
CASE COMMENTARY – P.V NARSIMHA RAO V. STATE (CBI/SPE)

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INTRODUCTION

In the year 2000, a 5-judge bench of the Supreme Court of India led by S.C. Agarwal, G.N. Rao, A.S. Anand, S.P. Barucha and S. Rajendra Babu had sat for the hearing of P.V. Narsimha Rao v. State (CBI/SPE) famously known as the “JMM Bribery case”.¹

Initially, legal action was taken by the state against some purported offenders for committing the offence of bribery. The Special Judge in Delhi took cognizance of the same. A petition was then filed in the High Court of Delhi to quash the charges pressed against the accused individuals. After dismissing the petition, an appeal was made by Shri P.P. Rao, Shri D.D. Thakur, and Shri Kapil Sibal who were the learned counsel for the appellants in the Supreme Court of India which was later referred to a constitutional bench.²

The court in a split decision of 3:2 ratio, held the judgement in favor of the Members of Parliament declaring that they were entitled to immunity from the criminal prosecution for the offence of bribery, under Article 105 of the Constitution of India.³ This decision left numerous individuals disappointed including the members of the legal committee and law enforcement. It is crucial to peruse this verdict as it is likely to bear significant implications for both the Indian Parliament as well as the broader political outlook in India.

FACTS

The Congress party won the most votes in the general election for the tenth Lok Sabha, which was conducted in 1991. As a result, it established the government and appointed P.V. Narasimha Rao as prime minister. On July 27, 1993, a motion of no confidence was introduced in the Lok

¹ *P.V. Narsimha Rao v. State (CBI/SPE)* (1998) 4 SCC 626

² *ibid*

³ The Constitution of India 1950, art. 105

Sabha against PV Narasimha Rao's minority government. The no-confidence vote needs the backing of 14 Members to be rejected. The no-confidence motion failed on July 28, 1993, with 251 members voting in favor and 265 voting against. Some members of Lok Sabha owing allegiance to the Jharkhand Mukti Morcha (hereinafter referred to as JMM), and members of Janta Dal, Arjit Singh (member of the Lok Sabha owing allegiance to the JD, AS, voted against the no-confidence motion.⁴

On July 28, 1993, they won the vote of no-confidence motion. Ravinder Kumar and Rashtriya Mukti Morcha claimed that certain MPS from Jharkhand were involved in a criminal conspiracy. P.V. Narasimha Rao paid bribes to Mukti Morcha and Janta Dal (Ajit Singh) to assist them in defeating the motion, and they then lodged a case with the CBI. A complaint was filed against the suspected bribe takers and givers in accordance with the Prevention of Corruption Act of 1988 and section 120-B of the Indian Penal Code, and Special Judge, Delhi took charge of the matter. The Delhi High Court rejected the petition that the accused submitted. As a result, they filed an appeal with the Supreme Court's constitutional bench.⁵

RULE

Article 105 (1) of Indian Constitution⁶, secures freedom of speech in parliament to its members. This freedom is “subject to the provisions of this constitution”. These words have been constructed to mean subject to the provisions of the constitution which regulate the procedure of Parliament, i.e., Articles 118 and 121.⁷

Article 105(2) of India Constitution⁸ provides immunity with regard to court proceedings. It states that no member of Parliament is subject to "proceedings" in any court "in respect of" anything said or a vote cast in Parliament or one of its committees. Any civil, criminal, or even writ proceeding is included when we use the term "proceedings." Nothing spoken within a house can be taken to court or used as evidence.⁹

⁴ P.V. (n 1)

⁵ Ibid

⁶ Constitution (n 3), art. 105(1)

⁷ MP Jain, Indian Constitution Law (6th edn, Lexis Nexis 2010) 92

⁸ Constitution (n 3), art. 105(2)

⁹ MP Jain, Indian Constitution Law (6th edn, Lexis Nexis 2010) 92

The definition of “public servant” in section 2(c)¹⁰ of the 1988 Act includes persons who are public servants under the provisions although the criterion of removability does not apply to them and there is no single authority that is authorized to sanction their prosecution under section 19 of the 1988 Act.

ISSUES

In this case two very significant questions were discussed concerning parliamentary privileges.

- Whether by virtue of Arts. 105(1) and 105(2), a member of Parliament can claim immunity from prosecution before a criminal court on a charge of bribery in relation to the proceedings in Parliament?
- Whether a member of Parliament is a “public servant” under the Prevention of Corruption Act, 1988?

