petitioner (A2) was convicted and sentenced to undergo one year rigorous imprisonment under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act read with Section 109 IPC and to pay a fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for three months. Further, the learned Judge ordered that the property, namely undivided share in the name of A-2, the School and Hostel building of Aditya Vidyashram Residential School as well as the existing lands comprised in R.S.1/4, 11/1, 99/5, 99/4, 44/1, 75/4, 75/3, 6/2, 84/7, 75/12, 75/1, 75/7 in Poraiyur Village, Villianur Commune, Puducherry, were ordered to be confiscated to the State for the disproportionate wealth value to the tune of Rs.1,74,36,839/.

5. As against the said judgment of conviction passed against the petitioner, he preferred an appeal in CrI. A. No. 724 of 2018 before this Court. By order dated 26.11.2018 in CrI. M.P. No. 15301 of 2018, this Court admitted the appeal and after notice to the respondent in the appeal, suspended the substantial sentence of imprisonment alone imposed against the petitioner till the disposal of the appeal,. The petitioner has also filed petitions to stay the order of attachment and to stay the conviction passed in Spl. C.C.No.1 of 2008, dated 30.10.2018. Based on the abovesaid judgment passed by the learned Special Judge, the respondent Nos. 4 and 5, passed an order which was published in the Gazette of Puducherry, Part-1 Extraordinary No.156, dated 08.11.2018 under Section 8 of the Representation of the People Act, 1951 (Act 43 of 1951) read with Sub-Clause (e) of Clause (1) of Article 102 of the Constitution of India, read with Section 14(1) of the Government of Union Territories Act, 1963, disqualifying the petitioner from being a Member of the Puducherry Legislative Assembly from the date of conviction, i.e. 30.10.2018 and declaring that No.9 Thattanchavady Assembly Constituency shall be deemed to have become vacant from the date of the petitioner's conviction, i.e. 30.10.2018 in Spl.C.C.No.1 of 2008.

6. It is further stated by the petitioner that the impugned order holding that he is disqualified from being a Member of the Puducherry Legislative Assembly from the date of conviction, i.e. 30.10.2018, is ex-facie illegal and without jurisdiction. The conviction for one year rigorous imprisonment is under Section 109 IPC read with Section 13(1)(e) read with Section 13 (2) of the Prevention of Corruption Act. The substantive offence against the petitioner is abetment which is punishable under Section 109 Indian Penal Code. The offence under Section 109 of Indian Penal Code is a separate and distinct offence, though punishable in the context of the other offence. It is further stated that the petitioner's conviction is not under any of the provisions of the Prevention of Corruption Act and therefore, he cannot be disqualified as contemplated under Article 102 of The Constitution of India. The petitioner was convicted and sentenced for having allegedly committed an offence punishable under Section 109 of The Penal Code for abetting the co-accused in the criminal case namely his father. There is no express provisions either under The Representation of People Act or The Constitution of India to disqualify a Member of Legislative Assembly for having committed the offence of abetment and what is provided as a disqualification is only the offence punishable under Section 13 of the Prevention of Corruption Act. Therefore, the offence of abetment cannot be equated to that of the offence punishable under Section 13 of The Prevention of Corruption Act warranting his disqualification.

7. Mr.J.Raja Kalifulla, learned Senior Counsel appearing for the petitioner submitted that the petitioner was elected to the Legislative Assembly of Puducherry in the General Election held in May 2011 from No.9 Thattanchavady Assembly Constituency and he was again re-elected from the same constituency in the subsequent General Election held in May 2016 and was sworn in as a Member of the Legislative Assembly by the fifth respondent. Much earlier to the petitioner becoming a Member of the Legislative Assembly, a case was registered in the year 2006 under the provisions of the Prevention of Corruption Act against his father who was holding the post of Executive Engineer and Superintending Engineer in Public Works Department, Government of Puducherry, during the period from 01.01.1997 to 07.01.2006. The allegation against the petitioner's father is that he acquired assets disproportionate to his known source of income and has amassed pecuniary resources or property in his name and in the name of his family members, which includes the petitioner herein, being his son. The provisions of the Prevention of Corruption Act have no application in so far as the petitioner is concerned, as the petitioner was not a public servant when the case was filed. There is no charge against the petitioner under the provisions of the Prevention of Corruption Act. The only allegation against the petitioner (A2) is that he abetted A-1, his father, who was convicted for the offence under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act. The petitioner was not in any public service on the date of the first information report, i.e. 04.01.2006 or on the date of filing of the charge sheet on 10.01.2008. In this regard, learned Senior Counsel appearing for the petitioner invited the attention of this Court to the judgment passed by the learned Special Judge in Spl.C.C.No.1 of 2008, more particularly to paragraphs 165 and 167 of the said judgment, which are as follows:

"165. As far as offence u/s 109 of IPC is concerned, "whoever abets any offence shall if the act abetted is committed in consequence of abetment and no express provision is made by this Code for the punishment of such abetment be punished with the punishment provided for the offence". There is no specific provision for punishment of abetment in the Prevention of Corruption Act thereby as per dictum laid down by the Hon'ble Supreme Court in Nallammal case, conviction can be made u/s 109 IPC. In this case, A2 has abetted A1 for the commission of offence u/s 13(1)(e) of P.C. Act, 1988 thereby we have to punish the accused as per Section 109 of IPC. Since there is no specific provision of punishment, we have to

invoke for punishment the provision u/s 13(1) (e) of P.C. Act, 1988."

"167. The 2nd accused is sentenced to undergo R.I. for one year u/s 13(1)(e) r/w 13 (2) of P.C. Act r/w 109 of IPC and to pay a fine of Rs.1,00,000/- (Rupees one lakh only) i/d to undergo R.I. for three months".

