

ITEM NO.33

COURT NO.14

SECTION PIL-W

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

Writ Petition(s)(Civil) No(s). 699/2016

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

IA No. 142097/2022 - APPLICATION FOR PERMISSION
 IA No. 73459/2019 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 107427/2018 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 8016/2022 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 39027/2020 - APPROPRIATE ORDERS/DIRECTIONS
 IA No. 2029/2020 - CLARIFICATION/DIRECTION
 IA No. 136819/2017 - CLARIFICATION/DIRECTION
 IA No. 143394/2021 - CLARIFICATION/DIRECTION
 IA No. 126476/2021 - CLARIFICATION/DIRECTION
 IA No. 108743/2021 - CLARIFICATION/DIRECTION
 IA No. 54637/2017 - CLARIFICATION/DIRECTION
 IA No. 55244/2022 - CLARIFICATION/DIRECTION
 IA No. 156548/2022 - CLARIFICATION/DIRECTION
 IA No. 81287/2018 - CLARIFICATION/DIRECTION
 IA No. 54552/2017 - DIRECTIONS
 IA No. 97487/2022 - EXEMPTION FROM FILING AFFIDAVIT
 IA No. 146933/2018 - EXEMPTION FROM FILING O.T.
 IA No. 149485/2021 - EXEMPTION FROM FILING O.T.
 IA No. 130543/2018 - EXEMPTION FROM FILING O.T.
 IA No. 56936/2023 - EXEMPTION FROM FILING O.T.
 IA No. 103522/2019 - EXEMPTION FROM FILING O.T.
 IA No. 91514/2022 - EXEMPTION FROM FILING O.T.
 IA No. 55246/2022 - EXEMPTION FROM FILING O.T.
 IA No. 168881/2022 - EXEMPTION FROM FILING O.T.
 IA No. 107431/2018 - EXEMPTION FROM FILING O.T.
 IA No. 101624/2021 - EXEMPTION FROM FILING O.T.
 IA No. 81286/2018 - INTERVENTION APPLICATION
 IA No. 2027/2020 - INTERVENTION APPLICATION
 IA No. 127368/2018 - INTERVENTION APPLICATION
 IA No. 204637/2022 - INTERVENTION APPLICATION
 IA No. 2083/2019 - INTERVENTION APPLICATION
 IA No. 58124/2017 - INTERVENTION/IMPLEADMENT
 IA No. 20037/2023 - INTERVENTION/IMPLEADMENT
 IA No. 57812/2017 - INTERVENTION/IMPLEADMENT
 IA No. 127023/2018 - INTERVENTION/IMPLEADMENT
 IA No. 108742/2021 - INTERVENTION/IMPLEADMENT
 IA No. 55243/2022 - INTERVENTION/IMPLEADMENT
 IA No. 156559/2022 - INTERVENTION/IMPLEADMENT
 IA No. 127553/2020 - INTERVENTION/IMPLEADMENT
 IA No. 7992/2022 - INTERVENTION/IMPLEADMENT

IA No. 156545/2022 - INTERVENTION/IMPLEADMENT
 IA No. 2085/2019 - PERMISSION TO APPEAR AND ARGUE IN PERSON
 IA No. 98425/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/
 ANNEXURES
 IA No. 72938/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/
 ANNEXURES
 IA No. 130542/2018 - STAY APPLICATION
 IA No. 22794 of 2025 - FOR CLARIFICATION

Date : 10-02-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
 HON'BLE MR. JUSTICE MANMOHAN

For Petitioner(s) : Mr. Vikas Singh, Sr. Adv.
 Mr. Gopal Shankarnarayanan, Sr. Adv.
 Mr. Ashwani Kumar Dubey, AOR
 Mr. Ashwini Kumar Upadhyay, Adv.

For Respondent(s) : Mr. Pranav Sachdeva, AOR
 Mr. Jatin Bhardwaj, Adv.
 Mr. Abhay Nair, Adv.
 Mr. Rohit Ram, Adv.