ANALYSIS

1. IMMUNITY FROM PROSECUTION OF MPs

Concurring judgement:

- **S.P. Barucha and S. Rajendra Babu, JJ**

Both the judges were of the same view regarding granting the immunity to MPs under the provisions established in the constitution. Under Article 105(1) of the Indian Constitution,¹¹ MPs are entitled to enjoy freedom of speech in the Parliament which is independent from the provision of freedom of speech in Article 19¹² and are not restricted by the exceptions mentioned in it. Article 105(2) affirms that no MP is legally accountable in any court for anything said or vote given in the Parliament.¹³ In short, sub-article 2 expresses the rule in a negative manner what sub-article 1 conveys positively. The court took into consideration the fact that MPs require the freedom to speak and cast vote in the Parliament without hindering by the fear of proceedings that might be instituted against them. With respect to the

¹⁰ Prevention of Corruption Act, 1988, s. 2(c)

¹¹ Constitution (n 6)

¹² Ibid, Art. 19

¹³ Constitution (n 8)

interpretation of sub-article 2, the court put forth two remarks. First, receiving protection against the actual speech and actual casting of vote and not against what might have been said or vote that might have been given.¹⁴ Second, the protection is broad in regards to the term “in respect of” as it is mentioned to secure the right of freedom of speech provided in sub-article 1 of article 105 of the constitution.¹⁵ The immunity thus provided is absolute against the speech and vote to the MPs.

The court then relied upon some of the previous cases which addressed the ongoing contention and held accordingly. For instance, in the case of *Tej Kiran Jain v. N. Sanjiva Reddy*,¹⁶ it was held that, in reference to anything said in the Parliament includes everything that is said in order to grant immunity to the MPs against any proceedings that might take place. Moreover, the court also held that the immunity granted by Article 105(2) is confined to the operational procedures that happens during the sitting of Parliament. Hence, anything said by the MPs during this course, will be protected under the said article.

The court further cited the report of the Royal Commission of the UK,¹⁷ which mentioned that, “a Member of Parliament considered to be a briber would be granted immunity from effective punitive sanctions of the kind that can be inflicted under the criminal law.”¹⁸ It also restated the fact that the Member of Parliament who has committed an offence of bribery would not be prosecuted under criminal law due to his role of a Parliamentarian.

The court also referred to *Prebble v. New Zealand Ltd*,¹⁹ wherein the Privy Council by upholding the claim for immunity, declared that no one can question the freedom of speech, or debates, or proceeding held in the Parliament, in any court of law or anywhere outside the Parliament.²⁰

In another such case of *R. v. Currie*,²¹ the court withdrew the charges that were pressed against a bribe taker who was a Member of Parliament and concluded that since the occurrence is

¹⁴ P.V. (n 1)

¹⁵ Ibid

¹⁶ *Tej Kiran Jain v. N. Sanjiva Reddy* (1970) 2 SCC 272

¹⁷ Great Britain, ‘*Royal Commissions on Standards of Conduct in Public Life*’ Her Majesty’s Stationery Office, 1976

¹⁸ Ibid

¹⁹ *Prebble v. Television New Zealand Ltd* (1994) 3 All ER 407

²⁰ ibid

²¹ *R. v. Currie* [1997] 2 SCR 260

protected under the parliamentary privilege, the court does not have authority to accuse MP for bribery.²²

Ultimately, the court stated that the purpose behind granting the immunity is to authorize the Members to put forth their opinion and speak in the Parliament and its debates and vote in the similar manner, without being intimidated by the apprehension of facing legal liability in the court for the same.²³ Hence, the judges held that the appellants will enjoy immunity against the criminal proceedings for the offence of bribery, under Article 105 of the Indian Constitution.

G.N. Ray, J

Article 105 of the Constitution of India pertains to the powers and privileges provided to the House of Parliament and its members and committees thereof.²⁴ A member of parliament enjoys the protection provided under clause 2 of the abovementioned article which arises out of the principle of freedom of speech which is mentioned in clause 1 of the same article.²⁵ This basically means that both the clauses are in correlation with one another, elucidating freedom of speech and right to vote in article 105 of the Constitution. Just like judges Barucha and Rajendra Babu, Justice G.N. Ray was also of the view that the interpretation of the term “in respect of” must be emphasised on its contextual reference and the particular aim of the provision in question instead of a rigid formula, as they both do not allow any limitation of the right to freedom of speech and right to vote provided under article 105(1) and (2) of the Indian Constitution,²⁶ provided when actual voting and delivery of speech takes place through the member in the parliament.²⁷ He too agreed to the fact that that Article 105(2) must be broadly interpreted and therefore immunity must be granted against any action taken place with reference to any vote cast or speech made in the Parliament by the members under the said article.²⁸