8. By relying upon the above portion of the judgment of the Criminal Court, learned Senior Counsel appearing for the petitioner submitted that the learned Special Judge convicted the petitioner only for the offence punishable under Section 109 IPC and imposed the punishment under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act. In this regard, learned Senior Counsel appearing for the petitioner invited the attention of this Court to the impugned order, dated 08.11.2018 and submitted that the respondent Nos.4 and 5 placed reliance on Section 8 of the Representation of the People Act, 1951 (Act 43 of 1951) read with Sub-Clause (e) of Clause (1) of Article 102 of the Constitution of India read with Section 14(1) of the Government of Union Territories Act, 1963 to disqualify the petitioner from holding the position of Member of Legislative Assembly. According to the learned Senior counsel appearing for the petitioner, a conjoint reading of Section 8 of the Representation of the People Act, 1951 (Act 43 of 1951) and Article 102 of the Constitution of India, read with Section 14 (1) of the Government of Union Territories Act, 1963, would reveal that the petitioner did not suffer disqualification as he was convicted and sentenced only for the offences punishable under Section 109 of Indian Penal Code and not for the offences referred to therein. Further, Article 102 of the Constitution of India has no application to the case of the petitioner as it only relates to disqualification of a Member of Parliament (MP), but the petitioner is a Member of Puducherry Legislative Assembly (MLA). Article 191 of the Constitution of India is in-pari-materia to Article 102 of the Constitution of India, particularly Article 102 (3) relates to disqualification of membership by or under any law made by Parliament.

9. Learned Senior Counsel appearing for the petitioner further submitted that Section 8 of the Representation of the People Act, 1951, deals with the disqualification of Member of State Legislature or Parliament if he or she is convicted for certain offences mentioned therein. Section 8 (1) therein refers to certain offences under the various Acts referred to therein which operates as a disqualification of a Member of the Legislature or Parliament. Section 8(1)(m) therein specifically refers to offences which are punishable under the Prevention of Corruption Act, 1988. Thus, learned Senior Counsel appearing for the petitioner submitted that if any person is convicted for any

of the offences as enumerated under Section 8 of The Representation of the People Act, 1950, he shall be disqualified and where the convicted person is sentenced to only fine, he stands disqualified for a period of six years from the date of such conviction. If imposed with imprisonment, the disqualification will continue for a further period of six years since his release. Section 8 (3) therein refers to person convicted of any offence other than items mentioned in Section 8 (1) and sentenced to imprisonment for not less than two years. The petitioner herein was convicted for the offence under Section 109 IPC read with Section 13(2) read with Section 13(1) (e) which is not expressly covered and/or indicated as a disqualification under Section 8(1) of the Representation of the People Act, 1951, and therefore, it has no application to the case of the petitioner. Further, Section 8(3) of the Representation of the People Act, 1951, cannot be applied on the basis of the petitioner's conviction under Section 109 IPC read with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act and sentencing him to one year rigorous imprisonment and to pay fine of Rs.1,00,000/-, as a disqualification. The disqualification of the petitioner will get attracted only if he is convicted for any other offence and sentenced to imprisonment for not less than two years. Section 109 of IPC is a distinct offence and if a person is convicted for abetment under Section 109 IPC, the punishment is relatable to the offence abetted. The period of sentence will vary according to the offence alleged to have been abetted. It is further submitted that there is no specific provision for abetment as against non-public servants under the Prevention of Corruption Act and Sections 7 to 11 of the Prevention of Corruption Act specifies the punishment and Section 12 of the Prevention of Corruption Act deals with the abetment. Insofar as Section 13(1)(e) of the Prevention of Corruption Act is concerned, there is no specific punishment provided for abetment. For the first time in the decision of the Supreme Court reported in 1999 SCC (Cri) 1133 = 1999 (6) SCC 559 (P.Nallammal Vs. State), the Supreme Court held that non-public servants can also be punished with the aid of Section 109 Indian Penal Code.

10. The sum and substance of the submissions of the learned Senior Counsel appearing for the petitioner is that as per Section 8(1)(m) of the Representation of the People Act, a person convicted for the offence punishable under the Prevention of Corruption Act alone can be disqualified. So far as the present case is concerned, the learned Special Judge has only convicted the petitioner under Section 109 IPC and such punishment cannot attract a disqualification against the petitioner. Therefore, the impugned order disqualifying the petitioner from functioning as a Member of the Legislative

Assembly and declaring the seat held by the petitioner as vacant, is not legally sustainable and the same is liable to be set aside. In this regard, the learned Senior Counsel appearing for the petitioner relied on the decisions of the Supreme Court reported in 2007 (10) SCC 797 (Kishori Lal Vs. State of M.P), 2003 (12) SCC 469 (Goura Venkata Reddy Vs. State of A.P) and 2000 (10) SCC 500 (Wakil Yadav and another Vs. State of Bihar).

11. Relying upon the above judgments of the Supreme Court, learned Senior Counsel appearing for the petitioner submitted that in Section 109 IPC, there is no provision for punishment. Hence, the petitioner was punished with the offence provided under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act. Thus, only in the event of convicting the petitioner under the provisions of the Prevention of Corruption Act, he can be disqualified under Section 8(1)(m) of the Representation of the People Act. In this regard, learned Senior Counsel appearing for the petitioner also submitted that the conviction is finding a person guilty of an offence and the sentence is the period of imprisonment imposed against such person. Section 8(1) of the Representation of the People Act refers only to conviction under the Acts mentioned therein and Section 8(3) therein refers to conviction and sentence other than the offences mentioned in Section 8(1) and Section 8(2) therein. Since the conviction of the petitioner is under Section 109 IPC and the petitioner has been imposed with sentence of one year rigorous imprisonment with fine of Rs.1,00,000/-, he will not suffer disqualification either under Section 8(1) or under Section 8(3) of the Representation of the People Act, 1951.

12. As the next fold of his submission, the learned Senior Counsel appearing for the petitioner submitted that the impugned order is vitiated for non-compliance of Article 192 of the Constitution of India and Section 14(3) of the Government of Union Territories Act, 1963. In this regard, the learned Senior Counsel appearing for the petitioner submitted that Article 192 (1) of the Constitution of India specifically states that if any question arises as to whether a Member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in Clause (1) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final. Further, as per Article 192(2) of the Constitution of India, before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion. The respondents 4 to 6, therefore, should have referred the question as to whether the petitioner has suffered disqualification, to the Governor, in terms of Article 192(1) of the Constitution of India. The learned Senior Counsel appearing for the petitioner also submitted that Sections 14(3) and 14(4) of the Government

of Union Territories Act, 1963 also imposes similar obligation on the respondents 4 to 6 and the respondents 4 and 5 have no jurisdiction to hold that the petitioner had suffered disqualification or to declare the seat as vacant, without referring the question to the decision of the Administrator of the Union Territory of Puducherry. Even assuming without admitting that the petitioner has suffered disqualification, then the seat cannot be filled up till the question is decided by the Governor in terms of Article 192 of the Constitution of India. In this regard, the learned Senior Counsel appearing for the petitioner relied on a decision of the Supreme Court reported in 2013 (7) SCC 653 (Lily Thoms Vs. Union of India).

