

Om Narayan Vs. State of U.P. and Others.

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Court : Allahabad

Decided On : Sep-09-2010

Judge : Pradeep Kant; Shabihul Hasnain, JJ.

Appeal No. : Writ Petition No. 167 (MB) of 2007

Appellant : Om Narayan

Respondent : State of U.P. and Others.

Advocate for Def. : Sri S.K. Kalia; Senior Advocate; Sri Mukund Tiwari; Sri Sameer Kalia; Sri Akhilesh Kalra, Advs

Advocate for Pet/Ap. : Sri Amitabh Kumar Rai; Sri Rama Shankar Singh, Advs

Judgement :

1. The present writ petition raises a question of general importance, which can be formulated as under:

"Whether a Block Pramukh of Kshettra Panchayat, who has been convicted for committing an offence under Section 302 read with Section 34 I.P.C. and has been awarded sentence of life imprisonment with fine and also having been convicted under Sections 307/34 I.P.C. wherein he has been awarded ten years' rigorous imprisonment and a fine of Rs. 10,000/-, can be allowed to

continue on his post of Block Pramukh, on being released on bail after conviction or he incurs a disqualification under Section 13 of Kshettra Panchayat and Zila Panchayat Adhiniyam, which would debar him to continue as such, unless either exonerated/acquitted of the aforesaid charges in appeal, or the disqualification ceases after the prescribed period."

2. In the elections held for Kshettra Panchayat, Jagdishpur, the petitioner was elected as a member and the opposite party no. 7 after being elected as 'member', was elected Block Pramukh. The election took place in the year 2005. At the time of his election, the opposite party no. 7 was in jail and he continued to be in jail till he was released on bail under the orders passed by the High Court in criminal appeal.

3. Initially when this writ petition was filed against an order dated 29.3.06 passed by the Chief Development Officer, Sultanpur, by means of which the Block Pramukh, namely, Rajesh Vikram Singh, opposite party no. 7, while in jail under lawful custody being charged of committing a criminal offence, was allowed to discharge the functions of Block Pramukh from jail, an interim order was passed by this Court restraining the opposite party no. 7 from discharging the functions of Pramukh from jail and the Up-Pramukh was allowed to discharge the functions of Pramukh, till he was released from jail. It was further provided that in case Up-Pramukh was also not available then the District Magistrate shall make temporary arrangement in accordance with the provisions of the Act.

4. During pendency of the writ petition, the opposite party no. 7 was convicted in Sessions Trial No. 388 of 2004 alongwith Sessions Trial No. 388-A, 464 and 389 of 2004 (which were clubbed and tried together) convicting the opposite party no. 7 under Section 307 read with 34 I.P.C. and sentencing him to undergo imprisonment for life and a fine of Rs. 2000/- and awarding a sentence of ten years' rigorous imprisonment and a fine of Rs. 1000/- respectively.

5. The writ petition was thereafter amended and the very right of opposite party no. 7 to continue as Pramukh was challenged.

6. In criminal appeal no. 497 of 2008 preferred by opposite party no. 7, the High Court granted bail vide its order dated 9.9.08 but the conviction was not stayed. The opposite party no. 7 thereafter moved an application in criminal appeal, namely, Cr. Misc. Application No. 87189 of 2008 for suspension/stay of the order of conviction and sentence, in which the High Court passed an order on 25.9.08, staying the execution of the sentence and disposed of the said application. The High Court passed the following orders:

"Heard.

In continuation of our order dated 09.09.2008 it is hereby directed that the execution of sentence passed in Sessions Trial Nos. 388-A of 2004, 464 of 2004 and 389 of 2004 shall remain suspended during the pendency of the appeal.

The application is accordingly disposed of."

7. On bail being granted by the High Court, the opposite party no. 7 moved an application before this Court on 30.9.08 for being allowed to function as Block Pramukh. Though no orders were passed on the application of the opposite party no. 7 in his favour but it appears that the District Magistrate allowed him to resume duties and thus, he also allowed to discharge the functions of Pramukh.

8. Taking a cue from the aforesaid interim order, though the Court did not pass any order allowing the opposite party no. 7 to resume charge on being released from jail under the orders of the High Court, the District Magistrate allowed him to do so. It is also the case of opposite party no. 7 that he resumed his duties as per the directives issued by the Court.

By means of the order dated 21.3.09, the opposite party no. 7 was authorised by the District Panchayat Raj Officer, Sultanpur to exercise his administrative and financial power in view of the fact that he was released from jail on 15.9.08 and the interim order passed by this Court, permitted the alternative arrangement, till he was released from jail. This order is said to have been passed as per the directives issued by the District Magistrate on 20.3.09.

9. There is also an allegation in the supplementary affidavit filed by the petitioner on 24.5.09 that the opposite party no. 7 soon after his resumption of functions as Block Pramukh, withdrew an amount of Rs. 55 lakhs in the name of development work in various schemes, despite the fact that the same was not permissible as the election notification was in force.

10. The petitioner's main thrust is that once the opposite party no. 7 was convicted for an offence like murder and attempt to murder and having been awarded sentence for not less than two years i.e. life imprisonment and ten years rigorous imprisonment respectively, he incurred a disqualification in terms of Section 13 and, therefore, he could not continue nor could have been allowed to continue as Pramukh, so long the disqualification continues.

11. Section 13(a) of Kshettra Panchayat and Zila Panchayat Adhiniyam, prescribes disqualifications for membership of Kshettra Panchayat and says that a person shall be disqualified for being chosen as and for being a member of a Kshettra Panchayat, if he is so disqualified by or under any law for the time being in force for the purpose of election of the State Legislature:

12. The proviso attached thereto says that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years.

13. There are certain more clauses, namely, sub-clauses (b) to (o) laying down some more disqualifications, which prohibit a person from being chosen as and for being a member of a Kshettra Panchayat, a reference of which disqualifications will be given in the latter part of this judgement.

14. In response, learned counsel for opposite party no. 7 submitted that, firstly he having been elected in accordance with the provisions of the Act, the question of 'his being chosen' as member of the Kshettra Panchayat would not arise and secondly, once he having been elected as such, he cannot be restrained from functioning as Block Pramukh on the plea that his continuance as such would be hit by the provisions of Section 13(a).

15. Alternatively, it has been argued that supposing the opposite party no. 7 has incurred a disqualification for the time being, for contesting the election of the State Legislature, in view of Section 8(3) of the Representation of People Act, 1951, he would be protected by the provisions of Section 8 sub-clause (4) of the Act, which provides exemption from the aforesaid disqualifications in case of a sitting member of Parliament or State Legislature for the period given therein.