Mr. Balaji Srinivasan, AOR

Mr. Tushar Mehta, Solicitor General
 Mr. K M Nataraj, A.S.G.
 Ms. Sonia Mathur, Sr. Adv.
 Mr. V Mohana, Adv.
 Mr. K Parmeshwar, Adv.
 Mr. Mohd Akhil, Adv.
 Mrs. Rajat Nair, Adv.
 Mr. Apoorv Kurup, Adv.
 Mr. Arvind Kumar Sharma, AOR

Mr. Sahil Tagotra, AOR
 Mr. Sidhant Kumar, Adv.
 Ms. Manyaa Chandok, Adv.
 Mr. Sujay Jain, Adv.

Mr. Shiv Ram Sharma, AOR

Ms. K. Enatoli Sema, AOR
 Ms. Limayinla Jamir, Adv.
 Mr. Amit Kumar Singh, Adv.
 Ms. Chubalemla Chang, Adv.
 Mr. Prang Newmai, Adv.

Ms. Aswathi M.K., AOR

Ms. Jesal Wahi, AOR

Mr. Vikramjit Banerjee, A.S.G.
Mr. K.V. Sreemuthin, Adv.
Ms. Priyadarshini Priya, Adv.
Mr. Saransh Kumar, Adv.
Mr. Vishnu Jain, Adv.
Mr. Shreekant Neelappa Terdal, AOR

Mr. Karan Sharma, AOR

Ms. G. Indira, AOR
Mr. P. S. Sudheer, AOR

Mr. Shovan Mishra, AOR
Ms. Bipasa Tripathy, Adv.

Mr. Ravindra S. Garia, AOR

Mr. Shuvodeep Roy, AOR
Mr. Deepayan Dutta, Adv.
Mr. Saurabh Tripathi, Adv.

Mr. Anupam Raina, AOR
Mr. Ankur Parihar, Adv.
Ms. Osheen Bhat, Adv.

Mr. Mahesh Agarwal, Adv.
Mr. Nishant Rao, Adv.
Mr. E. C. Agrawala, AOR

Mr. Anand Dilip Landge, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR

Mr. Sunil Kumar Jain, AOR
Ms. Rashika Swarup, Adv.
Mr. Naman Jain, Adv.

Mr. Anil Shrivastav, AOR
Mr. Viraz Shastri, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. Amit Kumar Chawla, Adv.
Mr. Varun Varma, Adv.
Mr. Akhileshwar Jha, Adv.
Ms. Charanjeet Sighu, Adv.
Mr. Ajay Mishra, Adv.

Mr. Apoorv Kurup, AOR

Mr. Sanjai Kumar Pathak, AOR
Mrs. Shashi Pathak, Adv.
Mr. Arvind Kumar Tripathi, Adv.

Mr. Somanadri Goud Katam, AOR
Mr. Sirajuddin, Adv.

Mr. Ambhoj Kumar Sinha, AOR
Mr. Saurabh Bharadwaj, Adv.
Ms. Sushmita Barman, Adv.

Intervenor-in-person, AOR

Mr. B.k. Satija, A.A.G.
Mr. Samar Vijay Singh, AOR
Mr. Keshav Mittal, Adv.
Ms. Sabarni Som, Adv.
Mr. Aman Dev Sharma, Adv.
Mr. Anurag Kulharia, Adv.
Mr. Ratipal Singh Tanwar, Adv.
Mr. Sameer Mehndiratta, Adv.
Mr. Gyaneshwar Kumar Maheshwari, Adv.

Mr. Ramesh Babu M. R., AOR

Mr. Arjun Garg, AOR
Ms. Kriti Gupta, Adv.
Mr. Avinash Tripathi, Adv.

M/S. Gorkela Law Office, AOR

Mr. Abhishek Atrey, AOR
Dr. Abhishek Atrey, Adv.
Mr. Ravindra Lokhande, Adv.
Ms. Vidyottma Jha, Adv.

Ms. Astha Sharma, AOR

Mr. Jayant Mohan, AOR
Ms. Adya Shree Dutta, Adv.

Ms. Radhika Gautam, AOR
Mr. Naresh K. Sharma, AOR

Mr. Aravindh S., AOR
Mr. Akshay Gupta, Adv.
Mr. Aadithya Aravindh, Adv.

