



2025:AHC-LKO:80596-DB

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 11593 of 2025

Ashok Pandey

.....Petitioner(s)

Versus

Sri Rahul Gandhi And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	In Person
Counsel for Respondent(s)	:	A.S.G.I., Anupriya Srivastava

Court No. - 3

**HON'BLE SHEKHAR B. SARAF, J.
HON'BLE MANJIVE SHUKLA, J.**

1. Heard Shri Ashok Pandey, the petitioner appearing in person, Shri Surya Bhan Pandey, learned Senior Advocate assisted by Shri Anand Dwivedi, learned counsel appearing on behalf of Opposite Party No. 2, that is Union of India and Shri O.P. Srivastava, learned Senior Advocate assisted by Ms. Anupriya Srivastava, learned counsel appearing for Opposite Party No. 3, that is Election Commission of India.

2. This is a petition under Article 226 of the Constitution of India where the writ petitioner appearing in person is seeking a writ of quo warranto against a Member of Parliament. The prayers in the writ petition have been delineated below:-

"(I.) Issue a writ, order or direction in the nature of Quo Warranto thereby asking the Respondent No. 1 Sri Rahul Gandhi as to under what authority of law, he is holding the office of Member of Lok Sabha from Raibareli in spite of the fact that because of conviction and sentence of two years recorded by Surat court, he was disqualified to be chosen as member of Parliament in view of the provision contained in article 102 r/w section 8 (3) of R.P. Act 1951.

(II.)To direct the speaker of Lok Sabha to recover the penalty from Sri Rahul Gandhi as provided in the constitution as he participated in the proceedings of Lok Sabha without being a valid member of it.

(III.) Issue a writ in the nature of Mandamus directing the Election Commission of Bharat to declare Sri

Dinesh Kumar Singh as the elected member of Lok Sabha from Raibareli Lok Sabha seat as the returned candidate Sri Rahul Gandhi was disqualified to be chosen as Member of Lok Sabha on the date of the election impugned."

3. The petitioner appearing in person has submitted that Mr. Rahul Gandhi was convicted by the trial court for an offence punishable under Section 499 of the Indian Penal Code, 1860, for which there is simple imprisonment of two years or fine or both. This order was subsequently challenged in the higher courts and the Gujarat High Court dismissed the revision petition of Mr. Rahul Gandhi and accordingly rejected the prayer for stay of conviction. When the matter went up before the Supreme Court by way of a Special Leave Petition bearing number S.L.P. (Cri.) No. 8644 of 2023, the Supreme Court passed the following order:-

"1. Leave granted.

2. Heard Dr. Abhishek Manu Singhvi, learned senior counsel for the appellant and Shri Mahesh Jethmalani, learned senior counsel for the respondent No. 1, on the question of interim protection.

3. The present appeal challenges the judgment and order passed by the learned Single Judge of the High Court dismissing the revision petition, which was in turn filed challenging the order of the learned Sessions Judge, thereby rejecting the prayer for stay of conviction.

4. The appeal filed by the present appellant challenging the order of conviction and sentence passed by the learned Trial Judge is pending before the Appellate Court. The arguments advanced by both Dr Abhishek Manu Singhvi, and Shri Mahesh Jethmalani, learned senior counsel, touch the merits of the matter. We, therefore, refrain from observing anything about the said arguments, inasmuch as it may adversely affect the rights of either of the parties in the appeal which is pending before the learned Appellate Court.

5. Insofar as grant of stay of conviction is concerned, we have considered certain factors. The sentence for an offence punishable under Section 499 of the Indian Penal Code, 1860 (for short "IPC") is simple imprisonment for two years or fine or both. The learned Trial Judge, in the order passed by him, has awarded the maximum sentence of imprisonment for two years. Except the admonition given to the appellant by this Court in contempt proceedings (Contempt Petition (Crl) No.3/2019 in Yashwant Sinha and Others v. Central Bureau of Investigation through its Director and another, reported in (2020) 2 SCC 338) no other reason has been assigned by the learned Trial Judge while imposing the maximum sentence of two years. It is to be noted that it is only on account of the maximum sentence of two years imposed by

the learned Trial Judge, the provisions of sub-section (3) of Section 8 of the Representation of the People Act, 1950 (for short, "the Act") have come into play. Had the sentence been due a day lesser, the provisions of sub-section (3) of Section 8 of The Act would not have been attracted.

6. Particularly, when an offence is non-cognizable, bailable and compoundable, the least that the Trial Judge was expected to do was to give some reasons as to why, in the facts and circumstances, he found it necessary to impose the maximum sentence of two years.

7. Though the learned Appellate Court and the learned High Court have spent voluminous pages while rejecting the application for stay of conviction, these aspects have not even been touched in their orders.