16. It is also a defence that though not admitting but assuming that the opposite party no. 7 has incurred a disqualification as given under Section 13(a), the District Magistrate himself cannot prohibit the resumption of duties by the Pramukh on being released from jail under the provisions of Section 9-A of the Act nor this Court will issue any writ restraining his functioning as such, and it is only when the dispute regarding his disqualification as member is referred under Section 14 of the Act and is decided, he will stand disqualified, from the date of such decision.

17. Before dealing with the legal issue, we would like to put on record the criminal antecedents of opposite party no. 7 as projected by the petitioner and as explained by the opposite party no. 7, which can be summarized as under:

Sl. No.

Crime No.

Under Sections

Police Station &

District

Acquitted/

Pending

1

269 of 1995

302/307/120B IPC

Mohan Ganj, Raebareli

Pending

2

270 of 1995

25 Arms Act

Mohan Ganj, Raebareli

Pending

3

299 of 1999

392/411 IPC

Shiv Ratan Ganj, Raebareli

Pending

4

288 of 1998

392/411 IPC

Jagdishpur, Sultanpur

Acquitted

5

50 of 1998

392/411 IPC

Jagdishpur, Sultanpur

Acquitted

6

978 of 1999

2(3) U.P. Ganster Act

Kotwali Nagar, Raebareli

Pending

7

322 of 1999

392/411 IPC

Mohan Ganj, Raebareli

Acquitted

8

63 of 2000

307 IPC

Bhadkar, Raebareli

Acquitted

9

110 of 2000

147/148/149/307IPC

Shiv Ratan Ganj, Raebareli

Acquitted

10

112 of 2000

3/25 Arms Act

Shiv Ratan Ganj, Raebareli

Acquitted

11

113 of 2000

8/21/22 NDPS Act

Shiv Ratan Ganj, Raebareli

Pending

12

50 of 2000

392 IPC

Mohan Ganj, Raebareli

Acquitted

13

62 of 2000

394/302/411 IPC

Gurbax Ganj, Raebareli

Acquitted

14

267 of 2000

395/397 IPC

Gauri Ganj, Sultanpur

Acquitted

15

271 of 2005

147/148/149/395IPC

G.R.P., Sultanpur

Acquitted

16

446 of 2003

41/120 Cr.P.C.

Jagdishpur, Sultanpur

Acquitted

17

629 of 2003

302 IPC & 37 C.L. Act

Jagdishpur, Sultanpur

Pending

18

81 of 1994

323/504/506 IPC

Jamo, Sultanpur

Acquitted

19

229 of 2004

148/149/302 IPC

Jagdishpur, Sultanpur

Pending

20

354 of 2005

3/25 Arms Act

Jagdishpur, Sultanpur

Pending

18. Learned counsel for the petitioner assailing the action of the opposite parties, including that of the District Magistrate, Chief Development Officer and other district authorities in allowing the opposite party no. 7 to resume duties and discharge the functions of Pramukh, both administrative and financial, has raised moral as well as legal issues.

19. Relying upon the number of criminal cases pending against opposite party no. 7 and with the kind of offences for which he was charged, a submission was made that such a person ought not to have been allowed even to contest the election and in no case, he can be allowed to discharge the functions of Pramukh after the conviction and sentence in two session trials, referred to above.

20. The eligibility to contest the election of Block Pramukh is to be seen in the light of the provisions of the Act as it is the statutory right which either makes a person eligible for contesting such an election or disqualifies him.

21. The plea of the petitioner, that a person viz. the opposite party no. 7 against whom so many criminal cases were pending, ought not to have been allowed to contest the election, which he was allowed, from jail, and was administered oath, under due permission of the trial court in strict security, does not require any further scrutiny for the reason that the learned counsel for the petitioner has not been able to cite any provision of the Act or the Rules or any law for the time being in force, which disqualifies such a person from contesting the election of member of Kshettra Panchayat and thereafter of Pramukh, simply because he was in jail for certain offences as an under-trial prisoner.

22. The law and the statutory provisions do not put any bar for such a person to contest the election and, therefore, the plea raised basically is a plea of morality which cannot be accepted nor it is a plea which can be answered in favour of the petitioner.

23. It is for the law makers to prescribe eligibility and qualification for a person to contest election and the role of legislation cannot be usurped by the High Court. Though it is the need of the hour that the public representatives, representing the people's will in the Parliament and the State Legislature should take stock of the situation and make such laws, which minimize the inflow/induction of the persons having criminal antecedents in the Parliament or the State Legislatures, Local Bodies and Local Authorities etc., so that these august offices are occupied by the persons of impeccable integrity, spotless character, with no criminal antecedents.

24. The main plank of argument of the petitioner is that in view of Section 13(a) of Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, the opposite party no. 7 on being convicted and sentenced for imprisonment for not less than two years, has incurred a statutory disqualification and he cannot contest the election of the State Legislature in view of the provision of Section 8 sub-clause (3) of the Representation of the People Act, 1951 and, therefore, he cannot be allowed to continue as such. In fact, the law for the time being in force mentioned in Section 13(a) is Section 8(3) of the Representation of People Act, 1951.

25. Section 8 of the Representation of the People Act, 1951 deals with disqualification on conviction for certain offences. Leaving aside other sub-clauses of the aforesaid Section, the relevant provision for the present controversy is sub-clause (3), which prescribes that 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.

26. Argument is that the opposite party no. 7 did fall within the definition of the aforesaid provision and, therefore, he cannot at present contest the election of State Legislature and that being so, he cannot be allowed to continue either as a member or Pramukh as the words under Section 13(a) includes both, namely, election as a member and also 'being a member of a Kshettra Panchayat'.

27. The phrase 'for being a member of a Kshettra Panchayat' is being interpreted to mean, to continue to be a member and consequently as Block Pramukh.

28. In response, the opposite party no. 7 relies upon sub-section (4) of Section 8 of the Representation of the People Act, 1951, which according to him protects his continuance both as a member as well as Pramukh and which reads as under:

"(4) Notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a

member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court."

29. Submission is that the opposite party no. 7 after his conviction and award of sentence has filed criminal appeal which is still pending and has not been disposed of, therefore, he cannot be restrained from functioning as such. This argument is based on the plea that if Section 8 sub-clause (3) is attracted in the instant case, then sub-clause (4) cannot be excluded from its application.