Mr. Ajay Pal, AOR

Mr. Biswajit Deb, Sr. Adv.
Mr. Anando Mukherjee, AOR
Mr. Shwetank Singh, Adv.

Mr. Sunny Choudhary, AOR

Mr. Ranjan Mukherjee, AOR

Mr. Abhimanue Shrestha, AOR

Ms. Sridevi Panikkar, Adv.

Mr. Pritesh Patni, Adv.

Mr. Anandh Kannan N., AOR

Ms. Swati Ghildiyal, AOR

Ms. Devyani Bhatt, Adv.

Ms. Sneha Menon, Adv.

Mr. Kabir Dixit, AOR

Mrs. Anil Katiyar, AOR

Mr. Shantanu Sagar, AOR

Mr. Anil Kumar, Adv.

Mr. Gunjesh Ranjan, Adv.

Mrs. Divya Mishra, Adv.

Mr. Ashish K Singh, Adv.

Mr. Keshav Khandelwal, Adv.

Mr. Gaurav Agrawal, AOR

Mr. Ahanthem Henry, Adv.

Mr. Ahanthem Rohen Singh, Adv.

Mr. Mohan Singh, Adv.

Mr. Aniket Rajput, Adv.

Ms. Khoisnam Nirmala Devi, Adv.

Mr. Kumar Mihir, AOR

Mr. Karan Bharihoke, AOR

Mr. Chirag M. Shroff, AOR

Mr. Nishe Rajen Shonker, AOR

Ms. Anu K Joy, Adv.

Mr. Alim Anvar, Adv.

Mr. Santhosh K, Adv.

Mr. Parth Awasthi, Adv.

Mr. Pashupathi Nath Razdan, AOR

Mr. Sanjay Kumar Tyagi, AOR

Mr. Pukhrambam Ramesh Kumar, AOR

Mr. Karun Sharma, Adv.

Ms. Anupama Ngangom, Adv.

Ms. Rajkumari Divyasana, Adv.

Mr. Rajeev Kumar Dubey, Adv.

Mr. Saurabh Singh Chauhan, Adv.

Mr. Ashiwan Mishra, Adv.
Mr. Kamendra Mishra, AOR

Mr. Raghvendra Kumar, AOR

Mr. Amit Sharma, AOR
Mr. Dipesh Sinha, Adv.
Ms. Pallavi Barua, Adv.
Ms. Aparna Singh, Adv.
Mr. Anirudh Singh, Adv.

Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.
Mr. Rohit Bansal, Adv.
Ms. Mrinalini Mukherjee, Adv.

Mr. Debanjan Mandal, Adv.
Mr. Kunal Nimani, AOR
Mr. Abhinav Rana, Adv.

M/S. Arputham Aruna And Co, AOR

Mr. Sandeep Kumar Jha, AOR
Mr. Shiv Mangal Sharma, A.A.G.
Ms. Nidhi Jaswal, Adv.
Mr. Saurabh Rajpal, Adv.

Mr. Baldev Singh, Adv.
Mr. Divyansh Thakur, Adv.
Mr. Rajeev Kumar Gupta, Adv.
Mr. Rishabh Kumar Singh, Adv.
Mr. Mukesh Kumar Sharma, Adv.
Mr. Abhimanyu Singh, Adv.
Mr. Vishal Bainsla, Adv.
Mr. Bimlesh Kumar Singh, AOR

Mr. Apoorv Kurup, Sr. Adv.
Ms. Nidhi Mittal, AOR

Mr. P. V. Yogeswaran, AOR
Mr. Mahesh Thakur, AOR
Ms. K. V. Bharathi Upadhyaya, AOR
Mr. Siddhesh Shirish Kotwal, AOR

Ms. Asmita Singh, AOR
Mr. Abheet Mangleek, Adv.
Mr. Tushar Nair, Adv.
Mr. Anirudh, Adv.
Mr. Punishk Handa, Adv.

Mr. Anandh Kannan N., AOR

Mr. Satish Pandey, AOR
 Ms. Jay Jaimini Pandey, Adv.
 Ms. Lalita Gupta, Adv.
 Mr. Rahul Kumar, Adv.
 Mr. Vijey Nand Tripathi, Adv.
 Mr. Prabhoo Dayal Tiwari, Adv.
 Mr. Abhinav Yesh Pandey, Adv.
 Mr. Braj Kishore Mishra, Adv.