13. The learned Senior Counsel appearing for the petitioner further contended that the proper person to decide and pass an order on the question of disqualification is the State Government as stated in Section 7 of the Representation of the People Act, 1951. As per Section 2(1)(a) of the Representation of the People Act, 1951, each of the expressions defined in Section 2 of the Representation of the People Act, 1950 (43 of 1950), but not defined in 1951 Act, shall have the same meaning as in that Act. Section 2(i) of the Representation of the People Act, 1950, defines "State", which includes an Union Territory and as per Section 2(j) therein, the "State Government" in relation to a Union Territory, means the Administrator thereof. The Administrator is defined in Section 2(1)(a) of the Government of Union Territories Act and Administrator means Administrator of the Union Territory appointed by the President under Article 239 of the Constitution of India. In the instant case, even assuming without admitting that the petitioner has suffered disqualification, it is for the State Government or the Union Government which is competent to pass an order for disqualification and the impugned order passed by the Speaker of the Legislative Assembly is without jurisdiction. Therefore, on this ground also, learned Senior Counsel appearing for the petitioner submitted that the impugned order is liable to be quashed.

14. Countering the above submissions, Mr.S.S.Pajaniradja, learned Central Government Standing Counsel appearing for the first respondent submitted that the impugned order is wholly justified and it cannot be stated to be either perverse or not in accordance with law. The factum of the petitioner's conviction in Spl.C.C.No.1 of 2008 on the file of the Special Judge at Puducherry is not disputed. The factum of filing an appeal in Crl.A.No.724 of 2018 is also not disputed. If the petitioner is aggrieved by the findings rendered in the judgment of the Special Judge, it is open to him to canvass his grievance in the appeal filed by him, but in the present Writ Petition, he cannot and should not be permitted to raise any issue relating

to the correctness or otherwise of the judgment of conviction and sentence of the trial Court. In the appeal, the petitioner was granted suspension of sentence imposed against him, but however, the conviction has not been stayed, and therefore, the same stands even as of now, which disables the petitioner to continue as MLA of Puducherry. In any event, the first respondent was implied only as a formal party to this writ petition and no relief has been sought for against the first respondent in this writ petition. Therefore, the learned counsel for the first respondent sought for dismissal of the Writ Petition.

15. Mr. Niranjan Rajagopalan, learned counsel appearing for the respondents 2 and 3 submitted that the impugned Notification issued relating to vacancy of Thattanchavady seat in the Union Territory of Puducherry, was passed by the Speaker of the Assembly (fifth respondent) and also by the Secretary of the Legislative Assembly (fourth respondent) and they are the appropriate authorities to defend the matter. The role of the Election Commission of India comes into play only on Notification of such vacancy, on which the bye-elections to the concerned Legislative Assembly are to be conducted before the period of six months as per Section 151-A of the Representation of the People Act, 1951. Learned counsel for the respondents 2 and 3 invited the attention of this Court to the decision of the Supreme Court reported in 2015 (12) SCC 570 (Election Commission of India Vs. Bajran Bahadur Singh), in which, pursuant to the order of disqualification made by the Governor of Uttar Pradesh under Article 192(1) of the Constitution of India on the ground that the Member entered into contracts with the State during his holding of office as MLA, while the Elections were notified on declaring that the seats are vacant, the petitioner therein filed a Writ Petition challenging the Governor's order of disqualification before the Allahabad High Court and interim order was passed in his favour, staying the Election process. The Election Commission of India filed an appeal against the same before the Supreme Court. The Supreme Court dealt with the question, considering the right of the disqualified MLA to challenge the order vis-a-vis the obligation of the Election Commission to conduct the Elections within six months as per Section 151-A of the Representation of the People Act, and as to what would be the course of action to adopt. In that case, the Supreme Court discussed the nature and consequence of disqualifications as contemplated under various provisions and held as follows:

"65. The question, therefore, is as to how to reconcile the two apparently conflicting constitutional obligations, (i) of the High Court to adjudicate the dispute regarding the legality of the Governor's

decision under Article 192, and (ii) the Commission's obligation to hold the election within a period of six months from the date of occurrence of the vacancy.

66. Unfortunately, there is no period of limitation prescribed by law within which a person aggrieved by the decision of the Governor under Article 192 can approach the High Court. Until such law is made, we deem it appropriate to hold that any person aggrieved by a decision of the Governor under Article 192 must approach the High Court by initiating appropriate proceedings (if he is so desirous) within a period of eight weeks from the date of the decision of the Governor.

67. Such proceedings must be head by a Bench of at least two Judges and be disposed of within a period of eight weeks from the date of initiation without fail. The Chief Justice of the High Court concerned will make an appropriate arrangement in this regard. If the abovementioned time-frame is strictly followed, the Commission would still be left with another eight weeks of time to comply with the obligations emanating from Section 151-A of the RP Act."

16. Learned counsel for the respondents 2 and 3 further submitted that as Articles 102 and 192 of the Constitution of India and Section 14(3) of the Government of Union Territories Act, 1963 are similar, the above said provisions of law would apply to the present case and even to cases where Governor's order is not warranted. Further, Article 102(1)(e) of the Constitution of India deals with cases where a person shall stand disqualified under any provision of law made by the Parliament. Section 8(1) of the Representation of the People Act provides for disqualification on being convicted of certain offences, among which, in sub-section (m), the Prevention of Corruption Act, 1988, is stated. Unlike sub-section (2) of Section 8, where disqualification occurs only on being sentenced for a particular period or more, in case of sub-section (1), mere conviction is sufficient. This also indicates that the Legislature views the offences provided under Section 8(1) as more serious in the context of Elections.

