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Case Comment: P V Narasimha Rao vs State

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INTRODUCTION

Article 105(2) of the parliament, "*provides immunity to MPs from liability in any proceedings in any court in respect of any vote given by him in the Parliament*"[1]. This present case which I am going to analyze is a landmark judgment concerning the above-mentioned provision where several parliamentarians were immunized from prosecution for bribery as it was 'in respect of a parliamentary vote given.[2] Although one of the accused wasn't provided immunity by the court as he didn't vote for what he had accepted the bribe for. So, what exactly this meant was if a legislator voted by the bribe taken. The immunity shall be applicable.

FACTS OF THE CASE

In the 10th Lok Sabha General elections Congress (I) party emerged as the single largest party and P.V. Narasimha Rao formed the government as the Prime Minister. Subsequently, on 26.07.1993 a motion for non-confidence was passed and the support of some 14 members was needed to prove the majority in the house. The members namely were, "Suraj Mandal, Shibu

[1] Constitution of India, art 105(2)
[2] *Ibid*

Soren, Simon Marandi, and Shailendra Mahto, Members of the Lok Sabha owing allegiance to the Jharkhand Mukti Morcha and Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadicharan Das, Abhay Pratap Singh, and Haji Gulam Mohammed, Members of the Lok Sabha owing allegiance to the Janata Dal, Ajit Singh group (the JD, AS), voted against the no-confidence motion"[3].

On 28.07.1993 they defeated the non-confidence motion. Rashtriya Mukti Morcha along with Ravinder Kumar alleged that there was a criminal conspiracy with certain MPS from Jharkhand Mukti Morcha and Janta Dal (Ajit Singh) received bribes from P.V. Narasimha Rao to help them defeat the motion and filed a complaint with CBI.[4] A case against the alleged bribe takers and bribe givers under the prevention of corruption act, 1988[5] and sec 120-B of the Indian Penal Code,[6] and the cognizance was taken by Special Judge, Delhi. The accused filed petition in the Delhi High Court but the same was dismissed. Hence, they moved an appeal to a constitutional bench at the Hon'ble Supreme Court.

ISSUES RAISED

- Does the immunity provided under Article 105(2)[7] to the members of parliament be invoked to prevent prosecution in a criminal court for an offence involving giving or taking a bribe?
- Is a parliamentarian considered a 'public servant' as defined under sec 2 (c) of the Prevention of Corruption Act, 1988[8]?

[3] *PV Narasimha Rao v State* (1998) 4 SCC 626
[4] *Ibid*
[5] Prevention of Corruption Act 1988
[6] Indian Penal Code 1860, s 120B
[7] Constitution of India, art 105(2)
[8] Prevention of Corruption Act 1988, s 2(c)

- Whether an M.P. is excluded from the jurisdiction of the 1988 Act since "*he is not a person comprehended in clause (a)*[9]*,(b)*[10] *and (c)*[11] *of sub-section (i) of sec 19, as there is no authority to grant sanction for his prosecution for the offences mentioned under the given act*?"[12]

CONTENTIONS RAISED BY BOTH THE PARTIES

The counsel for the Appellant submitted that the immunity provided by Article 105(2),[13] should be interpreted widely so that the Members could exercise their right to vote without any fear of legal proceedings. He contended that by the immunity the offer and acceptance by an M.P. of a bribe in connection with giving a vote will not be considered a criminal offence and neither the one giving the bribe nor the one receiving it can be prosecuted.[14] Also, no charge of Conspiracy under sec 120-B of IPC nor any other offence mentioned under the 1988 Act can be revoked against them. The counsel relied on the judgment given by the Court of Queen's Bench in *Wason ex p*[15] and the judgment of the Supreme Court of United States in *Johnson*[16] for the same.[17]

However, the learned Attorney General from the side of the state argued that the immunity which is granted under clause (2) of Article 105,[18] "*protects from any liability for a speech made by him or any vote given by him in the house or a committee thereof, but it cannot be extended to provide immunity from prosecution of a member for having received a bribe or has entered in a criminal conspiracy to make a vote or give a speech*"[19]. He relied on the Judgment by the U.S. Supreme Court in *Brewster*[20].

