IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 611 0F 2020

PRADEEP KUMAR SONTHALIA … APPELLANT(S)

VERSUS

DHIRAJ PRASAD SAHU @ DHIRAJ SAHU & ANR. …RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2159 OF 2020

JUDGMENT

S.A. Bobde, CJI

1. An interesting but important question of far-reaching consequence arises for consideration in these appeals. It is this. "Whether the vote cast by a Member of the Legislative Assembly in an election to the Rajya Sabha, in the forenoon on the date of election, would become invalid, consequent upon his disqualification, arising out of a conviction and sentence imposed by a Criminal Court, in the afternoon on the very same day?" Signature Not Verified Digitally signed by Madhu Bala Date: 2020.12.18 14:25:35 IST Reason: 2. We have heard learned counsel for the parties.

3. The brief facts sufficient for answering the issue arising for consideration in these appeals are as follows: -

(i) By a notification dated 05.03.2018, the Election Commission of India notified the biennial elections for two seats in the Council of States from the State of Jharkhand;

(ii) Three candidates by name Pradeep Kumar Sonthalia, Samir Uraon and Dhiraj Prasad Sahu, filed their nominations on 12.03.2018. It is stated that the first two candidates belonged to the Bharitya Janata Party (BJP), and the third candidate belonged to the Indian National Congress (INC);

(iii) On 23.03.2018, the election was held between 9.00 A.M. and 4.00 P.M. at the Vidhan Sabha. A total of 80 members of the Legislative Assembly of the State of Jharkhand cast their votes;

(iv) One Shri Amit Kumar Mahto who was an elected member of the Assembly belonging to Jharkhand Mukti Morcha Party (JMM) admittedly cast his vote at 9.15 A.M. on 23.03.2018;

(v) As fate (not of the voter but of the contestant) would have it, Shri Amit Kumar Mahto was convicted by the Court of the Additional Judicial Commissioner XVIII, Ranchi, in Sessions Trial No.481 of 2010, for the offences punishable under Sections 147, 323/149, 341/149, 353/149, 427/149 and 506/149 IPC, on the same day, but the conviction and sentence were handed over at 2.30 P.M. He was sentenced to various periods of imprisonment for those offences, but all of them were to run concurrently. The maximum punishment was for the offence under Section 506/149 and the Court awarded RI for a period of two years;

(vi) Since the election to the Council of States is by a system of proportional representation by means of single transferable vote, the counting of votes began at 7.30 P.M on 23.03.2018. Out of the 80 votes cast, two were declared invalid by the Returning Officer. The remaining 78 votes, which were validly cast, were converted into points (at the rate of 100 points per vote) and Pradeep Kumar Sonthalia was declared to have secured 2599 value of votes, Samir Uraon was declared to have secured 2601value of votes and Dhiraj Prasad Sahu was declared to have secured 2600 value of votes. Thus, the election petitioner was declared defeated and the other two, declared duly elected;

(vii) It appears that an objection was lodged at 11.20 P.M.

requesting the Returning Officer to declare the vote cast by Shri Amit Kumar Mahto invalid, on the basis of the conviction and sentence imposed in the afternoon on the same day by the Criminal Court;

(viii) However, the Returning Officer went ahead and declared the results at 12.15 A.M. on 24.03.2018. Shri Samir Uraon and Shri Dhiraj Prasad Sahu were declared by the Returning Officer to be duly elected and they were also issued with a certificate in Form No. 24 in terms of Rule 85 of the Conduct of Election Rules, 1961;

(ix) Therefore, Pradeep Kumar Sonthalia, the defeated candidate filed an election petition in Election Petition No.01/2018, praying for a declaration that the Returning Officer has caused improper reception of the void vote of Shri Amit Kumar Mahto. He also prayed for setting aside the election of Shri Dheeraj Prasad Sahu with a consequential declaration that the petitioner was duly elected as a member of Rajya Sabha;

(x) The High Court framed as many as 6 issues for consideration in the Election Petition and they are as follows: -

1. Whether Shri Amit Kumar Mahto has cast his vote in favour of respondent no. 1 in Biennial Election to the Council of States, 2018 in connection with State of Jharkhand?

2. Whether on conviction and sentence of two years in Sessions Trial No. 481 of 2010 by the Additional Judicial Commissioner-XVIII, Ranchi, Shri Amit Kumar Mahto ceased to be a Member of Legislative Assembly and his disqualification came into effect immediately from the date of his conviction and sentence of two years and, therefore, the vote of Shri Amit Kumar Mahto could not have been taken into consideration at the time of counting?

3. Whether the disqualification of Shri Amit Kumar Mahto rendered his vote void/illegal that was cast to respondent no.1 and, therefore, reception of his vote was improper and, thus, in terms of Section 100 (1) (d)

(iii) of the Representation of People Act, 1951, the election of respondent no. 1 is liable to be declared void?