8. No doubt that the alleged utterances by the appellant are not in good taste. A person in public life is expected to exercise a degree of restraint while making public speeches. However, as has been observed by this Court while accepting affidavit of the appellant herein in aforementioned contempt proceedings, the appellant herein ought to have been more careful while making the public speech. May be, had the judgment of the Apex Court in the contempt proceedings come prior to the speech made by the appellant, the appellant would have been more careful and exercised a degree of restraint while making the alleged remarks, which were found to be defamatory by the Trial Judge.

9. We are of the considered view that the ramification of sub-section (3) of Section 8 of the Act are wide-ranging. They not only affect the right of the appellant to continue in public life but also affect the right of the electorate, who have elected him, to represent their constituency.

10. We are of the considered view, taking into consideration the aforesaid aspects and particularly that no reasons have been given by the learned Trial Judge for imposing the maximum sentence which has the effect of incurring disqualification under Section 8(3) of the Act, the order of conviction needs to be stayed, pending hearing of the present appeal.

11. We, therefore, stay the order of conviction during the pendency of the present appeal.

12. However, we clarify that the pendency of the present appeal would not come in the way of the Appellate Court in proceeding further with the appeal. The appeal would be decided on its own merits, in accordance with law.

13. The parties would be at liberty to approach the learned Appellate Court for expeditious disposal of the appeal, which request would be considered by it, on its own merits."

4. The petitioner appearing in person submits that the stay of order of conviction does not allow the Respondent No. 1 to contest in elections

because Article 102 of the Constitution of India read with Section 8(3) of the Representation of Peoples Act, 1951, creates a disqualification for being chosen as or for being a Member of Parliament.

5. Mr. Ashok Pandey further submits that the Supreme Court in Criminal Appeal No. 3838 of 2023 (Arising out of Special Leave to Appeal (Crl.) No. 11129 Of 2023), also stayed the conviction of Afzal Ansari but in the order passed in that case, the Supreme Court in specific words permitted Mr Ansari to contest the elections which is clear from Para 24 (iv) of the judgment. The relevant part of the order passed by the Supreme Court in the matter of Afzal Ansari is being quoted below for ready reference:-

"The appellant shall not be disqualified to contest future election (s) during the pendency of his criminal appeal before the high court and if he is elected, such election will be subject to outcome of the first criminal appeal."

6. He further submitted that in view of the above mentioned position of facts and law it is clear that Rahul Gandhi and Afzal Ansari, both were disqualified to be chosen as MP but as the Supreme Court had permitted Mr Ansari to contest the elections and so Mr Afzal Ansari can contest the elections in spite of being disqualified but Mr Rahul Gandhi cannot as in his matter, the Supreme Court has not permitted him to contest the election (s) as in the case of Afzal Ansari. The submission is that in case merely the stay conviction entitles a person, who is otherwise disqualified, to contest the election(s), then the specific order to Afzal Ansari was not required.

7. That in view of above mentioned position of facts and law, the submission of the petitioner is that Mr Rahul Gandhi was disqualified to be chosen as MP and so his nomination paper was wrongly accepted and his name was wrongly put for voting amongst the voters of Wayanad and Raibareli Lok Sabha seats.

8. That subsequently, on 4th June 2024, the Returning Officer, Raibareilly went ahead and declared the election results whereby declaring the Sri Rahul Gandhi as winner candidate from Raibareilly.

9. That after being declared elected, Sri Rahul Gandhi started working as

the member of Lok Sabha and because of being a member of Lok Sabha, he was also nominated as Leader of Opposition and is working as such till date.

10. That in this view of the matter, it is clear that Mr Rahul Gandhi, in spite of being disqualified to be chosen as MP, was chosen as such and so the petitioner submits that he is holding the office created by the Constitution without any authority of law and is accordingly usurping a public office created by the Constitution without any authority of law.

11. Per contra, Shri O.P. Srivastava, learned Senior Advocate appearing for Respondent No. 3 submits that since there is a stay of conviction of the Respondent No. 1, there is no bar under Section 8(3) of the Representation of Peoples Act, 1951 for him to contest in the elections or to remain as a Member of Parliament. He relies on the judgment of the Supreme Court of India in ***Lily Thomas Vs. Union of India*** reported in (2013) 7 SCC (LS) 811, to contend that in the event a conviction is stayed by a higher Court, the bar under Section 8(3) would not apply. He relies on Paragraph 21 of the judgment to buttress his argument which is delineated below:-

"21. We do not also find merit in the submission of Mr. Luthra and Mr. Kuhad that if a sitting member of Parliament or the State Legislature suffers from a frivolous conviction. by the trial, court for an offence given under Sub-section (1), (2) or (3) of Section 8 of the Act, he will be remediless and he will suffer immense hardship as he would stand disqualified on account of such conviction in the absence of Sub-section (4) of Section 8 of the Act. A three-Judge Bench of this Court in Rama Narang v. Ramesh Narang and Ors. [MANU/SC/0623/1995 (1995) 2 SCC 513] has held that when an appeal is preferred Under Section 374 of the Code of Criminal Procedure [for short 'the Code'] the appeal is against both the conviction and sentence and, therefore, the Appellate Court in exercise of its power Under Section 389(1) of the Code can also stay the order of conviction and the High Court in exercise of its Inherent jurisdiction Under Section 482 of the Code can also stay the conviction if the power was not to be found in Section 389(1) of the Code. In Ravikant S. Patil v. Sarvabhouma S. Bagali [MANU/SC/8600/2006 (2007) 1 SCC 673], a three-Judge Bench of this Court, however, observed

