

ASHWINI KUMAR UPADHYAY

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v.

UNION OF INDIA AND ANOTHER

(Writ Petition (Civil) No 967 of 2017)

FEBRUARY 02, 2023

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**[DR. DHANANJAYA Y CHANDRACHUD, CJI,
PAMIDIGHANTAM SRI NARASIMHA AND
J. B. PARDIWALA, JJ.]**

Representation of the People Act, 1951: s. 33(7) – Constitutional validity of –s. 33(7) permitting person to contest from more than one constituency for the same office simultaneously – Plea that a person should not be permitted to contest from more than one seat at a time – Held: Such relief cannot be granted – Permitting a candidate to contest from more than one seat in a Parliamentary election or at an election to the State Legislative Assembly is a matter of legislative policy – This is a matter where Parliament is legitimately entitled to make legislative choices and enact or amend legislation – In absence of any manifest arbitrariness of the provision or violation of Art. 14 or Art. 19, not possible to strike down the provision as unconstitutional – However, the Parliament not restrained from taking an appropriate view if it decides to do so at any point of time in pursuance of its legislative authority– Constitution of India – Arts. 14, 19.

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CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.967 of 2017.

(Under Article 32 of The Constitution Of India)

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Gopal Sankaranarayanan, Sr. Adv., Ashwani Kumar Dubey, Adv. for the Petitioner.

R. Venkataramani, AG, Tushar Mehta, SG, Ms. Saudamini Sharma, Mrs. Rukhmini Bobde, Ankur Talwar, Chinmayee Chandra, Kanu Agrawal, Digvijay Dam, Vinayak Mehrotra, Mrs. Mansi Sood, Chitvan Singhal, Ms. Sonali Jain, Abhishek Kumar Pandey, Raman Yadav, Anand Venkatramani, Ms. Vijay Lakshami Venkataramani, Arvind Kumar Sharma, Amit Sharma, Dipesh Sinha, Pallavi Barua, Ms. Sakshi Upadhayya, Ms. Aparna Singh, Balaji Srinivasan, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, CJI

1. The petitioner has invoked the jurisdiction of this Court under Article 32 of the Constitution to challenge the constitutional validity of Section 33(7) of the Representation of the People Act 1951¹.

B 2. Apart from the above challenge, the petitioner seeks a direction to the Central government and the Election Commission of India to take appropriate steps to restrict any person from contesting an election for the “same office” from more than one constituency simultaneously.

C 3. At this stage, it would also be material to note that the third prayer, prayer (c), which sought a direction to the Union government and the Election Commission “to take appropriate steps to discourage independent candidates from contesting the Parliamentary and Assembly elections” was rejected by an order of this Court dated 11 December 2017.

D 4. The basis of the petition is that on 5 July 2004, the Chief Election Commissioner urged the then Prime Minister to amend Section 33(7) of the Act of 1951 insofar as it permits a person to contest from more than one constituency for the same office simultaneously. The petitioner urges that the Law Commission in its 255th Report had opined that the Representation of the People Act 1951 should be amended to provide that a person should not be permitted to contest from more than one seat at a time.

E 5. We have heard Mr Gopal Sankaranarayanan, senior counsel appearing on behalf of the petitioner and Mr R Venkataramani, Attorney General for India. The Election Commission of India has also appeared in these proceedings through its counsel, Mr Amit Sharma.

F 6. Counter affidavits have been filed by the Union of India and the Election Commission.

G 7. During the course of the hearing, Mr Gopal Sankaranarayanan, senior counsel urged that the petition implicates an issue under Article 19 of the Constitution. It has been submitted that citizens exercise their right to vote after knowing about a candidate’s character, qualifications and criminal antecedents among other details. When a candidate who contests from two seats, is elected from both, one of the two seats has

H ¹ “Act of 1951”

to be vacated. Apart from the financial burden which is imposed on the public exchequer for holding a bye-election, it has been urged that the electorate which has cast its vote in favour of a candidate on the basis of the representations which were held out during the course of campaigning would be deprived of being represented by that candidate for the Parliamentary or, as the case may be, the State Legislative Assembly constituency. Consequently, it has been urged that the electorate which has opted for a candidate in pursuance of its right to know under Article 19(1)(a) would be deprived of its right when the candidate vacates the seat.

8. Section 33(7) of the Act of 1951 provides as follows:

“Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

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A (g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

B (h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

C Explanation.—For the purposes of this sub-section, two or more bye -elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under Sections 147, 149, 150 or, as the case may be, 151 on the same date.”

D 9. The above provision was inserted by Act 21 of 1996 with effect from 1 August 1996. It is common ground between senior counsel and the Attorney General for India that prior to 1 August 1996, there was no bar on the number of seats which a candidate could contest in the course of one election, be it for Parliamentary or State Legislative Assembly constituencies. Parliament has stepped in to provide that a candidate cannot contest more than two seats simultaneously in one and the same election.

E 10. The issue which has been raised by the petitioner pertains to the legislative domain. Undoubtedly, where a candidate contests more than one seat simultaneously in the course of the same general election, one seat has to be vacated if the candidate succeeds in both the electoral contests. That necessitates a bye-election. The petitioner has highlighted the fact that this involves a drain on the public exchequer. The issue, F however, is whether this by itself would result in the invalidation of a statutory provision.

G 11. A statutory provision can be challenged before the Court either on the ground that it has been made by a legislature which lacks legislative competence to enact a law or on the ground that there is a violation of a Fundamental Right in Part III of the Constitution. The former is not in issue.

H 12. Permitting a candidate to contest from more than one seat in a Parliamentary election or at an election to the State Legislative Assembly is a matter of legislative policy. It is a matter pertaining to legislative policy since, ultimately, Parliament determines whether political

democracy in the country is furthered by granting a choice such as is made available by Section 33(7) of the Act of 1951. A candidate who contests from more than one seat may do so for a variety of reasons not just bearing on the uncertainty which the candidate perceives of an election result. There are other considerations which weigh in the balance in determining whether this would restrict the course of electoral democracy in the country. This is a matter where Parliament is legitimately entitled to make legislative choices and enact or amend legislation. The Law Commission and the Election Commission may at the material time have expressed certain viewpoints. Whether they should be converted into a mandate of the law depends on the exercise of Parliamentary sovereignty in enacting legislation. Absent any manifest arbitrariness of the provision so as to implicate the provisions of Article 14 or a violation of Article 19, it would not be possible for this Court to strike down the provision as unconstitutional.

13 This will not restrain Parliament from taking an appropriate view if it decides to do so at any point of time in pursuance of its legislative authority. Parliament has intervened in the past in the form of Act 21 of 1996 which restricts the choice of a candidate for electoral contest to two seats in one and the same election.

14. For the above reasons, we are of the view that no relief can be granted in these proceedings.

15. The Petition shall accordingly stand dismissed.

16. Pending applications, if any, stands disposed of.