4. Whether the communication from the Returning Officer (e-mail dated 24.03.2018) rejecting the objection made on behalf of the petitioner on the ground that the Returning Officer had not received the judgment of conviction of Shri Amit Kumar Mahto till the declaration of the results, is absolutely illegal and unlawful?

5. Whether disqualification of Shri Amit Kumar Mahto in terms of Section 8 (3) of the Representation of People Act, 1951, takes effect from the date of his conviction and sentence of two years i.e. 23.03.2018 which means the day as per English calendar beginning at midnight and covering a period of 24 hours i.e. with effect from 23.03.2018 at 00.00 hours?

6. The respondent no. 1 having been declared to be elected in the Biennial Election to the Council of States – 2018 by a margin of 0.01 vote and in the event, the vote of Shri Amit Kumar Mahto which has been received improperly is ignored, then whether the petitioner is entitled to be declared successful and consequently for being elected as a Member of Rajya Sabha?

(xi) By a judgment dated 17.01.2020, the High Court dismissed the Election Petition, after recording a finding in favour of the election petitioner on Issue Nos. 1, 2, 3 & 5. On Issue Nos. 4 & 6, the High Court did not record any finding.

(xii) Despite deciding Issue Nos. 1, 2, 3 & 5 in favour of the election petitioner, the High Court refused to grant any relief to the election petitioner, primarily on the ground that the election to the Council of States by a system of proportional representation by means of single transferable vote, is a highly complex, technical issue and that it is not possible for the Court to find out whether the election petitioner could have won the election, if that one vote had been rejected;

(xiii) Finding that the surgery was successful but the patient died, the election petitioner has come up with one appeal in Civil Appeal No.611 of 2020. Aggrieved by the findings on Issue Nos. 1, 2, 3 & 5, one of the two returned candidates, namely Shri Dhiraj Prasad Sahu, has come up with the other appeal namely Civil Appeal No.2159 of 2020.For the

purpose of convenience, we refer to the appellant in Civil Appeal No. 611 of 2020, as the appellant throughout and the appellant in the other appeal as the returned candidate.

4. Before proceeding further, it must be recorded that there is no dispute either before us or before the High court, about the fact that Shri Amit Kumar Mahto cast his vote at 9.15 A.M. on 23.03.2018 and that the judgment of the criminal court was rendered at 2.30 p.m. on the very same day.

5. Before the High court, a preliminary objection was raised about the validity of the presumption on the part of the election petitioner that Sri. Amit Kumar Mahto cast his vote in favour of Shri Dhiraj Prasad Sahu. Unless Shri Amit Kumar Mahto had cast his vote in favour of Shri Dhiraj Prasad Sahu, the entire edifice on which the election petition was built could have crumbled. Therefore, the Returning Officer, Mr. Binay Kumar Singh was examined as PW-1 and through him the original ballot paper by which Shri Amit Kumar Mahto cast his vote was marked as Exhibit-9. On the basis of the same, the High Court came to the conclusion that Shri Amit Kumar Mahto cast his vote in favour of Shri Dhiraj Prasad Sahu, the Congress candidate. It was also clear from the evidence of PW-1 and Exhibit-9 that Shri Amit Kumar Mahto did not cast his 2 nd, 3rd and 4th preference vote. Therefore, the validity of the vote cast by Amit Kumar Mahto assumed significance, especially in view of the margin of victory.

6. Since the factual position that Amit Kumar Mahto cast his vote in favour of Dhiraj Prasad Sahu has now become unassailable, many of the issues framed by the High Court have now paled into insignificance. There are only 2 issues which now survive for consideration and they are: -

(i) Whether the vote admittedly cast by Shri Amit Kumar Mahto in favour of Shri Dhiraj Prasad Sahu at 9.15 A.M. on 23.03.2018 should be treated as an invalid vote on account of the disqualification suffered by the voter under Article 191(1)(e) of the Constitution of India read with Section 8(3) of the Representation of the People Act, 1951, by virtue of his conviction and sentence by the Sessions Court in a criminal case, rendered at 2.30 P.M. on the very same date 23.03.2018;

and

(ii) Whether, in the event of the first issue being answered in the affirmative, the election petitioner is entitled to be declared as duly elected automatically.

7. It is needless to say that the second question as formulated above would arise only if the answer to the first question is in the affirmative and not otherwise.

8. Before proceeding further, we may point out that two ancillary issues namely (i) the non-joinder of the Election Commission of India as a party to the election petition; and (ii) the absence of a specific prayer for recounting of votes, were also dealt with by the High Court. These issues may have gained importance, but for the appeal filed by Shri

Dhiraj Prasad Sahu against the findings on Issue Nos. 1, 2, 3 & 5. Therefore, these ancillary issues need not deter us at this stage.

