



P. V. NARSIMHA RAO V. STATE (CBI/SPE)(1982) 2 SCC 397*

Introduction

The Supreme Court Constitutional Bench judgment had gathered great attention due to the involvement of several senior politicians, including the Prime Minister of India. The Court in this case was presented with an opportunity to interpret a substantial question of law which would have far reaching consequences both for the Indian Parliament and for the Indian Political Scenario at large. Moreover, it dealt with the powers of the Parliament to prosecute for its contempt and the ambit of Parliamentary Privileges granted to the Members of Parliament. Hence, Parliamentary supremacy and separation of powers were the protagonists in the play whose fate had to be decided.

Judges/Coram

S.C. Agrawal, G.N. Ray, Dr. A.S. Anand, S.P. Bharucha and S. Rajendra Babu, JJ.

Facts

In the General Election for 10th Lok Sabha held in 1991 Congress (I) party emerged as the single largest party and it formed the Government or P.V. Narasimha Rao. The support of 14 members was needed to have the no-confidence motion defeated. On 28-7-1993, the no-confidence motion was lost, 251 members having voted in support and 265 against. Certain members of the Lok Sabha having allegiance to the Jharkhand Mukti Morcha (the JMM), Janata Dal, and Ajit Singh group (the JD, AS) voted against the no-confidence motion. Ajit Singh abstained from voting thereon. Shri Ravindra Kumar filed a complaint on 1-2-1996 with the CBI wherein it was alleged that in July 1993 a criminal conspiracy was hatched pursuant to which the above members agreed to and did receive the bribes, to giving of which P.V. Narasimha Rao, MP and Prime Minister, along with others were parties to vote against the no-confidence motion. A prosecution was launched and cognizance was taken by the special Judge Delhi. The persons sought to be charged

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as aforesaid, filed petitions in the Delhi High Court seeking to quash the charges. The HC dismissed the petitions. Hence an appeal was filed in the Supreme Court of India and then referred to a Constitution Bench.¹

“...The learned counsel for the parties agree that the Constitution Bench may only deal with the questions relating to interpretation of Article 105 of the Constitution and the applicability of the Prevention of Corruption Act to a Member of Parliament and Member of State Legislative Assembly and the other questions can be considered by the Division Bench.”

Subject: Constitution

Subject: Criminal

Provisions under question

1. Constitution of India Article 105(1)
2. Constitution of India Article 105(2)
3. Constitution of India Article 19(1)

Issues Raised²

1. Does Article 105 of the Constitution confer any immunity on a Member of Parliament from being prosecuted in a criminal court for an offence involving offer or acceptance of bribe?
2. Is a Member of Parliament excluded from the ambit of the 1988 Act for the reason that :
 - a. he is not a person who can be regarded as a "public servant" as defined under Section 2(c) of the 1988 Act, and

¹ Supallab Chakraborty, *Comparative analysis of P.V. Narasimha Rao v. State and U.S. v. Brewster*, ACADEMIKE (ISSN: 2349-9796) (February 3, 2015), <https://www.lawctopus.com/academike/comparative-analysis-p-v-narasimha-rao-v-state-u-s-v-brewster/>

² P. V. Narsimha Rao v. State (CBI/SPE) (1982) 2 SCC 397, para 98.

- b. he is not a person comprehended in Clauses (a), (b) and (c) of Sub-section (1) of Section 19 and there is no authority competent to grant sanction for his prosecution under the 1988 Act?

