

ITEM NO.36+37

COURT NO.16

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Item No.36

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 5825/2022

(Arising out of impugned final judgment and order dated 17-06-2022 in IA No. 1734/2022 passed by the High Court Of Judicature At Bombay)

ANIL VASANTRAO DESHMUKH

Petitioner(s)

VERSUS

DIRECTORATE OF ENFORCEMENT & ANR.

Respondent(s)

IA No. 86818/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Item No.37

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 18766/2022

Date : 20-06-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

(VACATION BENCH)

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv.
Mr. Sudhanshu S. Choudhari, AOR
Mr. Vatsalya Vigya, Adv.
Mr. Shakul Ghatole, Adv.
Mr. Mahesh Shinde, Adv.
Ms. Rucha A. Pande, Adv.

For Respondent(s) Mr. Tushar Mehta, Ld. SG
Mr. Zoheb Hossain, Adv.
Mr. Rajat Nair, Adv.
Mr. Rajan Kr. Chourasia, Adv.
Mr. Kanu Agarwal, Adv.
Ms. Swati Ghildiyal, Adv.
Mr. Mukesh Kumar Maroria, AOR

Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.
Ms. Shwetal Shepal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The question whether the embargo under sub-section (5) of Section 62 of the Representation of People Act, 1951 (for short 'R.P.' Act) would be an absolute deterrent on the exercise of the Constitutional right of Member(s) of Legislative Assembly to vote in that capacity in the election of Member(s) of the Legislative Council under Article 171(3)(d) of the Constitution of India while being in prison, but not as a preventive detainee, arises for consideration in this case. In deciding that question interpretation of the words 'No person' and 'any election' employed under S.62(5) of the R.P. Act, bearing in mind the definition of term 'election' given in the R.P. Act, is required.

The matter is taken up on being mentioned today, which is the very date of election to the Maharashtra Legislative Council. In other words, the election in question was already underway when this matter is taken up for consideration. Going by the schedule of election, the time for casting votes would be over by 4 p.m. and the votes would be counted at 5 p.m.

In the circumstances and in view of the fact that the Constitutional validity of Section 62(5) of the Representation of the People Act was upheld by this Court in *Anukul Chandra Pradhan, Advocate, Supreme Court v. Union of India & Ors.*- [1997] 6 SCC 1 and in the

light of the decision in *S. Radhakrishnan v. Union of India & Ors.* - 1999 (5) SCALE 27 (W.P.[C] No.1028/1990 dated 17.08.1999) and the *prima facie* position as relates the bar on the right to vote on a person at any election in the circumstances contemplated under Section 62(5), we are not inclined to grant any interim relief(s) in the matter.

However, taking note of the submission of the learned senior counsel Ms. Meenakshi Arora, appearing for the petitioners that the stated larger question may arise in future on the interpretation of Section 62(5) of the R.P. Act (which fact is disputed by learned Solicitor General of India Shri Tushar Mehta), we think it necessary to issue notice and consider the said question.

Issue notice.

Mr. Mukesh Kumar Maroria, learned counsel waives notice on behalf of respondent No.1 and Mr. Rahul Chitnis waives notice on behalf of the State of Maharashtra.

Parties shall complete the pleadings within four weeks.

(ASHA SUNDRIYAL)
ASTT. REGISTRAR-cum-PS

(VIRENDER SINGH)
BRANCH OFFICER