

Before J. M. Tandon, J.

RAHIM KHAN,—Petitioner.

versus

ELECTION COMMISSION OF INDIA and another,—Respondents.

Civil Writ Petition No. 511 of 1980.

May 30, 1980.

Representation of the People Act (43 of 1951)—Sections 8-A, 80-A and 116-B—Constitution of India 1950—Article 190(4)—High Court declaring the election of a Legislator void and disqualifying him for six years—Supreme Court in appeal permitting the Legislator to sign the register of the Assembly with no right to participate in the proceedings—Such conditional order—Whether amounts to stay of operation of the order of the High Court—Appeal dismissed by the Supreme Court—Six years period of disqualification—Whether to commence from the date of dismissal of appeal by the Supreme Court.

Held, that where a legislator whose election had been declared void could sign the register of the Legislative Assembly as a member and as a consequence thereof could attend the Assembly during session without actually participating therein, it cannot be said that the interim stay of the operation of the order of the High Court had been declined. Conversely, the permission extended to such a legislator by way of interim stay issued by the Supreme Court to sign the register of the Legislative Assembly revived his membership. Such revival of membership could only be the result of the stay of the operation of the order of the High Court declaring his election void. It is thus clear that the permission given to such a legislator to sign the register *per se* amounted to the stay of the operation of the order of the High Court. To avoid evil consequences under Article 190(4) of the Constitution of India 1950 may be one of the objects for issuing the stay order by the Supreme Court but the fact remains that his membership of the Assembly stands revived to enable him to sign the register of the Assembly in that capacity. Thus, the conditional order issued by the Supreme Court in favour of such a legislator permitting him to sign the register of the Legislative Assembly as a member thereof did amount to stay of the operation of the order of the High Court in terms of section 116-B of the Representation of the People Act, 1951. In this situation, the period of six years disqualification shall commence with effect from the date the Supreme Court dismisses his appeal and not with effect from the date when his election had been declared void by the High Court. (Paras 7, 10 and 11).

Petition under Articles 226/227 of the Constitution of India praying that the following reliefs may be granted to the petitioner :—

- (i) *The list Annexure P/1 be quashed in so far as it relates to the petitioner by means of an appropriate writ order or direction.*

- (ii) A direction be issued declaring that the period of disqualification of six years started with effect from the date of the Judgment and Order of the Hon'ble Court i.e. March 12, 1973 and expired on March 12, 1979.
- (iii) Any other writ, order or direction be issued at this Hon'ble Court may deem fit in the circumstances of the case.
- (iv) Filing of certified copy of Annexure P/1 be dispensed with.
- (v) The costs of the petition be awarded to the petitioner.

B. S. Malik, Advocate, for the Petitioner.

U. D. Gaur, A. G. Haryana,, for the Respondent.

JUDGMENT

J. M. Tandon, J.

(1) Ch. Rahim Khan, petitioner contested Vidhan Sabha election from Nuh Constituency of district Gurgaon in March, 1972, against Khurshid Ahmed and others and was declared elected. Khurshid Ahmed filed an election petition (No. 7 of 1972) under sections 80 and 80-A of the Representation of the People Act, 1951 (hereinafter the Act) and the same was accepted on March 12, 1973, by the High Court on the ground that the petitioner had committed corrupt practice at the election. The petitioner was disqualified for a period of six years under section 8-A (old) of the Act. The petitioner preferred an appeal to the Supreme Court under section 116-B of the Act against the order of the High Court, dated March 12, 1973, and also applied for an interim stay of the operation of the impugned order. On May 4, 1973, the Supreme Court passed an interim order on the stay petition of the petitioner, the operative part of which reads:—

“ the petitioner-appellant herein be and is hereby permitted to sign the register of the Haryana Legislative Assembly and shall not take part in the proceedings of the said Assembly, shall not be entitled to any allowances of requisites as a Member of the said Assembly.

(2) ”.

Rahim Khan v. Election Commission of India and another
(J. M. Tandon, J.)