Dissenting Judgement:

- **S.C. Agarwal and A.S. Anand, JJ**

²² *ibid*

²³ P.V (n 1)

²⁴ Constitution (n 3)

²⁵ P.V. (n 1)

²⁶ Constitution (n 3)

²⁷ P.V. (n 1)

²⁸ *ibid*

Concerning the first question of immunities and privileges of Article 105 (2)²⁹ Justice S.C. Agrawal gave his and Dr Anand, J. dissenting opinion wherein they have first examined the scope and ambit available to a Member of Parliament. Before undertaking this task, they have briefly outlined the prevailing state of law in the United Kingdom and other countries following the common law and have tried to connect and interpret it with the Indian context.

According to the Salmon Commission's recommendation, Parliament should take into account corruption, bribery, and attempted bribery of a Member of Parliament operating in his parliamentary capacity within the ambit of the Criminal law.³⁰ In other words, members of the English Parliament are not entitled to claim immunity about crimes they have committed and are instead subject to the normal process of criminal prosecution like any other citizen. Consequently, India is entitled to the same interpretation in accordance with Article 105(3).³¹

The protection provided by clause (2) of Article 105³² is narrower than that granted by Article 9 of the Bill of Rights³³ (in England, this bill guarantees freedom of speech in Parliament). That is because the immunity granted by that clause is of a personal nature and is available to Members with respect to anything said or in any vote cast by him in the house or any violation thereof. The aforementioned clause does not confer immunity for challenge in the court on the speech or vote given by a Member of Parliament.³⁴ The defence provided by the interpretation of Article 9 of the Bill of Rights put out by Hunt, J. in *R. v. Murphy*³⁵, was rejected by the Privy Council in *Prebble v. Television New Zealand Ltd.*³⁶ Senior Counsel Shri Rao has used the case of *Ex p Wason*,³⁷ in which the judges stated that because the decision, in that case, was made in the context of Article 9 of the Bill of Rights³⁸, it can have no application in the matter of construing clause (2) of Article 105³⁹. The said clause does not state that a statement or vote given by a Member of Parliament cannot serve as the foundation of any civil or criminal

²⁹ Constitution (n 8)

³⁰ Ibid

³¹ Yashasvi & H. R. Saviprasad, 'JMM Bribery Case: A Review' (1999) 11 Student Advoc 144

³² Constitution (n 8)

³³ Bill of Rights, art. 9

³⁴ P.V. (n 1)

³⁵ *R. v. Murphy* (1986) 5 NSWLR 18

³⁶ *Prebble* (n 19)

³⁷ *Ex p Wason* (1869) 4 OB 573: LJQB 302

³⁸ Bill of Rights, art. 9

³⁹ Constitution (n 8)

proceedings. The preceding clause exclusively provides a shield to the Member who has delivered the speech or has given the vote from liability in any proceeding in a court of law.⁴⁰

After taking note of the legal positions of different countries, they look at the legal position in India, where accepting a bribe by a Member of Parliament is regarded as a breach of parliamentary privilege even though no money has actually changed hands.

In the import license case, where it was claimed that a member of the Lok Sabha had accepted a bribe and faked members' signatures, the Lok Sabha debated the issue of the offer or payment of bribe in 1974. However, it was also decided that he might be charged with lowering the House because the allegations of bribery and forgery were so severe and unworthy for a Member of Parliament.⁴¹

Furthermore, they have paid more emphasis on the expression “in respect of” used in clause (2) of Article 105.⁴² The interpretation of the said phrase should be done in a way that the immunity granted under that clause is only available in respect of legitimate acts of Member of Parliament and it cannot be used to secure immunity against any criminal acts in which the member may have been involved.⁴³

They held that “the offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way. The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way”.⁴⁴

Moreover, Article 105(2)⁴⁵ does not protect a Member of Parliament from indictment in a criminal court for accepting or offering a bribe in exchange for casting a vote in Parliament. He expressed the opinion that accepting a bribe is not related to the duties of an M.P. and does

⁴⁰ P.V. (n 1)

⁴¹ Ibid

⁴² Constitution of India, art. 105(2)

⁴³ PV Narasimha Rao v State (1998) 4 SCC 626

⁴⁴ Ibid, para 50

⁴⁵ Constitution of India, art. 105(2)

not, therefore, form a part of his official or parliamentary duties and is therefore, not covered⁴⁶ by Article 105(2).⁴⁷