"It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the

conviction non-existent, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying the consequences if conviction was not stayed, that is, the Appellant would incur : disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of execution of the sentence, it is not possible to accept the contention of the Respondent that the disqualification arising out of conviction continues to operate even after stay of conviction."

In the aforesaid case, a contention was raised by the Respondents that the Appellant was disqualified from contesting the election to the Legislative Assembly under Sub-section (3) of Section 8 of the Act as he had been convicted for an offence punishable Under Sections 366 and 376 of the Indian Penal Code and it was held by the three-Judge Bench that as the High Court for special reasons had passed an order staying the conviction, the disqualification arising out of the conviction ceased to operate after the stay of conviction. Therefore, the disqualification under Sub-section (1), (2) or (3) of Section 8 of the Act will not operate from the date of order of stay of conviction passed by the Appellate Court Under Section 389 of the Code or the High Court Under Section 482 of the Code."

12. We have heard learned counsels appearing on behalf of the parties and analyzed the position of law. Before going into the issue, it would be apt to lay down the relevant provisions of law in relation to the present issue. Accordingly, Article 102 of the Constitution of India and Section 8(3) of the Representation of Peoples Act, 1951 are provided below:-

"Article-102. Disqualifications for membership

(1)A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court,

(c) if he is an undischarged insolvent,

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State,

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.--For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Section-8 Disqualification on conviction for certain offences.

8(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

13. Upon a perusal of the above provision and after sifting through the judgments of the Supreme Court relied upon by the parties, it is clear that once an order of conviction is stayed, the bar under Section 8(3) of the Representation of Peoples Act would not apply. The reason behind the same is very simple -- a person convicted of an offence and sentenced to imprisonment for not less than two years is the bar provided under Section 8(3) of the Representation of Peoples Act. However, when such a conviction has been stayed by a higher court, the indelible mark of a convict cannot be assigned to such a person till the appeal is decided. It may be noted that in several cases, the higher court does not stay the conviction of a person but merely may stay the execution of the sentence and may even grant bail to the petitioner. Such a stay of the execution is not synonymous to stay of conviction. In the former case, the bar under Section 8(3) would apply but in the latter case, since the conviction has been stayed, the bar would not apply.

14. The petitioner has also relied on the judgment of a Constitutional Bench of the Supreme Court in **B.R. Kapur Vs. State of Tamil Nadu & others** reported in (2001) 7 SCC 231, and specifically relied on Paragraph 40 to buttress his argument. Paragraph 40 of the said judgment is delineated below:-

"40. In much the same vein, it was submitted that the presumption of Innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated as of now against the second Responderit. Before we advert to the four judgments relied upon in support of

this submission, let us clear the air. When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that it is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well."

15. The petitioner has specifically placed great emphasis on the last three lines of the said paragraph that states as follows:- "That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well." It is the argument of the petitioner that a conviction unless set aside would continue to operate, and therefore, the bar under Section 8(3) of the Representation of Peoples Act, 1951 would continue to apply.

16. With great humility and respect, we would submit that we are not at consensus ad idem with the argument raised, as we are of the view that the statement made in the said paragraph was in reference to a factual matrix wherein execution of the sentence had been stayed and not where there has been a stay of conviction. The moment a higher court stays a conviction, the anathema of conviction goes out of the window and the person against whom such conviction is stayed, though not absolved, cannot be stated to be a convicted person. It is only when the appeal is decided that it could be ascertained as to whether he would be a convicted person or an acquitted person.

17. Our opinion is also fortified by the judgment in ***Lily Thomas (Supra)*** wherein the Division Bench of the Supreme Court has categorically held that the disqualification under Sub-section (1), (2) or (3) of Section 8 of the Representation of Peoples Act will not operate from the date of order of stay of conviction passed by the Appellate Court under Section 389 of the Code or the High Court under Section 482 of the Code.

18. In light of the same, we are of the view that the present writ petition is devoid of merit. The petitioner has also sought from us a certificate for appeal to the Supreme Court under Article 134-A of the Constitution of India.

19. On consideration of the said prayer, we are of the view that no substantial question of law arises in the present matter, as the matter has been categorically settled by the Supreme Court and is no longer res integra, as discussed above. Accordingly, the said prayer is also rejected.

20. The writ petition is **dismissed** in the aforesaid terms.

December 4, 2025

Lokesh Kumar

(Manjive Shukla,J.) (Shekhar B. Saraf,J.)