The Supreme Court dismissed the appeal of the petitioner on August 8, 1974. The order of the Supreme Court issued by the Deputy Registrar reads:—

“The appeal abovementioned being called on for hearing before this Court on the 10th, 11th, 15th, 16th, 17th, 18th, 19th, 22nd, 23rd, 24th, 25th, 26th, 29th and 30th days of April, 1974 upon hearing counsel for the appellant and respondent No. 1. THIS COURT DOTH ORDER: (1) THAT the apeal abovementioned be and is hereby dismissed; (2) THAT the parties herein shall bear their respective costs of this appeal throughout; (3) THAT this Court’s order, dated the 4th day of May, 1973, granting stay in Civil Misc. Petition No. 3751 of 1973 be and is hereby vacated; AND THIS COURT DOTH FURTHER ORDER THAT THIS ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon’ble Shri Ajit Nath Ray, Chief Justice of India at the Supreme Court, New Delhi, dated this the eighth day of August, 1974.

(Sd.) . . . ,
DEPUTY REGISTRAR”.

(2) A list of persons disqualified under sections 8-A and 11-A (2) of the Act as on August 31, 1979 (relevant excerpt P. 1) was prepared and the name of the petitioner was entered therein. The period of disqualification against the name of the petitioner was shown as six years from August 8, 1974. The petitioner moved the President of India/Election Commission praying for the removal of his disqualification and in the alternative pointing out that his period of disqualification should be taken as expired on March 12, 1979, that is on the expiry of six years with effect from March 12, 1973. The representation of the petitioner was declined and the view expressed by the authorities was that the period of disqualification would start from the date of the Supreme Court’s judgment, that is August 8, 1974. The petitioner has filed the present writ petition praying that the list P. 1 in so far as it relates to him be quashed on the ground that the period of his disqualification of six years stands expired on March 12, 1979.

(3) The writ has been contested by the Election Commission of India. In the written statement submitted on its behalf by S. K. Mendiratta, Superintendent Legal, it has been averred that the period of six years disqualification shall commence from the date of the order of the Supreme Court, that is, August 8, 1974, and not with effect from the date of the order of the High Court, that is March 12, 1973, because in an appeal filed by the petitioner against the order of the High Court, the operation thereof was stayed by interim order, dated May 4, 1973, which was vacated on August 8, 1974, when the appeal was dismissed by the Supreme Court.

(4) The learned counsel for the petitioner has argued that the order of the Supreme Court, dated May 4, 1973, the operative part of which has been reproduced above, did not stay the operation of the order of the High Court. The Supreme Court did lay down terms and conditions which only reiterate the effect of the order of the High Court. The petitioner was allowed to sign the register of the Haryana Legislative Assembly during the pendency of the appeal only to save him from the evil consequences of his seat being declared vacant by the House under Article 190(4) of the Constitution of India. The interim permission extended to the petitioner to sign the register of the Haryana Legislative Assembly did not have the effect of the stay of the operation of the impugned order of the High Court in terms of section 116-B of the Act.

(5) Section 116-B of the Act deals with the stay of operation of the order of the High Court and it reads:—

“Stay of operation of order of High Court:—

- (1) An application may be made to the High Court for stay of operation of an order made by the High Court under section 98 or section 99 before the expiration of the time allowed for appealing therefrom and the High Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order; but no application for stay shall be made to the High Court after an appeal has been preferred to the Supreme Court.
- (2) Where an appeal has been preferred against an order made under section 98 or section 99 the Supreme Court

Rahim Khan v. Election Commission of India and another
(J. M. Tandon, J.)

may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from.

- (3) When the operation of an order is stayed by the High Court or, as the case may be, the Supreme Court, the order shall be deemed never to have taken effect under sub-section (1) of section 107; and a copy of the stay order shall immediately be sent by the High Court or, as the case may be, the Supreme Court, to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned."

(6) On the stay petition of the petitioner, the Supreme Court passed the order reproduced above on May 4, 1973. By this order, either the prayer of the petitioner for stay was accepted or declined. According to the learned counsel for the petitioner, the stay prayed for was declined inasmuch as no specific order was passed staying the operation of the order of the High Court. I am not impressed by this contention. If the petitioner had not been granted interim stay, he could not be permitted to sign the register of the Haryana Legislative Assembly as a Member. This point came up for discussion before the Supreme Court in *Smt. Indira Nehru Gandhi v. Raj Narain and another* (1), and it was observed:—

"..... It would be a curious contradiction to say that a person is disqualified to be chosen as or being a Member and yet be allowed to sign the Register as Member. Can the Court, without stultifying itself and usurping power, permit a non-Member to sit in the House instead of or even in the Visitor's gallery, unless it necessarily reads into the order of stay of judgment a suspension of the disqualification also The typical stay restores to the appellant, during its operation, the full status of a Member of a Legislature minus the right to participate in debates, including voting and drawing of remuneration as a legislator."

