



CASE ANALYSIS ELECTION COMMISSION OF INDIA & ORS V. SUBRAMANIAM SWAMY & ORS.

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Case details:

- Citation- AIR 1996 SC 1810
- Court- The Supreme Court of India
- Decided on- 23.04.1996
- Petitioner- 1. Election Commission of India,
2. Shri T.N Seshan
- Respondent- 1. Subramaniam Swamy
- Coram- 1. Justice A.M. Ahmadi,
2. Justice N.P. Singh,
3. Justice B.N. Kirpal,
4. Justice N.P. Singh.

Material Facts of the case

The claim that Ms. J. Jayalalitha engaged in business dealings with the state of Tamil Nadu as a partner in "Jaya Publications" served as the basis for Dr. Subramaniam Swamy's challenge to Ms. J. Jayalalitha's appointment as the Chief Minister of the state of Tamil Nadu.

Dr. Subramaniam Swamy petitioned the governor to revoke Jayalalitha's right to serve in the legislative assembly under section 9(A) of the 1951 Representation of the People Act and article 191(1)(e) of the Indian Constitution.

The Governor did forward Swamy's plea in 1993 while the said petition was pending before the High Court of Madras. This petition to the Governor was not forwarded to the Chief Minister by the Governor in violation of article 192(2) of the Indian Constitution.

In reaction to the governor's action, Ms. J. Jayalalitha filed two petitions with the High Court of Madras' learned single judge. The first was a writ of prohibition against allowing Shri Seshan to rule on the case due to his potential prejudice given his relationships with Subramaniam Swamy. The second petition asked for a ruling that she was not ineligible to serve as a legislator, as Subramaniam Swamy claimed.

With regards to the first writ petition, the learned single judge concluded that there was bias and that the matter should not pass to Shri Seshan. In the case of the subsequent petition, he concluded that the issue of whether to grant the said petition lies with the Governor but still effectively granted it.

Dr. Swamy challenged the single judge's ruling to the High Court of Madras' division bench. The Chief Election Commissioner and Other Election Commissioners (Conditions of Service) Amendment Ordinance, 1991, was passed in the interim. This ordinance ultimately became a law, and its Sections 9 and 10 essentially mandate that all decisions made by the election commission be made unanimously. In relation to that and the appeal, the division bench decided that, in line with article 192(2) of the Indian Constitution, the learned single bench should not have decided whether she was disqualified for membership or not. He alone should make that determination, the division bench said. Furthermore, it was decided that the two additional election commissioners appointed in accordance with the aforementioned amendment could not resolve the case on their own, but that they would do so in this case because of bias.

As a result, Shri T.N. Seshan, the chairman of the Indian Election Commission, filed a special leave petition with the Supreme Court of India to appeal the division bench's verdict.

Issues:

1. Whether Ms. J. Jayalalitha incurred a disqualification from membership of legislative assembly in accordance with article 191 (1) of the Constitution of India along with section 9A of representation of people act, 1951?
2. Whether the allegation of Bias by Ms. J Jayalalitha against Shri Seshan true and reasonable?
3. Whether doctrine of necessity is attracted attributable to section 9 and 10 of the Chief election commissioner and other election commissioners (Conditions of service) Amendment act, 1991, which remotely state that election commission can take a decision on the basis of majority without the explicit consent of chief election commissioner?
4. Whether if doctrine of necessity is allowed herein, then would it be against natural justice?

Arguments:

Arguments of the Petitioner- The learned counsel of petitioner i.e., Shri Sanghi raised the following arguments before the Supreme Court of India, -

He claimed that although his client, Shri Seshan, does not have the slightest interest in being involved in this choice, he is required to make one under Article 192(2) of the Indian Constitution and is therefore unable to do otherwise. So, he argues by stating that even if his participation in the selection process will lead to prejudice, he cannot resign from the committee since he has a constitutional duty to decide the issue and must therefore make that decision.

He further argued that even though the election commission was changed into a multi-member body by an ordinance dated 1.10.1993, his involvement in the evaluation process could not be abandoned because the chief election commissioner position was still of the utmost importance and was specified in Articles 324(2) and 324(3) of the Indian Constitution by the words "And" following "Chief election commissioners" and "Other" before "Election commissioners."

He also humbly argued that under the doctrine of necessity, Shri Seshan should be permitted because it is "Must" for him to participate in the election process validity of J. Jayalalitha to uphold the constitutionality of the situation, as per the constitution, the chief election commissioner is the chairman of the election commission and no decision could be made without the chairman's approval. His participation is therefore vital notwithstanding the bias.

Thus, Shri Sanghi argued as a conclusion that section 9 and 10 of the 1991 act, as well as the establishment of a multi-member election commission, cannot excuse the involvement of the chief election commissioner because even his involvement would lead to bias, as the earlier provisions merely outline the process that should be followed in the event of a disagreement of opinion.