9. The primary contention of Shri Mukul Rohatgi and Shri K.V. Vishwanathan, learned senior counsel appearing for the defeated candidate who is the appellant in the first civil appeal, is that wherever a statute uses the word "date" with reference to an event, courts have always interpreted the same to have happened at the intersection of the previous day and the present day, namely 00.01 a.m. This is firstly because it is at that time that the day begins and secondly because law abhors fractions. Therefore, it is their contention that though the Sessions Court delivered its judgment of conviction and sentence at 2.30 P.M. on 23.03.2018, the date of such conviction is deemed in law to have commenced at about 00.01 A.M. when the date of March 22 lapsed and the date of March 23 began. It is the further contention of the learned Senior Counsel that if the time at which the judgment was delivered is irrelevant and the focus is actually on the date of conviction, then the disqualification would also commence at 00.01 A.M. on 23.03.2018. As a corollary, the vote cast at 9.15 A.M. on 23.03.2018 would be a vote by a disqualified member and thus invalid.

10. In order to test the veracity of the above contention, it is necessary first to take note of the relevant provisions of the Constitution and the Representation of the People Act, 1951.

11. Article 191 of the Constitution speaks of the circumstances under which a person will be treated as disqualified (i) either for being chosen as (ii) or for being , a member of the State Legislative Assembly. The language of Article 191 makes it clear that it covers both a contest in an election and the continuance in office after getting elected. It reads as follows: -

"191. Disqualifications for membership (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament [Explanation.- For the purposes of this clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

[(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule]"

12. If a person, being a member of the Assembly, suffers a disqualification, his seat becomes vacant. This situation is taken care of by Article 190 which reads as follows:

"190. Vacation of seats-

(1)…… (2)…….

(3) If a member of a House of the Legislature of a State-

(a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 191; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant: [Provided that in the case of any resignation referred to in sub clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation]"

13. It is clear as daylight that the event which causes the disqualification under Article 191(1)(e) read with Section 8(3) is a conviction of a person for any of the specified offences. The consequence of such disqualification is that the seat becomes vacant. Obviously therefore, a Member of the Legislative Assembly who has become disqualified and whose seat has become vacant is not entitled to cast his vote for electing a representative from his State under Article 80(4) which provides that the representatives of each State "shall be elected by the elected members". His name is liable to be deleted from the list of members of the State Legislative Assembly maintained under Section 152 of the Representation of the People Act, 1951. He ceases to be an elector in relation to election by assembly member and cannot cast his vote.

14. The Representation of the People Act, 1951 was enacted for the purpose of providing for the conduct of elections of both houses of Parliament and to the House/Houses of State Legislatures, the qualifications and disqualifications for membership of those houses, the corrupt practices etc.,. Section 8 of the Act deals with disqualification on conviction for certain offences. For the purpose of disqualification, the offences are classified in section 8 into 3 categories, namely

(i) offences falling under sub-section (1)

(ii) offences falling under sub-section (1) and

(iii) offences not falling either under sub-section (1) or under sub- section (2).

15. The disqualification results in the Member becoming liable to be removed from the list of voters under Section 152 of the Representation of the People Act, 1951, though the actual deletion may take time. In any case, he ceases to be an elector vide Rule 2(d) of the Conduct of Election Rules, 1961 which provides that an elector in relation to an election by assembly members means any person entitled to vote at that election.

16. We are concerned in this case with sub-section (3) of section 8, as Amit Kumar Mahto was convicted for offences which do not fall either under sub-section (1) or under sub-section (2). Therefore, Sub- section (3) of section 8 alone is extracted as follows: -

"8. Disqualification on conviction for certain offences.-(1)…… (2) ……..

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub- section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]"

17. The disqualification under Section 8 of Act 43 of 1951 is relatable to Article 191(1)(e) of the Constitution. Therefore, any interpretation to Section 8 should be in sync with the Constitutional scheme.

18. As this Court had an occasion to point out in Saritha S. Nair vs. Hibi Eden1, Section 8(3) of the Act deals both with the conditions of disqualification and with the period of disqualification. As regards the period of disqualification, Section 8(3) is comprehensive in that it indicates both the commencement of the period and its expiry. The date of conviction is prescribed to be the point of commencement of disqualification and the date of completion of a period of six years after release, is prescribed as the point of expiry of the period of disqualification.

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19. Once the period of disqualification starts running, the seat hitherto held by the person disqualified becomes vacant by virtue of Article 190(3) of the Constitution. While speaking about the seat of the disqualified person becoming vacant, Article 190(3) uses the expression "thereupon". We may have to keep this in mind while interpreting the words "the date of such conviction".