(7) It is clear from the observations of the Supreme Court that the petitioner could sign the register of the Haryana Legislative

(1), A.I.R. 1975 S.C. 1590.

Assembly as a Member (and as a consequence thereof) could attend the Assembly during Session only as a Member without actually participating therein. If the interim stay of the operation of the order of the High Court prayed for had been declined, the petitioner could not be permitted to sign the register of the Haryana Legislative Assembly as a member and further to attend the Assembly Session. Conversely, the permission extended to the petitioner by way of interim stay issued by the Supreme Court to sign the register of the Haryana Legislative Assembly revived his membership. Such revival of membership of the petitioner could only be the result of the stay of the operation of the impugned order of the High Court. It is thus clear that the permission given to the petitioner to sign the register of the Haryana Legislative Assembly by the Supreme Court *per se* amounted to the stay of the operation of the order of the High Court.

(8) After the petitioner had been permitted to sign the register of the Haryana Legislative Assembly he was debarred from taking part in the proceedings of the Assembly or to claim allowances or requisites as a Member of the said Assembly. These terms and conditions laid down by the Supreme Court would have been unnecessary and redundant if the interim stay of the operation of the order of the High Court prayed for by the petitioner had been declined. The argument of the learned counsel for the petitioner is that by laying down the terms and conditions, the Supreme Court merely reiterated the consequence of the order of the High Court. There is hardly any force in this contention. If the interim stay prayed for by the petitioner had been declined there could be no occasion for the Supreme Court to reiterate the consequence of the order of the High Court. The Supreme Court laid down the terms and conditions because the membership of the petitioner had been revived inasmuch as he had been permitted to sign the register of the Legislative Assembly as a Member.

(9) The Supreme Court in its order, dated August 8, 1974, specifically vacated the interim stay order issued on May 4, 1973. If the contention of the learned counsel for the petitioner that the interim stay prayer of the petitioner was declined by the Supreme Court on May 4, 1973, is to prevail then no question of its vacation arose when the appeal of the petitioner was dismissed on August 8, 1974. The fact that the stay issued in favour of the petitioner on May 4, 1973, was specifically vacated on August 8, 1974, confirms

**Gurcharan Singh and others v. State of Punjab and others
(Harbans Lal, J.)**

that the stay order of the petitioner had been accepted and not declined.

(10) The petitioner signed the register of the Haryana Legislative Assembly in pursuance of the stay order issued by the Supreme Court on May 4, 1973, with the result that his seat could not be declared vacant by the High Court under Article 190(4) of the Constitution. It is obvious that the evil consequences of Article 190(4) did not follow because the petitioner signed the register of the Assembly as a Member and not otherwise. To avoid evil consequences under Article 190(4) of the Constitution may be one of the objects for issuing the stay order by the Supreme Court on May 4, 1973, but the fact remains that his membership of the Assembly was revived to enable him to sign the register of the Assembly in that capacity.

(11) In view of discussion above, I hold that the stay order issued by the Supreme Court on May 4, 1973, in favour of the petitioner permitting him to sign the register of the Haryana Legislative Assembly as a Member thereof did amount to stay of the operation of the order of the High Court in terms of section 116-B of the Act. In this situation, the period of six years disqualification of the petitioner shall commence with effect from August 8, 1974, on which date the Supreme Court dismissed his appeal and not with effect from March 12, 1973, when his election was declared void by the High Court.

(12) In the result, the writ petition fails and is dismissed with no order as to costs.

S. C. K.

Before Harbans Lal, J.

GURCHARAN SINGH and others,—Petitioners.

versus

STATE OF PUNJAB and others,—Respondents.

Civil Writ No. 529 of 1980.

May 30, 1980.

*Land Acquisition Act (1 of 1894)—Sections 4, 5-A, 6 and 9—
Constitution of India 1950—Article 226—Delay in publication of the*