Arguments of the respondent- The learned counsel of petitioner raised the following arguments before the Supreme Court of India,

The main contention of the learned counsel was that there was an exceptionally clear case of bias in this case and that it would be against natural justice to let Seshan make the decision. The bias is evident, therefore it cannot be argued that it does not exist. This is because Dr. Swamy, his wife, and Shri Seshan had a personal relationship that arose out of their professional relationship—wife Swamy's represented Seshan in the Bombay high court—and has since transcended into something more. If Shri Seshan were to rule on the petition that Dr. Swamy filed, then there would be a major question of bias inherent in the case.

He further argued that because of sections 9 and 10 of the 1991 act and also because of the fact that the electoral commission now has more than one member as a result of the aforementioned act, the doctrine of necessity would not apply in this case. Hence, if the chief election commissioner were present, the other two election commissioners may make the decision instead of him, especially if there was a concern about bias and prejudice. Hence, the doctrine of necessity must be used because bias and prejudice would be the standard if Seshan were on the panel, and its application can be done easily because there are two other election commissioners present, who can decide on the matter.

He claims that the learned single judge and division bench of the high court's judgement should be upheld by this Court since the doctrine of necessity was not applied and the bias or prejudice was given due weight because there are still another two election commissioners who can make the decision on the matter. Because it was founded on an accurate interpretation, it is necessary to reaffirm the High Court's careful consideration of the facts and its legal methodology.

Sections/Articles Involved:

The sections of various statutes that are relevant in this case are-

The Constitution of India:

Article 191- The grounds for denying someone membership in the legislative assembly or legislative council are laid out in this article. Every person who is disqualified by a law passed by the parliament is expressly stated to be prohibited from holding any office of profit in or with the state or union government, aside from membership, according to clause 1's subclause (e). Because J. Jayalalitha conducts business with the state government through her publications and because this article is relevant to the matter at hand, it must be carefully interpreted to determine whether she actually held any other offices and whether or not that disqualifies her from representing in the legislative assembly.

Article 192- Two clauses in Article 192 outline what must happen when a member of a legislative assembly or legislative council is questioned about their eligibility. The first clause specifies that the Governor will be consulted on the issue of disqualification on any of the grounds listed in article 191(1) of the Indian Constitution and will make the final determination. The second clause mandates that the governor obtain the electoral commission's view and provide a decision in accordance with it before deciding whether to rule on the disqualification issue. This article is pertinent to the situation since the governor initially declined to consult the electoral commission, and when he did, the question of whether he must do so if doing so would introduce bias into his decision-making arose.

Article 324- There are two clauses in this article. According to the first clause, a panel known as the "Election Commission" will oversee and conduct all national and state legislative elections. According to the second

clause, the election commission is made up of a chief election commissioner and other election commissioners as selected from time to time by the parliament. This article was applied to this case because the Supreme Court needed to decide whether the Election Commission could make a judgement without consulting the Chief Election Commissioner due to a potential conflict of interest, or whether only two election commissioners could make the decision. In order to ascertain the same, it was imperative to analyse the second clause of this article.

Article 136- This article establishes the special leave petition that may be submitted directly to the Supreme Court of India. Ms. J. Jayalalitha attempted to use this provision to appeal the decision of the learned single judge of the High Court directly to the Supreme Court of India, but she was required to use the appeals process only to reach the Division Bench.

Representation of People Act, 1951:

Section 9A- According to this section, if a person has an active contract with the relevant government for the purpose of conducting commerce or business, they are ineligible to serve in the legislative assembly. This section directly accords with the facts of the case, which show that Ms. J. Jayalalitha had an active contract with the Tamil Nadu state government for the supply of goods made from her "Jayalalitha prints." As a result, Dr. Swamy filed a petition to revoke her membership in the legislative assembly by using this section.

The chief election commissioner and other election commissioners (Conditions of service) act, 1991:

Section 9- According to this section, the election commission's business must be conducted in conformity with this Act's rules. While the determining factor in this case is whether a decision can be made without the input of an election commissioner, it is crucial to assess how the election commission does its business in order to answer the question.

Section 10- This section mandates that all decisions made by the election commission be unanimous, although clause (3) specifies that if there is a tie, the decision will be made based on the majority opinion. This section is also relevant because its clause (3) specifies that a decision might be made based on a majority. Hence, it must be decided if the majority is made up of the two election commissioners, in which case the exclusion of the CEC would have no consequence. As a result, in this circumstance, these are the sections that apply.

Holding:

Learned Single judge of the High Court:

He said that asking Shri Seshan for his opinion so that the governor might decide whether or not to disqualify Ms. J. Jayalalitha from serving in the legislative assembly would be biased against her, and that this would be

against natural justice.

Additionally, he asserted that the doctrine of necessity would be used in this situation since, according to article 324 of the Indian Constitution, a second election commissioner might be appointed and used as a different perspective of opinion.