Arguments

1. The argument on behalf of the appellants to be considered by the Constitution Bench, broadly put, is that, by virtue of the provisions of Article 105, they are immune from the prosecution and that, in any event, they cannot be prosecuted under the Prevention of Corruption Act, 1988. Article 105(2) protects a Member of Parliament against proceedings in court that relate to, or concern, or have a connection or nexus with anything said, or a vote given, by him in Parliament.³

To which the State responded by drawing the nexus. The charge against the alleged bribe takers is that they "were party to a criminal conspiracy and agreed to or entered into an agreement with" the alleged bribe givers "to defeat the no-confidence motion...by illegal means, viz., to obtain or agree to obtain gratification other than legal remunerations" from the alleged bribe givers "as a motive or reward for defeating the no-confidence motion and in pursuance thereof "the alleged bribe givers "passed on several lacs of rupees" to the alleged bribe takers, "which amounts were accepted" by them . The stated object of the alleged conspiracy and agreement is to defeat the no-confidence motion and the alleged bribe takers are said to have received monies "as a motive or reward for defeating" it.⁴

2. The Attorney General submitted that a proceeding in court founded on the allegation that a member of Parliament had received a bribe to vote in a particular way was not a proceeding in respect of a vote that he had given and that, therefore, the member did not enjoy immunity from the proceeding by reason of Article 105(2).⁵
3. The object of the immunity conferred under Article 105(2) is to ensure the independence of the individual legislators. Such independence is necessary for healthy functioning of the system of parliamentary democracy⁶ adopted in the Constitution. An interpretation of Article 105(2) which would enable a Member of Parliament to claim immunity from prosecution in a criminal court for an offence of bribery in connection with anything said

³ Id. para 31.

⁴ *Supra note 2*, para 32.

⁵ *Supra note 2*, para 13.

⁶ Jaganmohan Reddy, J. in *Kesavananda Bharti v. State of Kerala* treated Parliamentary Democracy as a basic feature of the Constitution.

by him or a vote given by him in Parliament or any committee thereof would thereby place such Members above the law. It would be repugnant to healthy functioning of Parliamentary democracy and be subversive of the Rule of Law.⁷ It is settled law that in interpreting the constitutional provisions the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution.⁸

4. Mr. Sibal, counsel of the appellant, urged that just as this court had there directed that no criminal prosecution should be launched against a Judge of a High Court or the Supreme Court without first consulting the Chief Justice of India, therefore no criminal prosecution should be launched against a member of Parliament without first consulting the Speaker. To prosecute a public servant the prior sanction of the authority competent to remove him is a must.
5. It was argued Article 19(1) of the Constitution of India is not an absolute right by virtue of being subject to certain limitations. However, Article 105 which is a parallel right for parliamentarians is not subject to the same restrictions. It is absolute. The said Article is only subject to Article 13 of the Indian Constitution.

Ratio Decidendi

“84...the alleged bribe takers...who voted upon the no-confidence motion are entitled to the immunity conferred by Article 105(2)”

“188. On the basis of the aforesaid discussion we arrive at the following conclusion:-

- 1. A Member of Parliament does not enjoy immunity under Article 105(2) or under Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof.*
- 2. A Member of Parliament is a public servant under Section 2(c) of the Prevention of Corruption Act, 1988.*
- 3. Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by*

⁷In *Indira Nehru Gandhi v. Raj Narain*, K.K. Mathew, J. considered the concept or rule of law as part of the basic structure of the Constitution.

⁸ *Supra note 2*, para 137.

Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13, and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be.”⁹

Analysis

1. Immunity of Member of Parliament under Article 105?

It is interesting to note that a literal interpretation to the section has been given.

The Supreme Court’s constitution bench by a majority of three judges to two answered to the first issue in affirmative. The privilege of immunity from court proceedings in Article 105(2) extends to bribes taken by members of Parliament for voting in a particular manner in the Parliament.

However, it is interesting to note that a distinction has been made between those who accepted the bribe and did not vote in the Parliament and those who accepted the bribe and did vote in that accordance.

The Members of Parliament who did vote were exempted from consequent criminal proceedings and were inferred to be protected under the ambit of Article 105(2) of the Constitution of India.

It is submitted that this decision of the majority, though unfortunate, is a very well formulated one. The reason of the same being:

- a) The Article reads, “There shall be freedom of speech in Parliament”.¹⁰ It was said, with reference to the law in England in respect of the privileges and immunities of the House of Commons, so far as a member of the House of Commons was concerned, the member had an absolute privilege in respect of what he had spoken within the four walls of the House. A vote, whether cast by voice or gesture or the aid of a machine, is treated as an extension of speech or a substitute for speech and is given the protection that the spoken word has.