Mr. Malak Manish Bhatt, AOR

Ms. Enakshi Mukhopadhyay Siddhanta, AOR
 Mr. Ravi Kumar S, Adv.
 Mr. P.S. Sridhar Raj, Adv.

Mr. Kanhaiya Singhal, AOR
 Mr. Kanhaiya Singhal, Adv.
 Mr. Prasanna, Adv.
 Mr. Ajay Kumar, Adv.

Mr. Vijay Hansaria, Sr. Adv.
 Ms. Sneha Kalita, AOR
 Ms. Kavya Jhavar, Adv.
 Ms. Nandini Rai, Adv.

Mr. Ashok Mathur, AOR

Mr. Sandeep Sudhakar Deshmukh, AOR
 Mr. Nishant Sharma, Adv.
 Mr. Ankur S. Savadikar, Adv.
 Mr. Viraj M. Parakh, Adv.

Mr. Santosh Krishnan, AOR
 Mr. E. C. Vidya Sagar, AOR

Mr. P.N.ravindran, Sr. Adv.
 Mr. T. G. Narayanan Nair, AOR
 Ms. Samyuktha H Nair, Adv.

M/S. Plr Chambers And Co., AOR

Mr. Sameer Abhyankar, AOR
 Mr. Rahul Kumar, Adv.
 Mr. Aryan Srivastava, Adv.
 Mr. Aakash Thakur, Adv.
 Mr. Krishna Rustogi, Adv.

Mr. Amit Anand Tiwari, A.A.G.
 Mr. Sabarish Subramanian, AOR
 Ms. Devyani Gupta, Adv.
 Mr. Vishnu Unnikrishnan, Adv.
 Mr. Danish Saifi, Adv.

Ms. Tanvi Anand, Adv.

Mr. Avdhesh K. Singh, A.A.G.

Mrs. Prerna Dhall, Adv.

Ms. Karishma Rajput, Adv.

Ms. Akansha Singh, Adv.

Mr. Gopinadh M N, Adv.

Mr. Shivam Ganeshia, Adv.

Mr. Prashant Singh, AOR

Ms. Prerna Singh, Adv.

Mr. Guntur Pramod Kumar, AOR

Mr. Dhruv Yadav, Adv.

Mr. Azmat H. Amanullah, AOR

Ms. Rebecca Mishra, Adv.

Ms. Ekta Kundu, Adv.

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

1. The amended prayers in Writ Petition (Civil) No. 699 of 2016 are:

“a. direct and declare the words “and shall continue to be disqualified for a further period of six years since his release” be severed from sections 8(1)(ii), 8(2) and 8(3) of the Representation of the People Act, 1951 and the words “for a period of five years from the date of such dismissal” be severed from section 9(1) of the Representation of the People Act, 1951 as invalid and ultra-vires the Article 14 and basic structure of the Constitution of India;

b. direct the Respondent-1 to take appropriate steps to setup Special Courts to decide the cases related to people representative and public servants within one year and implement the important electoral reforms, proposed by the National Commission to Review the Working of the Constitution, Law Commission of India in its 244th and 255th Report and Election Commission of India;

c. direct the Respondents to take appropriate steps to debar the person convicted for the offences specified in sections 8(1), 8(2), 8(3), 9(1) of the Representation of the People Act, 1951 from contesting MLA/MP election, forming political party or becoming office bearer of political party.”

2. We note that the challenge to the *vires* of part of Section 9 of the

Representation of People Act, 1951¹ was not part of the original prayer and has been incorporated by an amendment.

3. Insofar as prayer “b” is concerned, it has been brought to our notice that this Court (cor. Hon’ble Dr. D.Y. Chandrachud, CJI., Hon’ble P.S. Narasimha and Hon’ble Manoj Misra, JJ.) *vide* judgment and order dated November 9, 2023 [since reported in (2024) 1 SCC 185] has dealt with such prayer. While making several directions contained in paragraphs 21.1 to 21.7 therein, the said Bench concluded as follows:

“22. With these directions, we dispose of this writ petition with respect to the first prayer concerning the expeditious disposal of criminal cases against elected Members of Parliament and Legislative Assemblies.