20. One fundamental principle that we may have to keep in mind while interpreting the phrase appearing in Section 8(3) is that in cases of this nature, the Court is not dealing with a fundamental right or a common law right. As pithily stated by this Court in Jyoti Basu vs. Devi Ghosal2, an election dispute lies in a special jurisdiction and hence it has to be exercised without importing concepts familiar to common law and equity, unless they are ingrained in the statute itself. We may usefully extract the relevant portion of the decision in Jyoti Basu which reads as follows: -

"8. A 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. An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statutory creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied".

(1982) 1 SCC 691

21. Placing heavy reliance upon the decision of this Court in Pashupati Nath Singh vs. Harihar Prasad Singh3, it is contended that wherever the statute uses the words " on the date", it should be taken to mean "on the whole of the day" and that law disregards as far as possible, fractions of the day.

22. But in our considered view Pasupati Nath Singh hardly supports the contention of the Appellant. In that case the election to the Bihar legislative Assembly from Dumro constituency was in issue. As per the schedule, the filing of nominations was to take place from 13.01.1967 to 20.01.1967. The date of scrutiny of nomination papers was fixed as 21.01.1967. The returning officer, upon scrutiny of nominations on 21.01.1967, rejected the nomination paper of the Appellant before this Court, on the ground that he had not made and subscribed the requisite oath or affirmation as enjoined by clause (a) of Article 173, either before the scrutiny or even subsequently on the date of scrutiny. The question that arose in that case was formulated in paragraph 4 as follows: -

"4. The short question which arises in this appeal is whether it is necessary for a candidate to make and subscribe the requisite oath or affirmation as enjoined by clause (a) of Art. 173 of the Constitution before the date fixed for scrutiny of nomination paper. In other words, is a candidate entitled to make and subscribe the requisite oath when objection is taken before the Returning Officer or must he have made and subscribed the requisite oath or affirmation before the scrutiny of nomination commenced?"

23. The answer to the above question turned on the interpretation to Section 36(2) of the Act, clause (a) of which used the words " on AIR 1968 SC 1064 the date fixed for scrutiny". The contention of the appellant before this court in Pashupati Nath Singh was that he was entitled to take the oath or affirmation, before the Returning Officer, immediately after an objection is made but before the objection was considered by the Returning officer. Since Section 36(2)(a) uses the expression "on the date fixed for scrutiny" it was contended by the appellant in Pashupati Nath Singh that the whole of the day on which the scrutiny took place was available to him. However, this contention was rejected by this Court in the following manner: -

“16. In this connection it must also be borne in mind that law disregards, as far as possible, fractions of the day. It would lead to great confusion if it were held that a candidate would be entitled to qualify for being chosen to fill a seat till the very end of the date fixed for scrutiny of nominations. If the learned counsel for the petitioner is right, the candidate could ask the Returning Officer to wait till 11.55 p.m. on the date fixed for the scrutiny to enable him to take the oath”.

24. In other words, this Court interpreted the words “date” in Pashupati Nath Singh, not necessarily to mean 00.01 A.M. to 24.00 P.M. This was despite the fact that in common parlance a date would mean 24 hours in time. But the running of time got arrested, the moment the nomination of the appellant in Pashupati Nath Singh was taken up for scrutiny. Thus, the benefit of the whole day of 24 hours was not made available by this court in Pashupati Nath Singh to the appellant therein and the act of the Returning officer in drawing the curtains down at the happening of the event namely scrutiny of nomination papers, was upheld by this court in Pashupati Nath Singh.

25. In fact, Pashupati Nath Singh can be said to be a mirror image or the converse of the case on hand. In the case on hand the period of commencement of an event is in question, while in Pashupati Nath Singh the period of conclusion was in issue. If the date on which scrutiny was taken up can be held to have ended at the time when the event of scrutiny was taken up, we should, by the very same logic, hold that the date of commencement of an event such as conviction and the consequent disqualification should also begin only from the time when the event happened.

26. In fact, the argument of the appellant in this case is a double edged weapon. If the event of conviction and sentencing that happened at 2.30 P.M. on 23.03.2018 can relate back to 00.01 A.M., the event of voting by Shri. Amit Kumar Mahto which happened at 9.15 A.M. can also relate back to 00.01 A.M. Once both of them are deemed to relate back to the time of commencement of the date, the resulting conundrum cannot be resolved. This why, the emphasis in Pashupati Nath Singh was to provide an interpretation that will avoid confusion.