30. The plea that even if it is found that the opposite party no. 7 has incurred disqualification as aforesaid, still his functioning cannot be obstructed to, by the District Magistrate nor he can be refused resumption of his duties on being released on bail, unless the matter is referred to the Judge and his disqualification is decided in terms of Section 14 of the Act, and that no writ can be issued by the High Court, in view of the special machinery provided therein, requires consideration first, before adverting upon the aforesaid plea of disqualification.

31. The petitioner has submitted and relied upon the cases, which make an alternative remedy purely discretionary. Submission is that though the disqualification can also be determined under Section 14, where cessation order can also be passed by the Judge but the High Court would still have power to entertain the petition, ignoring the aforesaid remedy and issue the necessary writ, restraining the continuance of opposite party no. 7 as member and Pramukh.

32. In case of B.R. Kapur v. State of T.N. and another (2001) 7 SCC 231, the apex court while considering the disqualification of the Chief Minister, who was convicted for an offence and sentenced for imprisonment for a period not less than two years, did not accept the plea that disqualification of a person who has been appointed as Chief Minister or Minister for a limited period of six months, has to be tested by the Governor, but issued a writ of quo warranto holding that a person who who has been convicted as aforesaid, cannot be appointed as Chief Minister, even for a period of six months.

33. It has further been held in the said case, that 'if any of the disqualifications mentioned in Article 191(1)(e) are brought to the notice of the Governor which can be accepted without any requirement of adjudication or if the Governor is satisfied that the person concerned does not possess the minimum qualification for being chosen as a member, as contained in Article 173, then in such a case, there is no question of an impossible burden on the Governor at that stage and on the other hand, it would be an act on the part of the Governor in accordance with the constitutional mandate not to appoint such person as the Chief Minister or Minister notwithstanding the support of the majority of the elected members of the legislative assembly'.

34. His Lordship Justice Bharucha, J further observed that 'in a given case, if the alleged disqualification is dependant upon the disputed questions of fact and evidence, the Governor may choose not to get into those disputed questions of fact and, therefore, could appoint such person as the Chief Minister or Minister. In such a case, Governor exercises his discretion under Article 164 in the matter of appointment of the Chief Minister or a Minister. But in a case where the disqualification is one which is apparent as in the case in hand namely the person concerned has been convicted and has been sentenced to imprisonment for more than two years and operation of the conviction has not been stayed and the appeal is pending, thereby the disqualification under Article 191(1)(e) read with Section 8(3) of the Representation of the People Act staring at the face, the Governor would be acting beyond his jurisdiction and against the constitutional inhibitions and norms in appointing such a disqualified person as the Chief Minister on the sole reasoning that the majority of the elected members to the legislative council have elected the person concerned to be their leader.

35. His Lordship further observed that 'the constitution does not permit brute force to impede the constitution. The people of India and so also the elected members to the legislative assembly are bound by the constitutional provisions and it would be the solemn duty of the peoples representatives who have been elected to the legislative assembly to uphold the constitution. Therefore, any act on their part, contrary to the constitution, ought not to have weighed with the Governor in the matter of appointment of the Chief Minister to form the Government. In my

considered opinion, therefore, the arguments of Mr. Venugopal, on this score cannot be sustained.

36. Section 13 of the Act of 1961 which prescribes disqualifications for membership of Kshettra Panchayat in its sub-clauses (a) to (o), enumerates different sort of disqualifications. There are some disqualifications like holding any office of profit under a State Government or the Central Government or a local authority, or a Nyaya Panchayat established under Section 42 of the United Provinces Panchayat Raj Act, 1947 or being in arrears of any tax fee rate or any other dues payable to him to the Gram Panchayat, Kshettra Panchayat or Zila Panchayat for such period as may be prescribed, or has, inspite of being required to do so by the Gram Panchayat or Zila Panchayat failed to deliver to in any record or property belonging to it which had come into his possession by virtue of his holding any office under it, which may require determination of disqualification. Likewise, there are some other disqualifications also which may require adjudication or determination of fact, whether a person has incurred any disqualification or not and in such a case, the dispute has to be referred to the Judge whose decision shall be final and binding under Section 14.

37. Section 13 of the Act of 1961 reads as under:

"13. Disqualifications for membership of Kshettra Panchayat.-- A person shall be disqualified for being chosen as and for being a member of a Kshettra Panchayat, if he -

(a) is so disqualified by or under any law for the time being in force for the purpose of election of the State Legislature:

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(b) holds any office of profit under a State Government or the Central Government or a local authority, or a Nyaya Panchayat

established under Section 42 of the United Provinces Panchayat Raj Act, 1947;

(c) has been dismissed from the service of a State Government, the Central Government or a local authority, or a Nyaya Panchayat established under Section 42 of the United Provinces Panchayat Raj Act, 1947;

(d) is in arrears of any tax, fee rate or any other dues payable by him to the Gram Panchayat, Kshettra Panchayat or Zila Panchayat for such period as may be prescribed, or has, inspite of being required to do so by the Gram Panchayat or Zila Panchayat failed to deliver to in any record or property belonging to it which had come into his possession by virtue of his holding any office under it;

(e) is an undischarged solvent;

(f) has been convicted of an offence involving moral turpitude;

(g) has been sentenced to imprisonment for a term exceeding three months for contravention of any order made under the Essential Commodities Act, 1955;

(h) has been sentenced to imprisonment for a term exceeding six months or to transportation for contravention of any order made under the Essential Supplies (Temporary Powers) Act, 1946 or the U.P. Control of Supplies (Temporary Powers) Act, 1947;

(i) has been sentenced to imprisonment for a term exceeding three months under the U.P. Excise Act, 1910;

(j) has been convicted for an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985;

(k) has been convicted of an election offence;

(l) has been convicted of an offence under the U.P. Removal of Social Disabilities Act, 1947 or the Protection of Civil Rights Act, 1955;

(m) is debarred from practising as a legal practitioner by order of any Competent Authority;

(n) has been declared under Section 23 to have committed any corrupt practice within the meaning of that section and such declaration continues to be effective; or

(o) is not registered in the electoral rolls for any territorial constituency of the Kshettra Panchayat :

Provided that the period of disqualification under Clauses (c), (e), (f), (g), (h), (i), (j), (k) or (l) shall be five years from such date as may be prescribed:

Provided further that the disqualification under Clause (d) shall cease upon payment of arrears or deliver of the record or property, as the case may be :

Provided also that a disqualification under any of the clauses referred to in the first proviso may, in the manner prescribed, be removed by the State Government."