23. This writ petition will now be listed for hearing on the other issue relating to the constitutional validity of Section 8 of the Representation of the People Act, 1951. We also place on record our appreciation for the efforts taken by the learned *Amicus Curiae*.”

4. In view of disposal of the writ petition (we read it as disposal of prayer “b”) with regard to expeditious disposal of criminal cases against the elected Members of Parliament and the Legislative Assemblies, as recorded in paragraph 22, we, sitting in a combination of two Judges, find it inappropriate to reopen the issue upon appreciation of the submissions advanced by learned *Amicus Curiae* Mr. Hansaria that not much progress has been achieved in terms of the directions in paragraph 21.1 to 21.7 thereof and while on the one hand the pending cases are not being disposed of, there has been addition of new cases which, having regard to the present institutional framework, the special courts dealing with cases of MPs/MLAs is unable to tackle.

5. However, this issue of reopening the matter concerning prayer “b” having

¹ RoP Act

regard to concerns of propriety ought to be considered by a Bench having combination of three Judges. For the present, we consider it appropriate to refer the matter to the Hon'ble the Chief Justice of India for constitution of an appropriate Bench.

6. However, the issue relating to Constitutional validity of parts of Section 8 of the RoP Act (referred to in paragraph 23) and also Section 9 thereof, which form part of the amended prayers, does survive for consideration and we propose to fix an appropriate schedule for deciding such issue. Be it recorded that submissions in relation to prayer "c" would be heard later, if at all considered necessary.

7. We have been informed by Mr. Vikas Singh, learned senior counsel appearing for the petitioner that although counter affidavit to the writ petition was invited from the Union of India², no such affidavit has been filed despite lapse of more than four years.

8. Ms. Sonia Mathur, learned senior counsel appears for the UoI. As prayed by her, we grant the UoI three weeks' time to file its counter affidavit. Learned counsel for Election Commission of India³ (respondent no.2) also seeks and is granted similar time of three weeks to file its counter affidavit.

9. Once the counter affidavits are filed, we would consider granting some time to the petitioner to file his rejoinder affidavit; if no such rejoinder affidavit is sought to be filed, we shall proceed with the hearing of the Constitutional issue(s) on such date(s) as may be fixed.

10. Relist the writ petition on **4th March, 2025** to ascertain whether counter affidavit(s) has/have been filed by the UoI and the ECI. We make it clear that if no counter affidavit(s) is/are filed, hearing will commence without such counter

² UoI

³ ECI

affidavit(s).

11. Since Constitutional validity of parts of Sections 8 and 9 of the RoP Act is involved, we desire the Attorney General for India to address us. A copy of this order may be sent to the office of the Attorney General for India by the Registry.

IA No. 22794 of 2025:

12. IA No. 22794 of 2025, in W.P. (C) No.699 of 2016, is an application by the Registrar General, High Court of Delhi seeking the following relief:

“a. Clarify that the High Court may authorise that trial of MPs/MLAs (including Ex-MPs/MLAs) who are facing trial of the scheduled offences as prescribed in the Special Acts like NIA Act by the Special Court designated/constituted under Section 11 of the NIA Act instead of by the Special Courts created for the trial of MPs/MLAs and thereby enabling the High Court to issue necessary notification/office order in this regard.”

13. The facts and circumstances triggering this application have been narrated in paragraph 7 of the application and its several sub-paragraphs. The concern expressed by the Registrar General has then been averred in paragraphs 8 to 11 thereof.

14. Since trial against the relevant Member of Parliament had commenced even before his election and as on date 21 witnesses have been examined by the prosecution before the Special Court constituted under the National Investigation Agency (Amendment) Act, 2019, in the special facts and circumstances that have been projected before us, we grant clarification as prayed by the Registrar General. There shall be an order in terms of prayer (a) of the application.

15. IA No. 22794 of 2025 stands disposed of.

(JATINDER KAUR)
P.S. to REGISTRAR

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)