17. Learned counsel for the respondents 2 and 3 further submitted that the original provisions of the Prevention of Corruption Act, 1988, were such that the abetment of the offences under Section 13 therein did not have a specific

provision for punishment. In this context, the Supreme Court, in the decision reported in 1999 (6) SCC 559 (P.Nallammal VS. State) held that the abetment of offences under the Prevention of Corruption Act, though punishable under Section 109 IPC, is to be tried under the Prevention of Corruption Act, 1988 and relying on this decision of the Supreme Court, the trial Court convicted and sentenced the petitioner herein under Section 109 IPC read with Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act. Learned counsel for the respondents 2 and 3 further submitted that the contentions of the petitioner as to the appropriateness of the conviction of the Criminal Court, have to be made only in the Criminal Appeal and cannot be advanced in the instant Writ Petition. The conviction under Section 109 IPC and sentencing the petitioner under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act read with Section 109 IPC, is, in essence, a conviction for the offence under the provisions of the Prevention of Corruption Act and without the penal provision under the Prevention of Corruption Act, the abetment by itself does not have any existence. Thus, learned counsel for the respondents 2 and 3 prayed for dismissal of the Writ Petition.

18. Mr.AR.L.Sundaresan, learned Senior Counsel, assisted by Mr.D.Ravichandran, learned Additional Government Pleader (Puducherry) appearing for the fourth respondent, by inviting the attention of this Court to paragraphs 165 and 167 of the judgment passed by the learned Special Judge in Spl.C.C.No.1 of 2008, submitted that a reading of the same clearly shows that the petitioner was convicted for the offence punishable under the Prevention of Corruption Act, and as such, he stood disqualified with effect from 30.10.2018 being the date of conviction. Therefore, it is the duty of the authorities to act upon such disqualification and accordingly when the matter was brought to the notice of the Speaker of the Puducherry Assembly, the order of disqualification was passed and it was communicated by the order impugned in this Writ Petition. In fact, the petitioner has already filed appeal in CrI.A.No.724 of 2018 against the order of the trial Court and in the said Criminal Appeal, he had filed a petition praying for stay of the conviction. Further, as per Section 8(1)(m) of the Representation of the People Act, 1951, a person convicted of an offence punishable under the Prevention of Corruption Act, 1988, shall be disqualified for a period of six years from the date of conviction. Therefore, the disqualification is automatic. In this regard, learned Senior Counsel appearing for the fourth respondent relied on the decision of the Supreme Court reported in the case of Lily Thomas (cited supra) and contended that absolutely there is no need for any decision of the Governor or the President in this case. Even as per the decision of the Supreme Court reported in MANU/SC/1056/2018 = AIR 2018 SC 4675

(Lok Prahari Vs. Election Commission of India) (in W.P.(Civil) No.330 of 2016, judgment dated 26.09.2018), it was made clear that when the judgments of the Criminal Courts are published in e-Courts portal, all concerned should act swiftly.

19. Learned Senior Counsel appearing for the fourth respondent further contended that in the instant case, the disqualification of the petitioner is not referable to the provisions contained under X Schedule of the Constitution of India, but on account of conviction in a criminal case. The petitioner's conviction is based on Section 8 of the Representation of the People Act, 1951. The Representation of the People Act is a law enacted under the provisions of the Constitution of India and the same has been dealt with by the Supreme Court in the case of Lily Thomas (cited supra). Therefore, the disqualification of the petitioner does not require any decision of the Governor or the President of India. The learned Senior Counsel appearing for the fourth respondent also invited the attention of this Court to Section 8 of the Representation of the People Act and submitted that the wordings in the said Section 8 are to the effect "A person convicted of an offence punishable under", whereas Section 109 IPC says that, "Whoever abets any offence shall, if the act abetted is committed in consequence of abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence". The petitioner is convicted for the offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and he stands disqualified, which is clear from the operative portion of the judgment of the trial Court in Spl.C.C.No.1 of 2008. Thus, the disqualification of the petitioner is automatic.

20. With regard to the submission of the learned Senior Counsel appearing for the petitioner that when the check period was in operation, the petitioner was not a public servant, and as such, he cannot be punished under the provisions of the Prevention of Corruption Act, it is replied by the learned Senior Counsel appearing for the fourth respondent that even non-Government servant can be punished under the provisions of the Prevention of Corruption Act, which is evident from the decision of the Supreme Court reported in 2014 (11) SCC 724 (State Vs. Jitender Kumar Singh). For the same proposition, learned Senior Counsel appearing for the fourth respondent also relied on a decision of the Supreme Court reported in 1999 (6) SCC 559 (cited supra). Thus, the learned Senior Counsel appearing for the fourth respondent prayed for dismissal of the Writ Petition.

21. Mr. A. Gandhi Raj, learned Government Pleader (Puducherry) appearing for the sixth respondent submitted that the Gazette Publication Part-1 Extraordinary No.156, dated 08.11.2018 is only a Notification issued by the Secretariat of the Puducherry Legislative Assembly about the vacancy of seat in the Union Territory of Puducherry due to disqualification incurred by the petitioner under Sub-Clause (e) of Clause (1) of Article 102 of the Constitution of India, read with Section 14 (1) of the Government of Union Territories Act, 1963. The respondents 4 to 6 have not disqualified the writ petitioner by virtue of the said Notification in the Gazette of Puducherry, dated 08.11.2018. In fact, the Gazette Publication was not signed by the Chief Secretary of the Government of Puducherry, who is the sixth respondent herein and therefore, it is not an order of the Government of Puducherry. Any Government Order (G.O) should be signed by the Chief Secretary, concerned Minister, the Chief Minister and the Lieutenant Governor of Puducherry, before it is published in the Gazette as an order of the Government of Puducherry. The Gazette publication, in this case, was published by the Assembly Secretariat of the Government of Puducherry, bringing to the notice of the public about the vacancy of the seat due to the disqualification suffered by the petitioner as a consequence of his conviction and sentence imposed by the Special Judge (under the Prevention of Corruption Act). Hence, the disqualification is automatic and as a sequel to his conviction in Spl.C.C.No.1 of 2008. The Gazette publication was only issued for the information to the public and to all the officers concerned as well the Election Commission of India showing that the writ petitioner who was a sitting MLA of the Puducherry Legislative Assembly, had incurred statutory disqualification under Section 8(1)(m) of the Representation of the People Act, 1951, read with Section 14(1) of the Government of Union Territories Act, 1963 and consequently, the Assembly seat held by the writ petitioner is deemed to have become vacant under Section 13 of the Government of Union Territories Act, 1963. The Gazette publication signed by the respondents 4 and 5 herein cannot be deemed to be an order of the Speaker, the fifth respondent herein, disqualifying the writ petitioner from functioning as a MLA. It should be construed as an information to the public that, "Thattanchavady Constituency" had fallen vacant in view of the statutory disqualification incurred by the petitioner as provided under Section 8(1)(m) of the Representation of the People Act, 1951 and under Section 14(1) of the Government of Union Territories Act, 1963. In view of the statutory disqualification under Section 8(1)(m) of the Representation of the People Act, 1951, it is not mandatory and obligatory for the respondents 5 and 6 to inform the matter to the Election Commission of India or to the President of India. The Gazette publication issued by the respondents 4 and 5 does not in any way cause any stigma on the

writ petitioner, because the disqualification is only a legal consequence of his conviction in Spl.C.C.No.1 of 2008 on the file of the Special Judge and it cannot be deemed to be a punishment.