27. The learned Senior Counsel for the appellant relied upon the decision of this Court in Prabhu Dayal Sesma vs. State of Rajasthan4in support of their contention that a legal date commences after 12 o' clock midnight and continue until the same hour of the following night. But Prabhu Dayal Sesma arose in the context of Rule 11B of the Rajasthan State and Subordinate Services (1986) 4 SCC 59 Rules 1962 which prescribed the minimum and maximum age for participation in the selection for direct recruitment to Rajasthan Administrative Service. The appellant in that case was born on 02.01.1956 and Rule 11B prescribed that an applicant for participation in the selection, must not have attained the age of 28 years on the first day of January, next following the last date fixed for receipt of application. Therefore, when a notification was issued in the year 1983, the upper age limit was to be reckoned as on January 1, 1984. Since the appellant was born on 02.01.1956 and attained the age of 28 years on 01.01.1984, his candidature was rejected. It was in such circumstances that this Court took note of Section 4 of the Indian Majority Act 1875, which stipulated the method of computation of the age of any person. In view of the fact that Rule 11B used the words "must not have attained the age of 28 years", this court concluded that the appellant therein attained the said age at 12 o'clock midnight when January 1 was born. We should point out here that if Prabu Dayal Sesma concerned a case of retirement, he would be taken to have attained the age of superannuation on January 1 by the very same logic, but at 2400 hours on January 1. But Rule 11B mandated that the candidate " must not have attained". Therefore, Prabhu Dayal Sesma also does not go to the rescue of the appellant.

28. Tarun Prasad Chatterjee vs. Dinanath Sharma5, relied upon by the learned senior counsel for the appellant concerned the question of computation of the period of limitation for filing an (2000) 8 SCC 649 Election petition under section 81(1) of the R.P. Act 1951. Therefore, this Court referred to Section 9 of the General Clauses Act, 1897 that laid down the manner in which statutes prescribing the commencement and termination of time, can be worded by using expressions such as "from" and "to". But this decision is also of no assistance to the appellant for the simple reason that Section 8(3) of the Act uses the word " from" as well as the expression " the date of conviction"

and Tarun Prasad Chatterjee concerned the interpretation to be given only to the word "from".

29. In any case, Tarun Prasad Chatterjee need not have gone as far as the General Clauses Act, since Section 12(1) the Limitation Act, 1963 itself provides for the exclusion of the date from which the period of limitation is to be reckoned, while computing the period of limitation.

30. We must point out at this juncture that even in criminal law, there is a vast difference between (i) the interpretation to be given to the expression "date", while calculating the period of imprisonment suffered by a person and (ii) the interpretation to be given to the very same expression while computing the period limitation for filing an appeal/revision. Say for instance, a person is convicted and sentenced to imprisonment and also taken into custody pursuant thereto, on 23.03.2018, the whole of the day of March 23 will be included in the total period of incarceration. But in contrast, the day of March 23 will be excluded for computing the period of limitation for filing an appeal.

Though one contrasts the other, both interpretations are intended to benefit the individual.

31. Placing reliance upon the decision of the Constitution bench in B.R Kapur vs. State of T.N. & Anr. 6 it was contended by the learned senior counsel for the appellant that the disqualification under Article 191 of the Constitution and Section 8 of the R.P. Act is not a penal provision and that therefore the question of beneficial construction would not arise, especially when the object of such disqualification is to cleanse politics.

32. We have no doubt that disqualification is not a penal provision and that the object of disqualification is to arrest criminalisation of politics.

33. But what triggered the disqualification in this case, under Section 8(3) was a conviction by a criminal Court, for various offences under the Penal Code. Therefore, the phrase " the date of conviction" appearing in Section 8(3) should receive an interpretation with respect to the penal provisions under which a person was convicted.

34. The rule that a person is deemed innocent until proved guilty is a long-standing principle of constitutional law and cannot be taken to be displaced by the use of merely general words. In law this is known as the principle of legality and clearly applies to the present case. In Pierson vs. Secretary of State for the Home Department7, House of Lords held that unless there be clearest (2001) 7 SCC 231 (1997) 3 All ER 577 provision to the contrary, Parliament is presumed not to legislate contrary to rule of law which enforces 'minimum standard of fairness both substantive and procedural'.

35. In our view to hold that a Member of the Legislative Assembly stood disqualified even before he was convicted would grossly violate his substantive right to be treated as innocent until proved guilty. In Australia this principle has been described as an aspect of the rule of law "known both to Parliament and the Courts, upon which statutory language will be interpreted"8.

36. In the present case, it would be significant to add that it is not necessary to make a declaration incompatible in the use of the word "date" with the general rule of law since the word "date" is quite capable of meaning the point of time when the event took place rather than the whole day.

37. The well-known presumption that a man is innocent until he is found guilty, cannot be subverted because the words can accommodate both competing circumstances. While it is known that an acquittal operates on nativity, no case has been cited before us for the proposition that a conviction takes effect even a minute prior to itself. Moreover, the word "date" can be used to denote occasion, time, year etc. It is also used for denoting the time up to the present when it is used in the phrase "the two dates". Significantly, the word "date" can also be used to denote a point of time etc. (See Roget's International Thesaurus third edition Note 114.4). K-Generation Pty. Ltd. vs. Liquor Licensing Court, (2009) 83 ALJR 327 para 47.