In India no set law tells us what all parliamentary privileges are enjoyed by the M.P., it is treated as they enjoy the powers, immunities, and privileges which were available to the Members of

[9] Prevention of Corruption Act 1988, s 19(a)
[10] Prevention of Corruption Act 1988, s 19(b)
[11] Prevention of Corruption Act 1988, s 19(c)
[12] *PV Narasimha Rao v State* (1998) 4 SCC 626
[13] Constitution of India, art 105(2)
[14] *Ibid*
[15] *Wason v Walter* 11 (1869) 4 QB 573 : 38 LJQB 302
[16] *United States v Thomas F Johnson* 15 L Ed 2d 681
[17] *Ibid*
[18] Constitution of India, art 105(2)
[19].*Ibid*
[20] *United States v Brewster* 33 L Ed 2d 507

the House of Commons at the commencement of the Constitution on 26.01.1950. The appellant submitted that acceptance of a bribe by a member of the House of Commons was treated as a breach of privilege but was not triable as an offence in any criminal court. Therefore, the same will be applicable in India.[21] The counsel for the state submitted that till the decision in *R. V. Currie*[22] the position in England was that acceptance of a bribe was not an offence, and since it was not treated as an offence, the question of whether he enjoys immunity from prosecution in a criminal court on a charge of bribery never came before the court and hence it cannot be claimed by the Member of Parliament in India.[23]

RATIONALE BY THE COURT

The Constitutional Bench consisting of S.C. Agrawal, G.N. Ray, Dr. A.S. Anand, S.P. Bharucha, and S. Rajendra Babu by a majority of 3:2 held that Member of Parliament who took bribes (except Ajit Singh) who voted during the non-confidence motion will get immunity from the criminal prosecution for the offences of Criminal Conspiracy and Bribery under Article 105(2).[24] And the question of whether the Member of Parliament is a "public servant" under sec 2(c) of the 1988 Act was also answered affirmatively. It also held that there is no such authority that sanctions the prosecution of the offending persons for the offence committed and they cannot be tried under the Prevention Of Corruption Act, 1988.[25]

The dissenting judgment was that Article 105(2) does not confer immunity to a member of Parliament from being prosecuted before a criminal court due to acceptance or offer of a bribe for giving his vote in Parliament.[26] He gave the view that taking a bribe is not incidental to the role of an M.P. and hence does not constitute a part of his Parliamentary or official activities and does not come within the protection of Article 105(2). In his view,[27] "*it is improper to give a wide meaning to the expression 'in respect of so that a member could be made liable for bribery if he accepts a*

[21] *PV Narasimha Rao v State* (1998) 4 SCC 626
[22] *R v Currie* (1995) 86 OAC 143 (CA)
[23] *Ibid*
[24] *PV Narasimha Rao v State* (1998) 4 SCC 626
[25] *Ibid*
[26] *PV Narasimha Rao v State* (1998) 4 SCC 626
[27] *Ibid*

bribe for not speaking or for not speaking or for not giving his vote on a matter being considered in the parliament but he would get immunity from prosecution for a charge if he accepts bribe for speaking or giving his vote in Parliament in a particular manner and he speaks or gives his vote in Parliament in that manner."[28]

It was reasoned by the court that the fact an M.P. is a 'public servant' as it holds an office which certain responsibilities which are public in nature. Along with this, they are supposed to perform certain public duties. Hence therefore the Court concluded that an M.P. is a public servant. The decision infused accountability in the members and the step was appreciated, along with this it was a significant ruling in the context of Article 16 which imposes a duty over the state not to discriminate while appointing someone to public office. The court by a majority of 3:2 held that "*an M.P. is liable for criminal prosecution even for offences where the sanction of authority is required*."

CONCLUSION

This case is one of the most significant cases in the political future of the country. Though it received a mix of acceptance from the general public. The decision given by the court that a Member of Parliament is a public servant is considered a positive development and along with it the Chairman and Speaker of the Rajya Sabha and the Lok Sabha respectively were given sanctioning authority for the Member of Parliament in the matter of those offences under the Prevention of Corruption Act,1988. However, the decision of the majority where they made a differentiation between the ones who have received bribes and those who have given bribes is a bad law. This has led to an increase in the cases of horse trading and the use of unfair means to attain the desired result. There is a need to look into this decision given by the court and should be reconsidered. The decision given by the bench is considered to be against the ideals and aspirations of the Constitution. The reasoning given by the minority is in tandem with the present national political situation in the country where we see there is no stable government. The verdict needs immediate correction from a competent Bench and needs to be overruled.

[28] *Ibid*