22. Learned Government Pleader (Puducherry) appearing for the sixth respondent further contended that the question whether conviction under Section 109 IPC read with Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, is sustainable against him, is an issue pending in the Criminal Appeal filed against the conviction and sentence imposed by the trial Court and hence, the same cannot be adjudicated by this Court in this Writ Petition. Further, the Representation of the People Act, 1951, is a comprehensive law of Election to the Parliament, Legislature of a State and Union Territories and the qualification and disqualification of the Members therein. Therefore, under Section 8(1)(m) of the Representation of the People Act, 1951, in its application to sitting MLA of Puducherry, it does not require a reference to the President of India or Election Commission of India, by the Speaker of the Puducherry Legislative Assembly. Section 14(1) of the Government of Union Territories Act, 1963, does not bring Section 8(1)(m) of the Representation of the People Act, 1951, within its purview. Therefore, the respondent Nos. 4 and 5 have no obligation to refer the question of disqualification of writ petitioner to the President of India or to any other authority, including the Lieutenant Governor of the Union Territory of Puducherry. Hence, for these reasons, the learned Government Pleader (Puducherry) prayed for dismissal of the Writ Petition.

23. On the above aspects, this Court also heard the submissions made by the learned Special Public Prosecutor (CBI) appearing for the seventh respondent.

24. By way of reply, the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Supreme Court reported in AIR 1953 SC 210 (Election Commission of India Vs. Saka Venkata Rao), wherein it has been held as follows:

"16. For the reasons indicated we agree with the learned Judge below in holding that Articles 190(3) and 192(1) are applicable only to disqualifications to which a member becomes subject after he is elected as such, and that neither the Governor nor the Commission has jurisdiction to enquire into the respondent's disqualification which arose long before his election."

25. By citing the above decision, the learned Senior Counsel for the petitioner submitted that if the disqualification of the petitioner as Member of Legislative Assembly was prior to his election, then the Governor or the Election Commission of India will have no jurisdiction to cause an enquiry, but in this case, the petitioner's disqualification became the subject after he was elected in the year 2016 and therefore, reference of his case to the Governor or the Election Commission is mandatory, which was not done.

26. To this, the learned Senior Counsel appearing for the fourth respondent submitted that in the present case, the petitioner's disqualification had occurred in view of the operation of law under Section 8(1)(m) of the Representation of the People Act, 1951 and Section 8(1)(m) was inserted by the Parliament with effect from 08.01.2003, and hence, the said decision of the Supreme Court reported in AIR 1953 SC 210 (cited supra), relied on by the learned Senior Counsel appearing for the petitioner, on facts, will not be applicable to the case of the petitioner.

27. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have perused the materials available on record.

28. In view of the above submissions made by the learned counsel appearing for the parties on the factual matrix of the case, the following questions arise for consideration in this Writ Petition:

(i) Whether the conviction of the petitioner under Section 109 IPC read with Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act and sentence imposed thereunder, would attract "disqualification" as contemplated under Section 8(1) and (3) of the Representation of the People Act, 1951 ?

(ii) Whether the disqualification of the petitioner in this case warrants a reference to the Administrator/Lieutenant Governor ?

29. Question (i):

The petitioner was elected as a Member of the Legislative Assembly in the General Election held in 2011 from No.9, Thattanchavady Assembly Constituency, Union Territory of Puducherry and re-elected for the subsequent stint in the General Election conducted during May 2016. The fact remains that much before the election of the petitioner as a Member of the Legislative Assembly in the year 2011, a first information

report was registered against his father by the Deputy Superintendent of Police, CBI: SPE : ACB, Chennai during the year 2006 alleging that he had amassed wealth disproportionate to his known source of income and acquired assets in his name as also in the name of his family members. In other words, the petitioner's father was sought to be prosecuted for an offence punishable under the provisions contained under The Prevention of Corruption Act. It is also an admitted fact that the petitioner was arrayed as second accused, while the mother of the petitioner was arrayed as third accused in the criminal case. It is also an admitted fact that the petitioner was sought to be prosecuted for having abetted his father in amassing disproportionate wealth contrary to the known source of his income, which is an offence punishable under Section 109 of The Indian Penal Code. After trial, the petitioner's father as also the petitioner were convicted and sentenced to rigorous imprisonment. It is also a fact that while the father of the petitioner was convicted for having committed the offence punishable under Section 13 (1) (e) read with Section 13 (1) (2) of The Prevention of Corruption Act, the petitioner was convicted for the offence punishable under Section 109 of The Indian Penal Code. Such conviction and sentence imposed on the petitioner is the subject matter of the Criminal Appeal pending before this Court.