38. To say that this presumption of innocence would evaporate from 00.01 A.M., though the conviction was handed over at 14.30 P.M. would strike at the very root of the most fundamental principle of Criminal Jurisprudence.

39. Inasmuch as a conviction for an offence is under a penal law, it cannot be deemed to have effect from a point of time anterior to the conviction itself. As rightly pointed by Dr. A.M. Singhvi, this court held in Union of India vs. M/S G.S Chatha Rice Mills9 that legal fiction cannot prevail over facts where law does not intend it to so prevail. It was a case where a notification was issued by the Government of India under section 8A of the Customs Tariff Act 1975, introducing a tariff on all goods originating in or exported from Pakistan. The notification was uploaded on the e-gazette at 20:46:58 hours on 16.02.2019. The Government of India took a stand that the enhanced rate of duty was applicable even to those who had already presented bills of entry for home consumption before the enhanced rate was notified in the e-gazette. The importers successfully challenged the claim of the customs authorities before the High court and the Union of India came up on appeal to this Court. An extensive analysis was made in Section H of the decision in M/S G.S. Chatha Rice Mills, on the interpretation of the words "day" and "date". After taking note of several decisions, some of which arose under the law of Limitation, some under the law of Insurance and some under the Election law, this Court pointed out that these expressions were construed in varying contexts and that a general position in law, divorced from (2020) SCC Online SC 770 subject, context and statute, has not been laid down. As succinctly put by this Court, "Legislative silences create spaces for creativity" and that "between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense".

40. The decision in K Prabhakaran vs. P Jayarajan10 relied upon by the learned Senior Counsel for the appellant did not deal with the question that we are now confronted with. It was a case where (i) the effect of several sentences of imprisonment, each for a period of less than 2 years ordered to run consecutively and not concurrently, thereby totalling to more than the period prescribed under section 8(3) of the Act and (ii) the effect of the decision of the Appellate Court rendered in a criminal case after the election was over,

were in question. It is in that context that the Constitution Bench held in K Prabhakaran that Section 8 of the R.P Act has to be construed in harmony with the provisions of Cr.P.C so as to give effect to the provisions contained in both.

41. Cases arising under the law of insurance, have no relevance to cases of disqualification. Even under the law of insurance, different principles of interpretation have been carefully nurtured and developed. For instance, New India Assurance Company Limited vs. Ram Dayal & Ors.11, this Court was concerned with a case where a vehicle had insurance cover upto 31.08.1984, which was not renewed. However, a fresh policy was taken on 28.09.1984. It was on (2005) 1 SCC 754 (1990) 2 SCC 680 the very same day that the vehicle got involved in an accident. The Motor Accident Claims Tribunal upheld the repudiation of liability by the insurer, but the High Court held that the policy of insurance obtained on the date of the accident became operative from the commencement of the date of insurance, namely from the previous midnight. While upholding the view taken by the High Court, by a short order, this Court referred to In Re F.B. Warren12, wherein it was held that a judicial act will be referred to the first moment of the day on which it is done. However, in a subsequent decision in National Insurance Company Limited vs. Jijubhai Nathuji Dabhi & Ors.13, this Court explained the decision in Ram Dayal (supra) by stating that the same would hold good only in the absence of any specific time mentioned in that behalf in the policy of insurance. In Jijubhai Nathuji Dabhi (supra), the Court found that the contract clearly stipulated that it would be operative from 4.00 p.m on 25.10.1983 and that therefore the insurance coverage was not available in respect of an accident that happened before 4.00 p.m. on the same day. The decision in Jijubhai Nathuji Dabhi (supra) was also followed in New India Assurance Company vs. Bhagwati Devi14.

42. It must be remembered that a policy of insurance lies in the realm of contract. Therefore, the interpretation to be given to the terms of such contract would largely depend upon the intent of the parties, with a certain degree of latitude in favour of a party whose (1938) 2 All ER 331 (1997) 1 SCC 66 (1998) 6 SCC 534 bargaining power is not equal to that of other contracting party. Hence, it is not possible for us to adopt the interpretation given to the word “the date” appearing in a contract of Insurance.

43. Accepting the appellant’s submission would require us to construe the statutory scheme as intending something startling i.e. positing that the consequence precedes the cause. This would be reducing this provision to absurdity and require Courts to hold that a consequence can precede its cause, but according to the learned counsel this is the intended effect of the provision since it states that a convicted person shall be disqualified from the date of his conviction. But we do not agree. The disqualification arising under Section 8(3) of the Act, is the consequence of the conviction and sentence imposed by the criminal Court. In other words, conviction is the cause and disqualification is the consequence. A consequence can never precede the cause. If we accept the contention of the appellant, the consequence will be deemed to have occurred even before the cause surfaced.