Further, he maintained that the governor must ultimately decide if the purported disqualification of membership occurred, but he still maintained that she was not disqualified.

Division Bench of the High Court:

In terms of whether bias would exist or not, the division bench reaffirmed what the learned single judge had said, such that bias would exist if Shri Seshan offered his opinion.

The division bench also reinforced the learned single judge on the issue of whether or not the doctrine of necessity can be applied, stating that the election commission could make a decision in accordance with article 324 through majority decision, or, to put it another way, regardless of the viewpoint of the chief election commissioner, so the doctrine of necessity was not required.

The division bench took a different approach than the learned single judge in this regard; they neglected to determine whether the alleged disqualification existed or not because they claimed that under article 192(2) of the constitution, the election commission should decide this rather than the court; as a result, they claimed that the learned single bench overreached by holding on the disqualification issue and that it exceeded its authority.

Supreme Court of India:

The Supreme Court reaffirmed the division bench's ruling on the question of whether prejudice exists or not, i.e. additionally, it was decided that it would not be in the interests of natural justice and would be unfair to Ms. Jayalalitha if Shri Seshan made a decision regarding the claimed disqualification.

It also adopted the division bench's stance on who should decide whether the purported disqualification was true or false, holding that the election commission's finding should be used to make that determination.

The Supreme Court held that the doctrine of necessity would not apply, however this did not imply that constitutional obligations would be completely eliminated. Accordingly, the supreme court ruled that the two election commissioners would express their views, but in the event of a tie, the chief election commissioner's opinion would be taken into consideration. This was in contrast to the division bench of the High Court.

In light of this, the Supreme Court only subtly altered the High Court division bench's ruling; otherwise, it reaffirmed what the High Court division bench had decided.

Point of Law/Ratio propounded:

The legal principle that has been implemented in this case is that article 192(2) of the Indian Constitution cannot be interpreted in a "Narrow" way. This indicates that the phrase "the opinion of the election commission" should not be interpreted as encompassing the opinions of all the election commissioners or none at all, as if that were the case, the concept of majority opinion would not have existed. It also stipulated that the doctrine of necessity would be apply in every situation where, if it were not, the course of justice would be prejudiced in favour of the party who had defaulted. This implies that the doctrine of necessity should not be used if the way of justice is apparent, i.e., if natural justice is preserved. Hence, in order to understand the legislative aim, articles should be interpreted broadly or purposefully, and narrow reading of provisions in which the entire commission's name is incorporated must be avoided.

Reasoning:

The court based its ruling on the constitutional provision in Article 192(2) that states that the electoral commission's majority opinion should be considered rather than the views of the entire commission. The court makes this point by quoting the ruling in T.N. Seshan v. Union of India 1994(1) SCALE7, in which the court declined to comment on how the election commission should conduct itself. This means that if the method by which it would have conducted its business could have been determined, the constitution's authors would have done it. However, since it is not mentioned, it reinforces that the position of chief election commissioner is to be given importance, but not absolute importance. The court also used the legal principle that "the will of a Corporation or body can only be expressed by the whole or a majority of its members, and the act of a majority is regarded as the act of the whole" to back up its claim that parliament had the authority to enact Sections 9 and 10 by ordinance and that doing so would not violate Article 324 of the Indian Constitution. Therefore, the court concluded that it is legitimate to establish a multi-member organisation through the sections and permit majority opinion to have a say. This court further supported its reasoning by quoting the legal rule established in Grindley v. Barker, 126 ER 875, which reaffirmed the notion that the majority opinion is significant and should be taken into consideration as a whole.

The court further bases its decision to not permit the chief election commissioner to express his or her opinion by adding that even on a rational footing, he or she should not do so because doing so would bias people against Ms. J. Jayalalitha. The decision to rely on the chief election commissioner's opinion when the opinions of the two election commissioners conflict was further justified by the statement that it was permissible under the doctrine of necessity.

He concludes by stating that it will be chosen in the event of a deadlock, which could occur in this situation if the two election commissioners have divergent viewpoints on the subject. Hence, this is the explanation offered by the supreme court for the judgement it rendered in this case.

Conclusion and analysis:

The Supreme Court's decision was based on a practical perspective. This strategy is commendable since it best manages to lessen the bias that was there while also best managing to uphold the constitutional requirement placed on the election commission. It appropriately strikes a compromise between the differences between sections 9 and 10 of the 1951 Representation of the People Act and article 324 of the Indian Constitution. It is also fitting because it does take an extreme stance, as shown by the fact that it did not completely rule out the likelihood of applying the doctrine of necessity in the interest of avoiding prejudice but did not initially invoke it with regard to the chief election commissioner in order to uphold the obligation enshrined in the constitution imposed upon him. By ruling that the term "election commission" in the phrase "The opinion of the election commission" does not refer to the entire election commission but rather to the majority of the election commission, the apex court has carved out a rational methodology that would be followed when making decisions.