38. The disqualification as given in sub-clauses (b), (d), (e), (n) and (o) thus, would apparently require such adjudication but disqualifications like those given in sub-clauses (a), (c), (f), (g), (h), (i), (j), (k), (l) and (m) may not require any such adjudication, because the moment any of such disqualifications is incurred by the holder of the office, he will become disqualified, both for being chosen and also for being the member of Kshettra Panchayat.

39. It is only in cases where a dispute takes place or the disqualification is disputed or can be disputed, Section 14 shall necessary come into play.

40. Section 14 in sub-clause (2) very clearly says that if any question arises as to whether a person has been lawfully chosen a member of a Kshettra Panchayat or has ceased to remain eligible to be such member the question shall be referred in the manner prescribed to the Judge, whose decision shall be final and binding whereas sub-clause (3) says that if the Judge decides that the member was not lawfully chosen or has ceased to remain eligible to be a member of the Kshettra Panchayat such member shall cease to be a member of the Kshettra Panchayat from the date of such decision.

41. Reference for determining the disqualification would only arise in a case where there is a dispute regarding disqualification of being a member and also when a question arise, as to whether the person has been lawfully chosen a member or has ceased to be eligible as such. In the two circumstances aforesaid, reference would be made to the Judge, means the District Judge which includes any other Subordinate Civil Judicial Officer named or designated by the District Judge in this behalf.

42. It can also be argued and urged that normally if a question arises as to whether a person has been lawfully chosen a member of Kshettra Panchayat or has ceased to be a member, the question may be referred, in the manner prescribed, to the Judge but does it means that if a sitting member incurs a disqualification which on the face of it, cannot be disputed or for that matter, in other words, it stands established beyond doubt and it is such a disqualification which falls within one of the sub-clauses of Section 13, where the holder of the office cannot have any defence against his disqualification, even then reference to the Judge would be necessary for determination of factum of disqualification. The answer would be in negative for more than one reason.

43. Section 14 is a provision which prescribes a forum for determining, whether a person has been lawfully chosen as a member or he has incurred any disqualification, the consequence of which is the cessation of his membership. If such a disqualification can be disputed by the holder of the office on any legal or factual basis or where the question, namely, whether the person has incurred any disqualification or not, arises then on a decision given by the Judge, he shall

cease to be the member of the Kshettra Panchayat from the date of such a decision.

44. The aforesaid provision does not say that every matter of disqualification under Section 13, must be referred under Section 14 before holding such a holder of the office to be disqualified under any of the sub-clauses of Section 13.

45. In a case, where purely legal plea is raised in terms of the disqualifications mentioned, like in sub-clause (a) of Section 13, viz. the disqualification incurred by a sitting member of Kshettra Panchayat who is elected Pramukh, in view of the provisions of Section 8(3) of the Representation of the People Act, 1951, the matter can be seen by the High Court under Article 226 of the Constitution and necessary directions, orders and writ can be issued.

46. There may be no power apparently under the Kshettra Panchayat Adhiniyam, under which the District Magistrate can refuse joining i.e. resumption of the charge by a Pramukh, who has been released on bail, after being convicted for committing a criminal offence for which he has been sentenced for imprisonment for more than two years in terms of Section 9-A of the Act. But if the disqualification incurred is such, which needs no adjudication and there cannot be any legal or factual defence and the legal consequence of which is the cessation of membership of the person, he can exercise his powers under Section 9(2), treating that a casual vacancy has occurred in the office of the Pramukh or can also refer the matter to the Judge having jurisdiction in terms of Section 14(2) where the decision need be given within the shortest possible time. The exercise of such a power by the District Magistrate will be in consonance of Section 9 of the Act, where in fact Section 9-A will not be attracted.

47. Section 9 of the Act prescribes the term of Pramukh and reads as under:

"9. Term of Pramukh-- (1) Save as otherwise provided in this Act the term of office of a Pramukh of a Kshettra Panchayat shall commence upon his election and shall extend up to the term of the Kshettra Panchayat.

(2) Where the office of the Pramukh is vacant, the District Magistrate may, by order, make such arrangement as he thinks fit for the discharge of the functions of the Pramukh, till the Pramukh is elected."

48. The words 'save as otherwise provided in this Act', clearly means that unless the term of the Pramukh does not stand curtailed under any of the provisions of the Act, he will enjoy his term till the term of Kshettra Panchayat.

49. The term of a Pramukh shall stand reduced if no confidence motion is passed against him, or he resigns or unfortunately dies and also if he incurs a disqualification specified in Section 13.

50. A disqualification incurred by a Pramukh, which need no adjudication, shall necessary curtail his normal tenure and such a Pramukh would not be entitled to continue thereafter.

51. Section 9 has to be interpreted in the manner aforesaid, for giving effect to the purpose and object of the Act and particularly the provisions of Section 13, which does not allow a disqualified person to continue as Pramukh.

52. The intention of the legislature also appears to be that a disqualified person be stopped from functioning forthwith, therefore, the Section speaks of cessation of membership, even after being lawfully chosen as a member, because of subsequently incurring the disqualification.

53. In *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, AIR 1990 SC 123, it has been observed that 'the Courts strongly lean against any construction which tends to reduce a Statute to a futility. The Court also noticed *Whitney v. Inland Revenue Commissioners* 1928 AC 37, wherein Lord Dunedin said as follows:

"A Statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

54. In *High Court of Gujarat and another v. Gujarat Kishan Mazdoor Panchayat and others* (2003) 2 SCR 799, the apex court observed as under:

"In "The Interpretation and Application of Statutes" by Reed Dickersen, the author at page 135 has discussed the subject while dealing with the importance of context of the statute in the following terms:-

"...The essence of the language is to reflect, express, and perhaps even effect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called 'conceptual map of human experience'"

55. The purport and object of the Statute is to see that a Tribunal becomes functional and as such the endeavours of the Court would be to see that to achieve the same, an interpretation of Section 10 of the Act be made in such a manner so that appointment of a President would be possible even at the initial constitution thereof.

56. Such a construction is permissible by taking recourse to the doctrine of strained construction, as has been succinctly dealt with by Francis Bennion in his Statutory Interpretation. At Section 304, of the treatise; purposive construction has been described in the following manner:-

"A purposive construction of an enactment is one which gives effect to the legislative purpose by -

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)."

57. In case it is held that generally and uniformly that whatever be the disqualification incurred by a member who is elected as member and may be holding the office of Pramukh, he would not be restrained from functioning, unless determination is made under Section 14 by the Judge on a reference being made, it would mean that in cases where the disqualification stares at the face, the

person would be allowed to continue as member or Pramukh as the case may be for such further period, till the matter is decided by the Judge. There is no limitation prescribed during which the reference should be made to the Judge and the time within which such a question be decided. The disqualified incumbent would thus, hold the office for any such extended period, though he stands disqualified, only because it requires an order by the Judge under Section 14.