30. It is the strenuous contention of the learned Senior Counsel appearing for the petitioner that only if the conviction is imposed against the petitioner under the provisions of the Prevention of Corruption Act, it will operate as a bar or disqualification for the petitioner. Rather, the petitioner was convicted only under the provisions of Section 109 of IPC and only for the purpose of punishment, the learned Special Judge has invoked the provisions of the Prevention of Corruption Act. In other words, even though the charge was framed against the petitioner for the offence punishable under Section 109 of The Indian Penal Code read with Section 13(1)(e) read with 13(2) of the Prevention of Corruption Act, while awarding sentence, the learned Special Judge, finding that no penalty could be imposed for having committed an offence under Section 109 of Indian Penal Code, had chosen to award sentence under Section 109 of Indian Penal Code read with the provisions contained under the Prevention of Corruption Act. Thus, in effect, the conviction or sentence imposed on the petitioner cannot be construed as the one imposed under the provisions contained under the Prevention of Corruption Act, rather, it was imposed only under the provisions contained under The Indian Penal Code and in such circumstances, it cannot be said that the said conviction operate as a bar or attract disqualification for the position held by the petitioner as a Member of Legislative Assembly. Even though this argument appears to be attractive, we are not

inclined to accept this for the simple reason that the petitioner had in fact suffered a conviction under the law of this land. There cannot be any major distinction that could be advanced as regards the conviction or sentence imposed under the provisions of The Indian Penal Code or the provisions contained under the Prevention of Corruption Act. Even otherwise, Article 191 of The Constitution of India makes it crystal clear that a disqualification of a member of the Legislative Assembly or Legislative Council of a State includes a disqualification suffered by or under any law made by the Parliament, meaning thereby, the disqualification attracted by "any" of the enactment, penal provisions or legislations framed by the Parliament. It cannot be disputed that The Representation of People Act, 1951 has been framed by our Legislatures to regulate certain matters relating to election, disqualification or delimitation of Constituencies for proper conduct of either House of the Parliament or the Legislative Assembly, as the case may be. In the course of legislation, it mandates that the Members of such Legislative Assembly must be of blameworthy conduct to inspire the confidence of the voters, who have exercised their franchise in favour of such Member. When the so-called Member suffers certain disqualification by any of the sub-clauses contained under Article 191 of The Constitution, then it goes without saying that such Member had lost the confidence reposed in him by the voters. In such circumstances, whether the Member suffered conviction under The Indian Penal Code or The Prevention of Corruption Act is immaterial, especially when such conviction comes within the fold of Article 191 (1) (e) of The Constitution of India. In other words, once a Member suffered a disqualification, by operation of Law, he cannot be expected to continue as a Member much to the chagrin of the electors. Therefore also, we are of the view that the disqualification suffered by the petitioner either under the Indian Penal Code or The Prevention of Corruption Act cannot in any way put him in the higher pedestal to claim that such conviction under either of the provisions will not attract the disqualification. In fact, this view taken by us was also considered by the trial Court in paragraphs 165 and 167 of the judgment in Spl.C.C.No.1 of 2008, which are extracted earlier in this order. In this regard, it is also useful to extract Section 8(1)(m) of the Representation of the People Act, 1951, as follows:

"Section 8: Disqualification on conviction for certain offences-- (1) A person convicted of an offence punishable under--

... ..
(m) the Prevention of Corruption Act, 1988 (49 of 1988); or
... ..

shall be disqualified, where the convicted person is sentenced to--

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release."

31. Therefore, on a reading of paragraphs 165 and 167 of the judgment of the learned Special Judge in Spl.C.C.No.1 of 2008 coupled with Section 8(1)(m) of the Representation of the People Act, would only indicate that the conviction imposed on the petitioner can be construed as the one imposed under The Prevention of Corruption Act and consequently, such conviction imposed on the petitioner would attract his disqualification to hold the position as a Member of Legislative Assembly and he had lost the people's mandate. In any event, we do not find any classic distinction between the conviction imposed under The Prevention of Corruption Act or The Indian Penal Code that would relieve the petitioner of his disqualification. To top it all, the conviction suffered by the petitioner, even if it is under The Prevention of Corruption Act or The Indian Penal Code, will be a disqualification for the petitioner to continue as a Member of the Legislative Assembly. In this regard, it would be appropriate to extract Section 109 IPC and Section 8(3) of the Representation of the People Act, 1951:

"Section 109 IPC: Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment: Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation: An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

"Section 8 (The Representation of the People Act, 1951): Disqualification on conviction for certain offences--

... ..

(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."

32. Even as admitted by the learned Senior Counsel appearing for the petitioner, even if an act of abetment is committed by a person, there is no express provision made under the Indian Penal Code for punishment of such abetment per-se, and that is the precise reason why the learned Special Judge has rightly imposed the punishment under Section 109 Indian Penal Code read with Section 13 (1) (e) read with Section 13 (2) of The Prevention of Corruption Act, which course of action adopted by the learned Trial Judge would only render the petitioner disqualified. Therefore, the petitioner is deemed to have been disqualified pursuant to his conviction imposed by the learned Special Judge for the offences under The Indian Penal Code read with the provisions contained under The Prevention of Corruption Act, as mentioned above. Further, in paragraph 160 of the judgment, the learned Special Judge had concluded as follows:

"160. Therefore, as discussed above, this Court is of the opinion, that the prosecution has proved the charge as against the accused A1 for the offence u/s 13(1)(e) r/w 13(2) of P.C. Act, 1988 and proved the charge as against A2 for the offence u/s 13 (1)(e) r/w 13(2) of P.C. Act r/w 109 of IPC and convicted them thereunder. The Point is answered accordingly."

33. Thus, it is evident that the conviction and sentence imposed on the petitioner are inseparable and therefore, the submissions of the learned Senior Counsel appearing for the petitioner, cannot hold good. Sections 8(1)(m) and (3) of the Representation of the People Act were inserted by the Parliament with effect from 08.01.2003 by Act 9 of 2003. The criminal prosecution against the petitioner and his father came to be launched during the year 2006 and therefore, the provisions under Section 8 (1) (m) and (3) of The Representation of The People Act are very much applicable to the offences alleged against the petitioner. In effect, when once the petitioner stood disqualified by reason of his conviction and sentence imposed by the learned Special Judge, his disqualification is automatic.

34. It is yet another submission of the learned Senior Counsel appearing for the petitioner that during the check

period, the petitioner was not a public servant and hence, he cannot be punished under the provisions of Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act. This submission of the learned Senior Counsel appearing for the petitioner cannot be accepted, in view of the judgments of the Supreme Court reported in 2014 (11) SCC 724 (State Vs. Jitender Kumar Singh) and 1999 (6) SCC 559 (P.Nallammal Vs. State), wherein it was held that even non-Government servants can be punished under the provisions of the Prevention of Corruption Act. Hence, the said technical plea raised by the learned Senior Counsel appearing for the petitioner cannot be entertained. If such technical defence is accepted, then it would defeat the very object of the Representation of the People Act and it will amount to allowing the convicted person to occupy the seat and continue as Member of The Legislative Assembly. The petitioner's only remedy is to work out his grievances in the Criminal Appeal that is pending before this Court, which was filed challenging the Judgment passed by the learned Special Judge in Spl.C.C.No.1 of 2008 sentencing and convicting him for the offence punishable under Section 109 of Indian Penal Code read with Section 13 (1) (e) read with Section 13 (2) of The Prevention of Corruption Act. Hence, for these reasons, we answer question (i) framed in this writ petition by holding that the conviction and sentence imposed by the learned Special Judge in Spl.C.C.No.1 of 2008 for the offence punishable under Section 109 of Indian Penal Code read with Section 13 (1) (e) read with Section 13 (2) of The Prevention of Corruption Act, would operate as a bar and would eventually disqualify the petitioner from holding the post of Member of the Puducherry Legislative Assembly.