44. It is contended by the learned Senior Counsel for the Returned candidate, that the Constitution also takes care of the contingency of disqualified persons sitting and voting despite suffering a disqualification and that a court cannot travel beyond what is so prescribed. Article 193 which takes care of this contingency reads as follows: -

"193. Penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified. - If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of Article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State."

45. On the basis of Article 193, it is contended that when law prescribes certain consequences for an act of commission, the Court cannot impose additional consequences. Reliance is placed in this regard on the decision of this Court in State of Madhya Pradesh vs. Centre for Environment Protection Research and Development & Ors.15,wherein it was held that when a Statute or the Statutory Rules prescribes a penalty for any act or omission, no other penalty not contemplated in the Statute or the Rules can be imposed.

46. But we do not think that the aforesaid decision can be applied to cases where consequences other than a penalty arise on account of an act or omission. While it is true that a penalty other than the one prescribed by the Statute cannot be imposed for a particular act or omission, the said principle has no place in so far as consequences other than penalty which flow automatically out of such act or omission, are concerned.

47. Article 193 deals with the penalty to be imposed upon an erring member who sits or votes as a member of the Legislative Assembly or the Legislative Council (i) either before he has complied with the requirements of Article 188; (ii) or when he knows that he is (2020) SCC Online SC 687 not qualified for membership; (iii) or when he knows that he is disqualified from being a Member; (iv) or when he knows that he is prevented by any law from sitting or voting.

48. A disqualification for which penalty is prescribed under Article 193, also invites civil consequences such as the denial of privileges that go with the membership, other than the penalty stipulated in Article 193. Once a person is disqualified, he ceases to be a member and his right to vote also ceases alongwith his membership. This is a natural consequence of a person ceasing to be a member and this consequence is automatic and not dependent upon Article 193. Therefore, we cannot stretch Article 193 to such an extent that even the natural consequences of disqualification of a member will not get attracted because of the prescription of a penalty.

49. However, Article 193 and the interpretation given to the same by this Court may be of significance for finding out whether an act or omission done by a person disqualified would also perish and if so in what circumstances.

50. In Pashupati Nath Sukul vs. Nem Chandra Jain16, one of the questions that arose for consideration was whether a person elected as a member of the Assembly but who has not made and subscribed the prescribed oath or affirmation as required by Article 188 can validly propose a person as a candidate at an election for filling a seat in the Rajya Sabha. This question arose under peculiar circumstances. The elections to the Legislative Assembly of the State (1984) 2 SCC 404 of Uttar Pradesh were held in May, 1980 and the notification containing the names of elected members was issued on 09.06.1980 under Section 73 of the Representation of the People Act, 1951. The elected members were notified that they could take oath as required by Article 188 at the Session of the Assembly summoned to meet on 27.06.1980. But in the meantime, election for filling up a vacancy in the Rajya Sabha was notified on 17.06.1980. Therefore, the proposal of the name of a candidate for election to the Rajya Sabha, made by an elected member who was yet to take oath under Article 188, was objected to. The objection was overruled and the nominated candidate won the election. Therefore, the question as stated above arose, before this Court in an Election Petition.

51. Article 188 reads as follows: -

"188. Oath or affirmation by members. - Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."

52. In view of the mandate of Article 188, it was argued before this Court in Pashupati Nath Sukul (supra)that before taking his seat, an elected person is required to take an oath or affirmation and that if he had failed to do so, he could not be counted as a member entitled to vote. Overruling the said contention, this Court held as follows: -

"We are of the view that an elected member who has not taken oath but whose name appears in the notification published under Section 73 of the Act can take part in all non-legislative activities of an elected member. The right of voting at an election to the Rajya Sabha can also be exercised by him. In this case since it is not disputed that the name of the proposer had been included before the date on which he proposed the name of the appellant as a candidate in the notification published under Section 73 of the Act and in the electoral roll maintained under Section 152 of the Act, it should be held that there was no infirmity in the nomination. For the same reason even the electoral roll which contained the names of elected members appearing in the notification issued under Section 73 of the Act cannot be held to be illegal. That is how even respondent No. 1 appears to have understood the true legal position as he was also proposed as a candidate by an elector who had not yet made the oath or affirmation."

53. Therefore, it is clear that dehors the liability for penalty under Article 193, the act done by the elected member is not liable to be invalidated, but only in certain circumstances. One of them may be a case like the one on hand apart from cases falling foul of Article

188.But the position would have been different if Shri Amit Kumar Mahto had been convicted and sentenced in the forenoon of 23.03.2018 and yet he voted in the election to the Rajya Sabha in the afternoon with full knowledge.

54. The fallacy of the argument of the appellant that wherever the word "date" is used in a Statute, it should be understood to relate back to 00:01 a.m. can be best understood if we apply the same to a reverse situation. If in a hypothetical situation, the conviction and sentence had taken place in the forenoon and Shri Amit Kumar Mahto had cast his vote in the afternoon, the defeated candidate would not have argued that the voting should be deemed to have taken place at 00:01 a.m.