58. In the case of B.R. Kapur (supra), the Supreme Court has well defined the difference between a disqualification of a member, which requires adjudication by the Governor and the disqualification which does not require any such determination, but disqualifies a person from holding the elected office.

59. The intention of the aforesaid provision of Section 14 is not to give a lease of life, to a disqualified member to continue in office, till a decision is given by the Judge, but to protect the elected office, from being occupied by any disqualified person.

60. The moment the elected office bearer incurs a disqualification, which does not require any adjudication and for which there cannot be any defence, the matter need not be referred in all cases before the Judge, though it can be referred and action can be taken under Section 14 of the Act also, holding him to be disqualified for continuing in the elected office. The consequence of such a disqualification will mean cessation of membership, even without any such adjudication by the Judge.

61. The provision of Section 13 read with Section 14 have to be given a purposive construction and interpretation so that they serve the purpose and achieve the object for which the aforesaid provisions have been enacted.

62. In *Kehar Singh v. State (Delhi Admn.)*, 1989 Cri LJ 1, the apex court held as under:

"During the last several years, the 'golden rule' has been given a go bye. We now look for the 'intention' of the legislature of the 'purpose' of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary

sense of the words."

In *District Mining Officer v. Tata Iron & Steel Co.*, (2001) 7 SCC 358, the apex court observed that 'a statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature' and further held - "In other words, the legislative intention i.e the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

63. The object and purpose of Section 13 is that no disqualified person should be allowed to occupy any elected office either as a member or as an elected Pramukh, if he incurs any disqualification and for this, it has been specifically provided that such an ineligible person cannot be allowed to contest the election and if he has incurred disqualification for being chosen as a member, he also cannot be allowed to continue as member from the date of his disqualification.

64. A conjoint reading of the phrase 'A person shall be disqualified for being chosen as and for being a member of a Kshettra Panchayat' under in Section 13 alongwith the disqualification prescribed in sub-clause (a) make it abundantly clear, that such a disqualified person, cannot either be chosen a member, nor can be allowed to continue as such.

65. The words 'shall be disqualified' in Section 13, and the words 'so disqualified' in sub-clause (a) can only be interpreted to mean that a person so disqualified, shall stand disqualified for being chosen or continuing as a member. Use of 'shall' before the words 'be disqualified' is imperative in nature, and its effect cannot be diluted by giving any other interpretation.

66. Section 14 is a methodology in case of disputes regarding the member's disqualification, which inherently and obviously presupposes a dispute regarding

disqualification i.e. whether the incumbent has incurred any disqualification or not. The provision of Section 14 is mainly for deciding such a dispute or to say, the 'question' as mentioned in sub-section (2) and consequence of such determination has been provided in sub section (3) but that cannot be taken to mean that unless a Judge decides such disqualification and passes an order in terms of sub-section (3), the elected office bearer shall not cease to be a member or cannot be restrained from functioning as such. The restraint would come on incurring the disqualification as given in Section 13 and not because an order is passed under sub-section (3). Passing of an order under Section 14 is the consequence of the disqualification incurred by the member.

67. This can be further clarified by having a glimpse of sub-clause (a) of Section 13, which prescribes the disqualification which is under consideration in the present petition, namely, a person shall be disqualified for being chosen as and for being a member of a Kshettra Panchayat, if he is so disqualified by or under any law for the time being in force for the purpose of election of the State Legislature.

68. In case the holder of an office of Pramukh or member of the Kshettra Panchayat incurs a disqualification, which debars him under any law for the time being in force, for the purpose of election of State Legislature, there cannot be a plea from such a person to hold him disqualified only after determination being done by the Judge under Section 14. May be, in a case where the question arises, whether the person is holder of an office of profit or not or whether he is in arrears or not, such dispute regarding disqualification would necessarily have to be referred to be Judge, where incumbent can put his defence against such alleged disqualification. But in a case like disqualification for contesting the election of State Legislature under any law for the time being in force or if the incumbent has been dismissed from services of the State Government, Central Government or Local Authority, and on a challenge being made, if he does not say that he has been reinstated into service or dismissal order has been set aside, there cannot be any defence to protect his election or his continuance as a member.

69. Likewise, if a person has been convicted of an offence involving moral turpitude unless there is a dispute, that the offence, for which he has been

punished, whether would constitute moral turpitude, or has incurred any other such disqualification as given in Section 13, there would be no necessity to decide any such dispute or question regarding disqualification by the Judge.

70. By making this observation, we do not mean to say that the Judge would not have any competence to decide the dispute under Section 14, if a reference is made as per the provisions of sub-section (2) but what we stress upon, is that on incurring such a disqualification, which does not require any adjudication and where there can be no defence available to the elected member or the Pramukh, it is not always necessary to get an order of cessation of membership from the the Judge and rather, on the face of the disqualification incurred, he can be restrained from functioning as such, even by the High Court.

71. It could not be disputed by opposite party no. 7 nor it can be, that on conviction for an offence in which sentence awarded is more than two years, he has incurred a disqualification for the purpose of election of State Legislature under the law for the time being in force, namely, the Representation of People Act, 1951 and the provisions referred to above. His only plea is that despite such disqualification, he is entitled to the protection under sub-section (4) of Section 8 and, therefore, he cannot be held as disqualified nor he can be restrained from functioning as such, as his membership cannot cease because of the fact that he has already filed the appeal against the order of conviction and sentence, in which the execution of sentence has also been stayed, till the disposal of the appeal.

72. Sub-section (4) of Section 8 of the Representation of People Act, 1951 is an exception to the disqualification clause given under sub-section (3). It starts with non-obstante clause and protects the term of the elected member of the Parliament or the State Legislature, despite disqualification having been incurred by them under sub-section (1), (2) or (3) of Section 8, only for the period prescribed therein.

73. A bare perusal of sub-section (4) of Section 8, would reveal that it presupposes the incurring of a disqualification either under sub-section (1) or sub-section (2) or sub-section (3) [we are concerned with sub-section (3)] and then protects a person who on the date of his conviction is a Member of Parliament or

the State Legislature from the consequences thereof for the limited period, as it says that the aforesaid qualifications shall not take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

74. This means that though disqualification has certainly been incurred by such a sitting Member of Parliament or the Legislature of State but he being a member even on the date of conviction, his disqualification shall, in other words, remain in abeyance for the period mentioned in the aforesaid provision.