35. Question (ii):

It is the submission of the learned Senior Counsel appearing for the petitioner that the impugned Notification is vitiated, as there was no reference of the same to the Administrator. In this regard, it would be appropriate to extract Section 14 of the Government of Union Territories Act, 1963 :

"Disqualification for membership:

Section 14: (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly of the Union Territory--

(a) if he holds any office of profit under the Government of India or the Government of any State or the Government of the Union Territory other than an office declared by law made by Parliament or by the Legislative

Assembly of the Union Territory not to disqualify its holder; or

(b) if he is for the time being disqualified for being chosen as, and for being, a member of either House of Parliament under the provisions of sub-clause (b), sub-clause (c) or sub-clause (d) or clause (1) of article 102 or of any law made in pursuance of that article.

(2) For the purposes of this section, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State or the Government of the Union Territory by reason only that he is a Minister either for the Union or for such State or Union Territory.

(3) If any question arises as to whether a member of the Legislative Assembly of the Union Territory has become disqualified for being such member under the provisions of sub-section (1), the question shall be referred for the decision of the President and his decision shall be final.

(4) Before giving any decision on such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

36. As per Section 14 (3) of the Government of Union Territories Act, if any question arises as to whether a Member of the Legislative Assembly of the Union Territory has become disqualified, which is referable and/or relatable to the provisions contained under Article 191 of The Constitution of India in Sub-sections (1) (a) to (d), then the question shall be referred for the decision of the President and his decision shall be final. In this case, the disqualification relates to X Schedule of the Constitution of India and also under Article 191 (1) (e) of the Constitution of India by operation of law. The disqualification of the petitioner does not relate to want of qualification or on account of his unsound mind etc., but it is on account of his conviction in the criminal case. In the criminal case, the competent Criminal Court, after appraising and weighing the oral and documentary evidence, has come to a conclusion that the prosecution has proved the case against the petitioner beyond reasonable doubt. Needless to mention that such conviction and sentence imposed on the petitioner is the subject matter of Criminal Appeal before this Court. When the matter is subjudice, the respondents cannot be expected to seek

any opinion or refer the matter for a decision of the Lieutenant Governor or The President of India, as the case may be. In this context, it would be appropriate to refer the decision of the Supreme Court reported in 2013 (7) SCC 653 (Lily Thomas Vs. Union of India), wherein the Apex Court observed as under:

"31. We cannot also accept the submission of Mr.Kuhad that until the decision is taken by the President or Governor on whether a Member of Parliament or State Legislature has become subject to any of the disqualifications mentioned in clause (1) of Article 102 and Article 191 of the Constitution, the seat of the Member alleged to have been disqualified will not become vacant under Articles 101(3)(a) and 190(3)(a) of the Constitution. Articles 101(3)(a) and 190(3)(a) of the Constitution provide that if a Member of the House becomes subject to any of the disqualifications mentioned in clause (1), "his seat shall thereupon become vacant". Hence, the seat of a Member who becomes subject to any of the disqualifications mentioned in clause (1) will fall vacant on the date on which the Member incurs the disqualification and cannot await the decision of the President or the Governor, as the case may be, under Articles 103 and 192 respectively of the Constitution. The filling of the seat which falls vacant, however, may await the decision of the President or the Governor under Articles 103 and 192 respectively of the Constitution and if the President or the Governor takes a view that the Member has not become subject to any of the disqualifications mentioned in clause (1) of Articles 102 and 191 respectively of the Constitution, it has to be held that the seat of the Member so held not to be disqualified did not become vacant on the date on which the Member was alleged to have been subject to the disqualification.

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.

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 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 subsection (4) of Section 8 of the Act is ultra vires the Constitution.

34. We do not also find merit in the submission of Mr.Luthra and Mr.Kuhad that if a sitting Member of Parliament or the State Legislature suffers from a frivolous conviction by the trial court for an offence given under sub-sections (1), (2) or (3) of Section 8 of the Act, he will be remediless and he will suffer immense hardship as he would stand disqualified on account of such

conviction in the absence of subsection (4) of Section 8 of the Act. A three-Judge Bench of this Court in Rama Narang Vs. Ramesh Narang (1995 (2) SCC 513) has held that when an appeal is preferred under Section 374 of the Code of Criminal Procedure (for short 'the Code') the appeal is against both the conviction and sentence and, therefore, the appellate court in exercise of its power under Section 389(1) of the Code can also stay the order of conviction and the High Court in exercise of its inherent jurisdiction under Section 482 of the Code can also stay the conviction if the power was not to be found in Section 389(1) of the Code."

37. A reading of the above judgment of the Supreme Court clearly shows that the disqualification of the petitioner based on the conviction by the Court, does not require any reference for any decision by The Lieutenant Governor or The President of India. The reference to the President/Governor would arise only if a Member holds an office for profit and not in case of disqualification on account of the conviction by the competent Criminal Court. Thus, non-reference of the case of the petitioner relatable to his disqualification to the Administrator/Governor/ President is not a sine-qua-non or will it in any manner vitiate the impugned Notification. Therefore, also, Section 8(1)(m) of the Representation of the People Act, in its application to sitting MLA, does not require a reference to the President or Election Commission of India by the Speaker. Thus, respondents 4 and 5 have no obligation to refer the question of "disqualification" of the petitioner to The President or The Lieutenant Governor.