⁹See also *Supra* note 2, para 82.

¹⁰ Article 105(1), Constitution of India.

Therefore, the members of Parliament who voted, irrespective of the reason of the vote, are on the literal interpretation of the Article subject to immunity under the same.

- b) The members who accepted or offered the bribe outside the parliament would be subject to Criminal Proceedings as the same wasn't within the four walls. Moreover, as stated by the Attorney General, the completion of the crime of bribery happened on acceptance, with disregard to the final vote or speech.
- c) Further, the immunity extends to speeches made or votes given and not the negative. The immunity does not extend to votes not given or/and speeches not made. Thereby, the members of parliament who did not vote in the nature the bribe had been made for could not be brought under the umbrella of the privilege.

The decision is submitted as unfortunate. The reason of this being the following:

- a) As stated on the judgment, an interpretation of the provisions of Article 105(2) which would enable a Member of Parliament to claim immunity from prosecution in a criminal court for an offence of bribery in connection with anything said by him or a vote given by him in Parliament or any committee thereof and thereby place such Members above the law would not only be repugnant to healthy functioning of Parliamentary democracy but would also be subversive of the Rule of Law which is also an essential part of the basic structure of the Constitution. It is settled law that in interpreting the constitutional provisions the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution.
- b) The pith of substance of the article needs to be looked at. It is certain that the drafters of the Constitution must not have the intention to distinguish between members of the parliament who commit the acts of bribery outside or inside the four walls of the parliament. The members are placed at a high pedestal in the society and as public representatives are thereof expected to hold themselves in the highest conduct.

2. Is Member of Parliament a “Public Servant” under Section 2(c) Act?

The Court reached the conclusion that members of Parliament and the State legislatures are public servants¹¹ for the purpose of the Act. The Court referred to the use of the expression ‘office’ in the provision of the Constitution and The Representation of the People Act, 1951. The Court held the view that membership of Parliament is an office as the holder carries certain responsibilities which are of public character. On account of office, it becomes an obligation to perform public duties. Drawing the same inference, the Court concluded that a Member of Parliament is a public servant.

It is submitted that the decision of Court is appreciated. It elevates and reiterates the ideals of Rule of Law. The Supreme Court¹² observed that the Statement of Object and Reasons for the Prevention of Corruption Act demonstrates that the legislature intended to strengthen the anti-corruption law by widening its coverage and broadening the definition of 'public servant' under the act.

3. Competent authority to grant Sanction?

The Court by a majority of three judges to two held that the Members of Parliament are liable for prosecution under the Act. However, there was an absence of any single individual authority competent to remove and grant sanction for their prosecution.¹³

The majority opinion held that the minority opinion falls behind as it ignores the fact that sanction is not a prerequisite for prosecution for all offences under the statute; it is limited to those expressly specified in the sanction provision. It was held that till the lacuna is removed by Parliament in this regard, the Chairman of the Rajya Sabha/ Speaker of the Lok Sabha shall be empowered to grant permission for the prosecution of a Member of Parliament.

It is submitted that the decision of the majority is rightly made. For the object of a sanction is to safeguard a public servant from any malicious or frivolous allegations by persons with vested

¹¹ *Supra note 2*, para 82.

¹² *Central Bureau of Investigation v Ramesh Gell* (2016) 3 SCC 788.

¹³ **Sections 7, 10, 11, 13, 15 of Prevention of Corruption Act, 1988.**

interests. It does not serve the purpose of shielding a public officer of a prosecution of an offence (s)he committed.

Conclusion

The judgment comes with a baggage which a member of a parliament might use to his or her benefit. This was the decision of the majority to give immunity to those members who have received bribes. The classification is artificial and fails to work in the interest of the people and the voters whose representatives the provisions apply on.

At the same time, by making Member of Parliament and public servant synonyms in respect to certain provisions the Court limits the members of Parliament to the Rule of Law. It strengthens the corruption laws in force in the territory of India.