75. The question, therefore, is, whether the opposite party no. 7 who is an elected member of Kshettra Panchayat and thereafter was elected as Pramukh from amongst the members, would fall within the exemption clause of sub-section (4) aforesaid or that clause having not been specifically incorporated in Kshettra Panchayat Adhiniyam and no reference of the same having been made therein, would not be available to him.

76. Learned counsel for the parties do not dispute that sub-section (a) of Section 13 is a legislation by reference and that it does not physically and bodily incorporate any of the provisions of the Representation of People Act, 1951 in Kshettra Panchayat Adhiniyam specifically. It talks about disqualification of the member, because of which he cannot be chosen or allowed to continue but it does not say about any exemption of a sitting member from the operation of the mischief of disqualification for any period whatsoever.

77. A close reading of sub-sections (3) and (4) of Section 8 of the Representation of People Act, 1951, makes it clear that sub-section (3) lays down the disqualification with no exceptions and reservations i.e. if a person has been 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), he 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 but sub-section (4), a non-obstante provision, saves only the Members of Parliament and the Legislature of a State from the effect of disqualification for a period of three months from the

date of their conviction and if within that period an appeal or application for revision is filed, then till the disposal of the same by the court.

78. Sub-section (4) only speaks of Member of Parliament or Legislature of a State. It does not include in itself any other elected member, may be under the Kshettra Panchayat Adhiniyam, who on conviction for an offence, has been awarded a sentence of imprisonment of not less than two years. This is the plain and simple meaning of Section 13(a), which attracts the disqualification given in sub-section (3) of Section 8, and not the exemption as given in sub-section (4) of Section 8.

79. The Parliament was conscious about the class of persons (members) who needed protection from the mischief of disqualification, which they incur when they are in office and, therefore, it consciously decided only to protect the Members of Parliament and Legislature of a State. The specific mention about sitting Member of Parliament and Legislature of a State in sub-section (4), would not allow the Court to include any other member, who is elected under any other Act, may be Kshettra Panchayat Adhiniyam, nor such a member can be included into the aforesaid provision.

80. In case the intention of the Parliament was to give protection to the elected members of the Kshettra Panchayat, where disqualification as given in sub-clause (a) of Section 13 has been provided, the said protection (exemption clause) would also have been mentioned either in the aforesaid sub-section (4) of Section 8 or would have been incorporated or referred to in the Kshettra Panchayat Adhiniyam. That having not been done, the provision cannot be read for the benefit of those members who do not find place in the aforesaid provision.

81. This view is also fortified by the fact that the reason for giving this protection to the Members of Parliament or Legislature of a State is obviously not to give any lease of life from disqualification incurred by such a member or to protect his interest but, in fact, it is for the reason that the removal or cessation of such a sitting member from the Parliament or the Legislature of a State, may cause a situation, which would not be in the interest of running the House or in the interest of the political party on whose ticket such a member was elected or was returned to Parliament or Legislature of a State.

82. In the case of *K. Prabhakaran v. P. Jayarajan* (2005) 1 SCC 754, the apex court while considering the purpose of sub-section (4) of Section 8 of the Representation of People Act, 1951, namely, whether the protection against the disqualification conferred upon any candidate would continue to apply though the candidate had ceased to be a member on the date of nomination of elections, observed that a comparative reading of sub-sections (3) and (4) of Section 8 of the Representation of People Act shows that Parliament has chosen to classify candidates at an election into two classes for the purpose of enacting disqualification. These two classes are: (i) a person who on the date of conviction is a Member of Parliament or Legislature of a State, and (ii) a person who is not such a member. The persons falling in the two groups are well-defined and determinable groups and, therefore, form two definite classes. Such classification cannot be said to be unreasonable as it is based on a well-laid-down differentia and has nexus with a public purpose sought to be achieved.

83. Their Lordships further held that 'once the elections have been held and a House has come into existence, it may be that a member of the House is convicted and sentenced. Such a situation needs to be dealt with on a different footing. Here the stress is not merely on the right of an individual to contest an election or to continue as a member of a House, but the very existence and continuity of a House democratically constituted. If a member of the House was debarred from sitting in the House and participating in the proceedings, no sooner the conviction was pronounced followed by sentence of imprisonment, entailing forfeiture of his membership, then two consequences would follow. First, the strength of membership of the House shall stand reduced, so also the strength of the political party to which such convicted member may belong. The Government in power may be surviving on a razor-edge thin majority where each member counts significantly and disqualification of even one member may have a deleterious effect on the functioning of the Government. Secondly, a by-election shall have to be held which exercise may prove to be futile, also resulting in complications in the event of the convicted member being acquitted by a superior criminal court. Such reasons seem to have persuaded Parliament to classify the sitting members of a House into a separate category. Sub-section (4) of Section 8, therefore, provides that if on the date of incurring disqualification a person is a

member of a House, such disqualification shall not take effect for a period of 3 months from the date of such disqualification. The period of 3 months is provided for the purpose of enabling the convicted member to file an appeal or revision. If an appeal or revision has been filed putting in issue the conviction and/or the sentence which is the foundation of disqualification, then the applicability of the disqualification shall stand deferred until such appeal or application is disposed of by the court in appeal or revision'.

84. In *Shibu Soren v. Dayanand Sahay* [(2001) 7 SCC 425], a three-Judge Bench of the Supreme Court was seized of the question of examining a disqualification on account of the person at that time holding an office of profit. The Court held that such a provision is required to be interpreted in a realistic manner having regard to the facts and circumstances of each case and the relevant statutory provisions. While "a strict and narrow construction" may not be adopted which may have the effect of "shutting off many prominent and other eligible persons to contest the elections" but at the same time "in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points".

What is at stake is the right to contest an election and hold office. "A practical view, not pedantic basket of tests" must, therefore, guide courts to arrive at an appropriate conclusion. The disqualification provision must have a substantial and reasonable nexus with the object sought to be achieved and the provision should be interpreted with the flavour of reality bearing in mind the object for enactment.

85. Their Lordships further held that 'sub-section (4) operates as an exception carved out from sub-sections (1), (2) and (3) of Section 8 of RPA. Clearly the saving from the operation of sub-sections (1), (2) and (3) is founded on the factum of membership of a House. The purpose of carving out such an exception is not to confer an advantage to any person; the purpose is to protect the House. Therefore, sub-section (4) would cease to apply no sooner the House is dissolved or the person has ceased to be a member of that House. Any other interpretation would render sub-section (4) liable to be annulled as unconstitutional. Once a House has been dissolved and the person has ceased to be a member, on the

date of filing the nomination there is no difference between him and any other candidate who was not such a member. Treating such two persons differently would be arbitrary and discriminatory and incur the wrath of Article 14. A departure from the view so taken by us would also result in anomalous consequences not intended by Parliament'.