55. In any case the principle that the acts of the officers de facto performed within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally regarded as valid and binding as if they were the acts of the officers de jure, articulated in Pulin Behari Das & Ors. vs. King Emperor17, was invoked by this Court in Gokaraju Rangaraju vs. State of Andhra Pradesh18 when a question arose as to the validity of the judgments pronounced by an Additional Session Judge whose appointment was declared by the Court to be invalid subsequently. This Court pointed out that the de facto doctrine is founded on good sense, sound policy and practical expedience and that it is aimed at the prevention of public and private mischief and the protection of public and private interest. As stated by this Court this doctrine avoids endless confusion and needless chaos.

56. Again, in Pushpadevi M. Jatia vs. M.L. Wadhawan, Additional Secretary, Government of India & ors. 19, this Court reiterated the de facto doctrine as one born of necessity and public policy to prevent needless confusion and endless mischief. This Court held that "where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as validity of his acts are concerned." So long as he is clothed with the insignia of the office and exercises its powers and functions, the acts performed by him were held by this Court to be valid.

57. Even in B.R. Kapur (supra), this Court invoked the de facto doctrine to declare as valid, all acts performed by a Chief Minister (1912) 15 Cal.LJ 517 (1981) 3 SCC 132 (1987) 3 SCC 367 whose appointment was held to be invalid from day one. Paragraph 57 of the said decision reads as follows:

"We are aware that the finding that the second respondent could not have been sworn in as Chief Minister and cannot continue to function as such will have serious consequences. Not only will it mean that the State has had no validly appointed Chief Minister since 14th May, 2001, when the second respondent was sworn in, but also that it has had no validly appointed Council of Ministers, for the Council of Ministers was appointed on the recommendation of the second respondent. It would also mean that all acts of the Government of Tamil Nadu since 14th May, 2001 would become questionable. To alleviate these consequences and in the interest of the administration of the State and its people, who would have acted on the premise that the appointments were legal and valid, we propose to invoke the de facto doctrine and declare that all acts, otherwise legal and

valid, performed between 14th May, 2001 and today by the second respondent as Chief Minister, by the members of the Council of Ministers and by the Government of the State shall not be adversely affected by reason only of the order that we now propose to pass."

58. Therefore, it is not possible to hold that the vote cast by Shri Amit Kumar Mahto at 9:15 a.m. on 23.03.2018 should be treated as invalid on account of the conviction and sentence passed by the criminal Court at 2:30 p.m. on the same day. This conclusion can be drawn through another process of reasoning also. Article 191 (1) of the Constitution deals with five different grounds of disqualification. They are (i) holding an office of profit as specified in the First Schedule; (ii) unsoundness of mind, which stands so declared by a competent Court; (iii) undischarged insolvency; (iv) absence of citizenship of India or acquisition of citizenship of a foreign State etc.; and (v) disqualification by or under any law made by Parliament.

59. The interpretation to be given to the expression "the date" appearing in Section 8(3) of the Representation of the People Act, 1951 will have a bearing upon the interpretation to be given to the date of happening of any one of the above events of disqualification.

60. While it may be convenient for the appellant in this case to interpret the expression "the date" appearing in Section 8(3) with reference to Article 191(1)(e), we may have to see whether the same would fit into the scheme of Article 191(1) in entirety. It may not. If tested against each one of Sub-clauses (a) to (d) of Clause (1) of Article 191 we would find that the interpretation offered by the appellant would not survive. Justice Oliver Wendell Holmes, Jr. in Henry R Towne vs. Mark Eisner20 while dealing with the construction of a word in the Constitution as well as a statute, observed:-

"A word is not a crystal, transparent and unchanged; it is the skin of a living though and may vary greatly in colour and content according to the circumstances and tie in which it is used"

61. Therefore, on the first issue we hold that the vote cast by Shri Amit Kumar Mahto at 9:15 a.m. on 23.03.2018 was rightly treated as a valid vote. To hold otherwise would result either in an expectation that the Returning Officer should have had foresight at 9:15 a.m. about the outcome of the criminal case in the afternoon or in vesting with the Election Commission, a power to do an act that will create endless confusion and needless chaos.

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62. In view of our above answer to the first issue, the second issue does not arise for consideration. Therefore, the Civil Appeal No.611 of 2020 is dismissed. Civil Appeal No.2159 of 2020 is allowed, setting aside the findings of the High Court on issue Nos. 2, 3 and 5 framed by the High Court. There will be no order as to costs.

.CJI [S.A. BOBDE] …….J.

[A.S. BOPANNA] ……..J.

[V. RAMASUBRAMANIAN] ……..J

New Delhi December 18, 2020