2. *M.P AS A PUBLIC SERVANT*

- **Agarwal, J. (for himself and Anand J.)**

According to Agarwal, J. definition of “public servant” has been defined under sec 2(c) of the Prevention of Corruption Act (hereinafter referred to as the 1988 act), which basically states that a person in service of the Government for the performance of any public duty, among other things, is called a public servant.⁴⁸ The relevant clause is 2(c)(viii) which states that a person is a public servant who holds an office and who is required to perform a public duty (according to section 2(b) of the act).⁴⁹ Upon the argument whether the members hold an office or not, the judges were of the view that, according to the interpretation of the provisions of the Constitution of India and some other acts, since an MP is authorized to occupy an office, he is obliged to grant sanction for the accomplishment of the responsibilities that pertain to public duties.⁵⁰ It was thus concluded that an MP falls within the purview of section 2(c)(viii) of the 1988 act and therefore is a public servant according to the same act.⁵¹

- **G.N. Ray, J.**

Justice G.N. Ray concurred with the judgement passed by Justice Agarwal and approved the reasoning for the conclusion that an MP is considered as a public servant under the Prevention and Corruption Act, 1988.⁵²

- **Barucha, J (for himself and Rajendra Babu J.)**

Justice Barucha initially defined what public servant and public duty is by the means of the sections 2(c) and 2(d) of the 1988 act.⁵³ The court rejected the submission that an MP only has privileges and no duties by explaining that MP represents the people while forming the laws

⁴⁶ PV Narasimha Rao v State (1998) 4 SCC 626

⁴⁷ Constitution (n 8)

⁴⁸ Prevention of Corruption Act 1988, sec. 2(c)

⁴⁹ Ibid, sec. 2

⁵⁰ P.V. (n 1)

⁵¹ Prevention (n 22), sec. 2(c)(viii)

⁵² P.V. (n 1)

⁵³ Prevention (n 23)

which administer the society and also looks after both the central and state expenditure by exerting authority over the executive.⁵⁴ The court, while referring to the case of Habibulla Khan,⁵⁵ expressed that for an MP to be a public servant under the 1988 act, he must fulfill 2 conditions, first holding an office and second executing the public duty on account of that office.⁵⁶ The court accepted through the arguments that the MPs fulfilled both the conditions and its position as a member is subsisting, permanent and substantive.⁵⁷ Hence for the purpose of the said act, an MP is considered as a public servant.

CONCLUSION

The questions of law that have been addressed in this case are of a significant importance for India's legislative future. The verdict has however been developed into mixed results. The bright side of this is the declaration of the MPs being considered as public servants. Additionally, the judiciary has made provisions for the Chairperson of Rajya Sabha as well as the Speaker of Lok Sabha to become the sanctioning authorities for the MPs in the cases of offences related to corruption, which necessitate such authorization.⁵⁸ Consequently the judgement has made sure for the Parliament to take responsibility to formulate an appropriate legislation to officially appoint the sanctioning authority.

Moreover, majority of the individuals have opined that the decision of the court to give immunity to the MPs which extends to the offence committed in respect of corruption and bribery is erroneous and inaccurate. For the same purpose, recently Supreme Court has referred to review the judgement of *P.V. Narsimha Rao v. State (CBI/SPE)* to a 7-judge.⁵⁹ The present case in the Supreme Court is related to a member of JMM who was indicted for taking bribe against voting in favor of some candidates in the Rajya Sabha Elections in 2012.⁶⁰ A petition was filled in the Jharkhand High Court under Article 194 of the Indian Constitution but eventually got dismissed. The case is now being heard by the Supreme Court.⁶¹

⁵⁴ P.V. (n 1)

⁵⁵ *Habibulla Khan v. State of Orissa* (1995) 2 SCC 437

⁵⁶ Ibid

⁵⁷ P.V. (n 1)

⁵⁸ Ibid

⁵⁹ Padmakshi Sharma, 'Do MPs/MLAs Taking bribe For Votes Have Immunity From Criminal Law? Supreme Court Refers to 7-Judge Bench', 20 September 2023 <<http://www-livelaw-in.opj.remotlog.com/top-stories/are-mpsmlas-immune-from-prosecution-for-taking-bribe-to-cast-vote-in-legislature-supreme-court-refers-to-7-judge-bench-238263?infinitemscroll=1>>

⁶⁰ Ibid

⁶¹ Ibid