86. The reasons for upholding the constitutional validity of the aforesaid provision and the purpose and object inset thus, has been elaborately pronounced by the apex court in respect of the sitting member of the House.

87. Unless there is a specific provision under the Kshettra Panchayat Adhiniyam or under the Representation of People Act, the aforesaid exception clause cannot be made applicable to the elected members of Kshettra Panchayat.

88. This can be tested keeping in mind another angle also, namely, the object and purpose for saving the sitting member of the House from being ousted immediately on incurring a disqualification during the mid session of the tenure of the Parliament or Legislature of a State, as propounded by the apex court, which exception has not been carved out for protecting any right of the individual member but for protecting the House and its smooth functioning etc., whereas in the case of Kshettra Panchayat in which the elections are officially and formally apolitical, there is no question of House being short of any majority party nor the House would face any dissolution because one of the members has ceased to be a member because of incurring a disqualification nor there would be any vacuum in the Kshettra Panchayat by any such reason. Section 9(2) and Section 12 of the Act take full care of such a situation.

89. The constitution of Kshettra Panchayat is such, that out of the elected members, Pramukh is elected. There are several members who constitute the Kshettra Panchayat, as given in Section 6 and out of these elected members, the Pramukh is elected. The cessation of membership of any elected member or for that matter, of the Pramukh on incurring a disqualification, would not at all affect the functioning of the Kshettra Panchayat and, therefore, the reasons for which sub-section (4) has been consciously incorporated in the Representation of People Act, 1951 in Section 8, cannot be read under the provisions of Kshettra Panchayat

Adhiniyam.

90. The aforesaid being the legal position, it cannot be held that a member of the Kshettra Panchayat or the elected Pramukh who has incurred a disqualification under Section 13 sub-clause (a), shall not cease to be a member from the date of such disqualification and he cannot be restrained from functioning by the court, only because there is sub-section (4) of Section 8 under the Representation of People Act, 1951.

91. A member or Pramukh who has admittedly incurred disqualification referable to Section 13(a), during his subsisting tenure as a member or Pramukh cannot claim, as a matter of right, that he should be allowed to continue to discharge his functions of Pramukh during rest of the tenure irrespective of his conviction and sentence or till proceedings under Section 14 are initiated and of course, concluded.

92. The next argument of the counsel for opposite party no. 7 that the execution of sentence having been stayed by the High Court in criminal appeal, he cannot be treated as disqualified, is also to be rejected outrightly.

93. In the case of B.R. Kapur (supra) in Para 34 of the report, the court observed as under:

"It is true that the order of the High Court at Madras on the application of the second respondent states: "Pending criminal appeals the sentence of imprisonment alone is suspended and the petitioners shall be released on bail....", but this has to be read in the context of Section 389 under which the power was exercised. Under Section 389 an appellate court may order that "the execution of the sentence or order appealed against be suspended....". It is not within the power of the appellate court to suspend the sentence; it can only suspend the execution of the sentence pending the disposal of appeal. The suspension of the execution of the sentence does not alter or affect the fact that the offender has been convicted of a grave offence and has attracted the sentence of imprisonment of not less than two years. The suspension of the execution of the sentences, therefore, does not remove the disqualification against the second respondent."

94. In Para 58 of the report their Lordships observed that 'we are of the view that a person who is convicted for a criminal offence and sentenced to imprisonment for a period of not less than two years cannot be appointed the Chief Minister of a State under Article 164(1) read with (4) and cannot continue to function as such' and thereafter gave a declaration that the appointment of the second respondent as the Chief Minister of the State of Tamil Nadu on 14.5.2001 was not legal and valid and that she cannot continue to function as such. The appointment of the second respondent as the Chief Minister of the State of Tamil Nadu was quashed and set aside.

95. Hon'ble Brijesh Kumar, J, concurring with the view expressed by Hon'ble S.P. Bharucha, J, while considering the plea of the respondent that under Article 361 of the Constitution, the Governor shall not be answerable to any court for performance of duties of his office as Governor, observed that 'we are considering the prayer for issue of the writ of quo warranto against respondent no. 2, who according to the petitioner suffers from disqualification to hold the public office of the Chief Minister of a State. A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office.

96. It was further observed that the question of fulfilling the legal requirements and qualifications necessary to hold a public office would be considered in the proceedings, independent of the fact as to who made the appointment and the manner in which the appointment was made. Therefore, Article 361 of the Constitution would be no impediment in examining the question of entitlement of a person, appointed by the Governor to hold a public office, who according to the petitioner/relator is usurper to the office.

97. The stay of execution of sentence thus, could not be of any assistance to the opposite party no. 7, to plead that he has not incurred any disqualification or that his disqualification remains in abeyance for any period.

98. A plea has also been raised by the counsel for the opposite party no. 7 that the petition does not make a prayer for issuing of a writ of quo warranto and only a prayer for issuance of writ of mandamus has been made for not allowing the opposite party no. 7 to function and discharge the functions of Pramukh, besides prayer for quashing the orders dated 29.3.06 passed by the District Magistrate, therefore, this Court would not issue any quo warranto and no mandamus would lie in such a matter.

99. True, the relief of issuance of a writ of quo warranto would have been the appropriate relief but this Court can mould the relief if it flows from the pleadings and is not beyond the scope of the writ petition.

100. In the case of *State of Haryana v. Haryana Cooperative Transport*, AIR 1977 SC 237, the apex court observed as under:

"The mere circumstance that the first respondent did not in so many words ask for a writ of quo warranto cannot justify the argument that the appointment was being challenged collaterally in a proceeding taken to challenge the award. On the averments in the writ petition it is clear that the main and real attack on the award was the ineligibility of Shri Gupta to occupy the post of a Judge of a Labour Court in the discharge of whose functions the award was rendered by him.

The relief of certiorari asked for by the writ petition was certainly inappropriate but the High Court was also invited to issue such other suitable writ, order or direction as it deemed fit and proper in the circumstances of the case. There is no magic in the use of a formula. The facts necessary for challenging the appointment are stated clearly in the writ petition and the challenge to the appointment is expressly made on the ground that the officer was not qualified to hold the post."