38. Though learned Senior Counsel appearing for petitioner made submissions based on decision of Supreme Court reported in AIR 1953 SC 210 (Election Commission of India Vs. Saka Venkata Rao) (cited supra), the same is not factually applicable to case on hand. In the instant case, petitioner suffered disqualification by operation of law under Section 8(1)(m) of the Representation of the People Act and Section 8(1)(m) was inserted by Act 9 of 2003 with effect from 08.01.2003. The said decision of Supreme Court reported in AIR 1953 SC 210 relates prior to insertion of abovesaid Section 8(1)(m) and hence, said decision reported in AIR 1953 SC 210 cannot be pressed into service in this case. Therefore, we hold that impugned Notification is not vitiated for non-reference to the

Administrator, as the petitioner stood disqualified based upon the conviction by the Criminal Court and since he was convicted, there is no need to refer the decision to the Governor or President of India. We answer the second question also against the petitioner.

39. As regards the publication of the notification by the fifth respondent, which is impugned in this writ petition, the learned Senior counsel for the petitioner would contend that the fifth respondent is not competent to issue such notification inasmuch as the Government or Union Territory represented by the Secretary to the Government alone is competent to issue such notification by virtue of Section 7 of The Representation of The People Act, 1951. We are not impressed by such argument advanced on behalf of the petitioner. The Speaker of the Legislative Assembly/fifth respondent in this case, had only issued the notification in question to inform the electors and other persons concerned that No.9, Thattanchavadi Assembly Constituency is lying vacant due to the disqualification suffered by the petitioner, but by virtue of such notification, the petitioner was not disqualified by the fifth respondent. Therefore, when the notification in question does not disqualify the petitioner, rather, it informs the general public and others about the disqualification suffered by the petitioner by operation of law, and therefore, the notification will not get vitiated merely because it was issued by the Speaker of the Legislative Assembly.

40. At this juncture, it is brought to the notice of this Court by the learned Senior Counsel appearing for the petitioner that during the pendency of the present Writ Petition, the petitioner has made a representation on 13.03.2019 to the Lieutenant Governor of Puducherry regarding his disqualification pursuant to his conviction by the Criminal Court and prayed to defer the holding of bye-election to No.9 Thattanchavady Legislative Assembly Constituency. It is further stated that the said representation was forwarded by the Lieutenant Governor of Puducherry to the President of India. It is also stated that the petitioner has also filed W.P.No.8110 of 2019 before this Court to prohibit the Election Commission of India from notifying the bye-election to the said Constituency. The said Writ Petition was dismissed by this Court on 18.03.2019. Therefore also, we are not inclined to grant the relief sought for by the petitioner in this writ petition.

41. For the foregoing reasonings, we do not find any merit in the present Writ Petition and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

CS

To

1. The Secretary,
Ministry of Home Affairs,
Government of India, North Block,
Cabinet Secretariat, Raisina Hills,
New Delhi-110 001.
2. The Election Commission of India,
Represented by its
Chief Election Commissioner,
having his office at
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.
3. The Chief Electoral Officer,
Union Territory of Puducherry,
having his office at
Villanur Road,
Reddiarpalayam,
Puducherry-605 010.
4. The Secretary, Legislative Assembly,
Union Territory of Puducherry,
Puducherry.
5. The Speaker,
Puducherry Legislative Assembly,
having his office at
The Secretariat,
Puducherry-605 001.
6. The Chief Secretary,
Government of Union Territory of Puducherry,
Goubert Avenue, Beach Road,
Puducherry-605 001.

7. State represented by
Inspector of Police,
SPD : CBI : ACB, Chennai,
Through Public Prosecutor for CBI, Chennai,
(RC MAI 2006 A 0001)

+1 cc to M/s.G.R.Associates, Advocate, S.R.No.28224

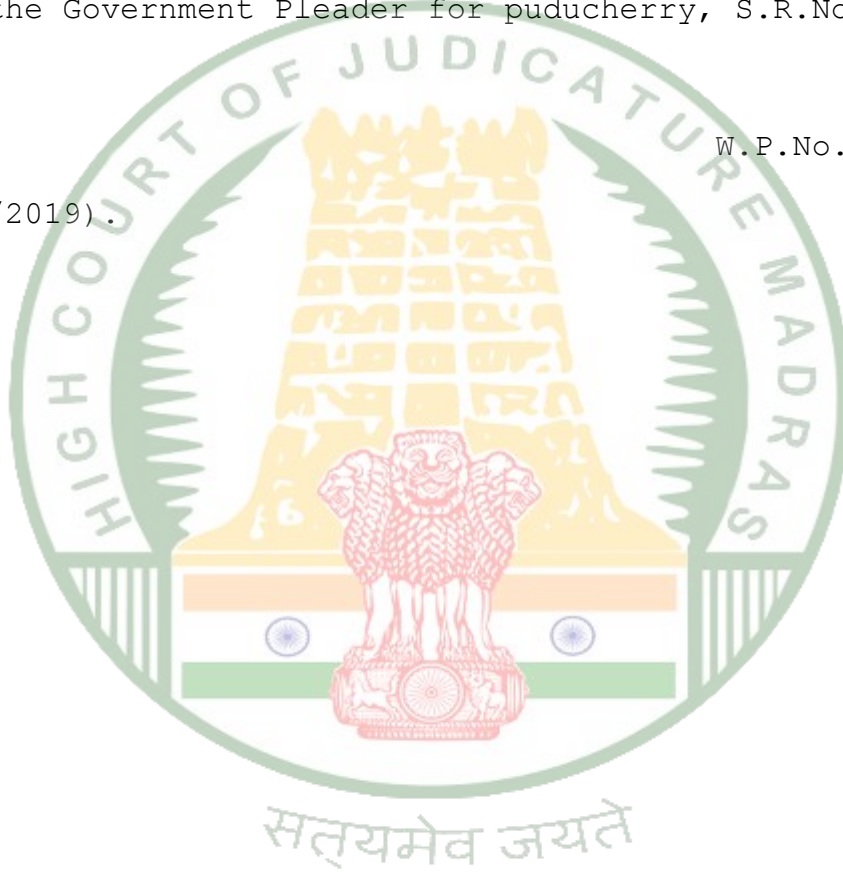
+1 cc to Mr.S.S.Pajaniradja, CGSC, S.R.No.27710

+1 cc to Mr.M.S.Govindarajan, Advocate S.R.No.27723

+1 cc to the Government Pleader for puducherry, S.R.No.28131

RGN (CO)
SSM(26/03/2019).

Order
in
W.P.No.452 of 2019



WEB COPY