101. In the case of *B.R. Ramabhadriah v. Secretary, Food & Agriculture Department, Andhra Pradesh and others*, (1981) 3 SCC 528, it was held as under:

"The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds."

102. The petition, therefore, cannot be thrown out only on the ground that writ of quo warranto has not been specifically prayed for, and instead, a writ in the nature of mandamus for restraining the opposite party no. 7 from continuing with the office of the Pramukh has been asked for.

103. In view of the aforesaid consideration of the issues involved and the reasoning given by us, our conclusions are as under:

(i) In the case of a Pramukh who incurs a disqualification as given in Section 13, which does not require any adjudication and could have no legal and factual defence i.e. the disqualification is so glaring that it stares on the face, writ of quo warranto can be issued against such a Pramukh;

(ii) In the aforesaid circumstance, incurring such a disqualification on its own will result into cessation of membership, therefore, the District Magistrate can also treat the office of Pramukh as vacant and make arrangement in view of Section 9(2) of the Act, if an elected Up-Pramukh is not otherwise available;

(iii) The District Magistrate even in such a case, can also refer the matter to the Judge concerned who need decide the same within the shortest possible time.

The discretion of the District Magistrate should be exercised in a manner which is in accordance with the provisions of the Act and does not offend any of the provisions nor the right of the Pramukh in case there is a disqualification, which can be disputed; and

(iv) If the disqualification incurred is a disqualification which requires adjudication, the necessary reference has to be made to the Judge and the District Magistrate will have no power to restrain or restrict the functioning of the Pramukh.

105. In this view of the matter, this Court, in a case which involves no disputed question of fact, can certainly issue the desired writ and restrain the opposite party no. 7 from functioning as a member or Pramukh of the Kshettra Panchayat.

106. We, for the reasons stated above, are of the considered opinion that the opposite party no. 7 having incurred a disqualification as given in sub-section (a) of Section 13, cannot be allowed to discharge the functions of the member or elected Pramukh, as he ceased to be a member from the date of incurring such a disqualification. We hold and direct accordingly.

107. We further direct that the functions of the Pramukh, with immediate effect, shall be looked after by the Up-Pramukh, if there is an elected Up-Pramukh, whose term has not expired and in case there is no such Up-Pramukh available, then the District Magistrate may make an alternative arrangement under Section 9(2), by nominating any member to look after the functioning of Pramukh, till a new Pramukh is elected, if any election is to take place, as per rules.

108. We for the aforesaid reasons, also quash the order dated 29.3.06 passed by the District Magistrate.

109. In the last we would be failing in our duty if we do not explain the interim order, which was passed at the initial stage of filing of the writ petition, when the opposite party no. 7 was in jail as under-trial prisoner but was not convicted and sentenced and he was allowed to function as Pramukh from jail. By means of the interim order, this Court had provided that alternative arrangement, as directed in the interim order, was to be made till the opposite party no. 7 was released from jail, in terms of Section 9-A.

110. Based on the aforesaid observation, a plea has also been raised that resumption of office by opposite party no. 7 is totally in accordance with Section 9-A and observations made in the interim order by this Court.

111. In this regard reliance has been placed upon the case of Smt. Mithilesh Kumari Singh vs. State of Uttar Pradesh and others [Writ Petition No. 5878 (MB) of 2008] decided on 17.7.08.

112. In this case, the petitioner was an elected Pradhan of Block Gilaula, District Shravasti. She was convicted for the offences under Sections 147, 148, 302/149, 307/149, 504, 506 and 120B IPC and was sentenced for life imprisonment in Sessions Trial No. 173 of 2005 on 11.4.08. While the petitioner was in jail, on 5.5.08 the District Magistrate considering her absence and inability to perform the functions of Pramukh, exercising his powers under Section 9-A of the Act, passed an order appointing a Committee of three persons for looking after the work of Pramukh. The petitioner filed criminal appeal wherein she was granted bail on 12.5.08 and thereafter she moved an application under Section 389 sub-clause (1) Cr.P.C. praying that conviction and sentence of the petitioner be suspended during pendency of the appeal. A Division Bench of this Court passed an order on 23.5.08 suspending the conviction and sentence passed in the aforesaid Sessions Trial against the petitioner till disposal of the appeal. Since the petitioner was not allowed to resume duties even thereafter, she filed the writ petition, which was allowed by a Division Bench of this Court, of which one of us (Pradeep Kant,J.) was a member, with a direction that the petitioner shall be allowed to continue to discharge duties as Pramukh, in the light of the observations made in the order.

113. In the aforesaid judgement, provisions of Section 9-A were discussed, which permitted any Pramukh or Up-Pramukh, as the case may be, to resume his duties after his absence for a limited period, as given therein.

114. Emphasis has been laid upon the said judgement by the opposite party no. 7 saying that he is also entitled to continue as such, as per the aforesaid pronouncement.

115. The said judgement was based on a different set of facts, where, on an application moved under Section 389 sub-clause (1) Cr.P.C., the Court passed an order suspending the conviction and sentence passed in Sessions Trial against the petitioner till disposal of the appeal, whereas in the instant case, when the opposite party no. 7 was in jail, he was not convicted of any offence but during pendency of the writ petition, he has been convicted and sentenced to imprisonment of life and of ten years respectively in two Session Trials clubbed together.

116. The question, whether conviction and sentence could have been suspended by the appellate court under Section 389 was never raised in that writ petition, therefore, this Court did not address on the issue of disqualification in that context, as has been raised in the present writ petition.

117. Further in view of the aforesaid order of suspending the conviction and sentence of the appellate court, the question, whether the petitioner has incurred any disqualification even under Section 13(a), could only have been decided by taking recourse to Section 14 of the Act.

118. The aforesaid judgement thus, cannot be read as a precedent on the plea of disqualification having been incurred by a member under Section 13.

119. This is the main distinguishing feature between the aforesaid judgement and the present case, which does not entitle the opposite party no. 7 to take the benefit of the aforesaid judgement.

120. Apart from the aforesaid reason, Section 9-A of the Act would not be of any use to opposite party no. 7 as he has incurred a disqualification, in consequence of which he no more remains a member and consequently, is restrained from functioning as Pramukh and, therefore, his cessation of membership would result into a casual vacancy in the office of Pramukh, which is to be filled in as per Section 12 of the Act, and in the meantime if there is Up-Pramukh, as observed earlier, either he, or in case of non-availability of such a Up-Pramukh, the member nominated under Section 9(2) will discharge the functions of the Pramukh. In either case Section 9-A will not be attracted.

121. With the aforesaid observations and directions, the writ petition is allowed. No order as to costs.

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