

**PRADEEP KUMAR SONTHALIA V. DHIRAJ PRASAD SAHU: AN ANALYTICAL
STUDY**

*Justice Kaushal Jayendra Thaker**

- I. **Introduction**
- II. **Contentions and Arguments**
- III. **Issues before the Supreme Court**
- IV. **Analysis of Supreme Court decision**
- V. **A note on cogent approach**
- VI. **Conclusion**

I. Introduction

SINCE TIME immemorial elections are fought with all kinds of craft. The term ‘fought’ has replaced the word ‘contesting’ an election. Recently the Apex court had to decide on whether a person who has been convicted can be a representative of the people or not? The importance of elections and the principles on which elections are contested have been discussed time and again. Recently, the Election Commission of India has come out with the sixth volume of the book titled ‘Landmark Judgments on Election Law’¹. The judgment is taken up for consideration as while going through the six volumes, the author could not find a single case which had been responsible for the new shift in jurisprudence of law on timing of disqualification under election law. Looking at the peculiar facts of the case and considering fraction of day and time and not 12.00 a.m. as the starting point of the event was considered. The decision has considered two important facets of law namely - time and date for applicability of statute and, therefore, in the coming years it would have great bearing on the election laws of India. The vision of the Constitutional framers has been

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¹ A compilation of important judgments pronounced by the Supreme Court of India and the High Courts of various States.

embodied in Part VI, Chapter 3, as ‘disqualifications for membership’ under Article 191 of the Constitution of India (*hereinafter* referred to as ‘Constitution’).

a. Why this judgment for analysis?

The *Pradeep Kumar Sonthalia v. Dhiraj Prasad Sahu*² is about an election dispute which throws light on when a person can be said to be disqualified. The judgment is important for it also considers the judgment in *Saritha S. Nair v. Hibi Eden*³ (*hereinafter* referred to as ‘*Saritha case*’) which was decided by the Supreme Court immediately before this matter was decided. The judgment would strengthen the democratic base and the constitutional ethos of India.

Further, the judgment also considers the decision of the apex court in *Union of India v. G.S. Chatha*⁴ (*hereinafter* referred to as ‘*Chatha case*’) and *Saritha Case (Supra)* which laid down the time for disqualification in this digital era.

b. The parties and their respective interests in the matter

Pradeep Kumar Sonthalia (Pradeep Kumar) (was a person who had)contested the election to Rajya Sabha as a member of Bharatiya Janata Party (B.J.P). Samir Uraon and Dheeraj Prasad also contested the same election. The main person, around whom the entire fulcrum of the judgment rotates, is Amit Kumar Mahato (Mahto). His interest in the matter was to cast vote as sitting M.L.A. and his vote proved to be decisive. The petitioner was Pradeep Kumar who had lost the election and also the election petition before the High Court. Despite losing before the Court, Dheeraj Prasad Sahu who was the elected member succeeded before both the Courts in retaining his seat in the Rajya Sabha. Amit Kumar Mahto is a person who turned to be the decisive voter before he was convicted by the competent court.

c. Relevant factual aspects and background

² (2021) 6 SCC 523

³ (2020) SCC Online SC 1006

⁴ (2021) 2 SCC 209.

In the State of Jharkhand, two members of the Rajya Sabha were to retire on May 3, 2018. The Election Commission of India declared the program of election and the date of poll was fixed as March 23, 2018 and the hours of poll were from 9 a.m. to 4 p.m. The counting of votes was to take place on the very same day at 5 p.m. The parties are referred to as 'petitioner' and 'returned candidate'. Petitioner was a candidate of BJP. Two other candidates also filed nomination. Till the date of poll and till the hours of poll, things went in normal way. The Election to Rajya Sabha was held and a voter Amit Kumar Mahto cast his vote at 9.15 a.m. as he was a sitting member of Legislative Assembly from Silli constituency. On the same day, after Amit Kumar Mahto cast his vote, he was convicted in the afternoon by the competent court and was taken into custody. As is the practice, his sentence was pronounced at 02.30 p.m. under various provisions of the law.

This conviction rendered Sri Mahto disqualified under section 8 (3) of the Representation of the Peoples Act, 1951, from the date of his conviction, *i.e.*, March 23, 2018 and he would cease to be a member of Legislative Assembly. This came into effect immediately and, therefore, his vote was not to be considered by the authorities concerned. The counting of votes could not start at 5 p.m. and instead started at 7.30 p.m. At around 11.20 p.m., the petitioner requested the Commission to declare the vote of Mahto as invalid. But the Returning Officer by email on March 20, 2018 at 6:22 pm rejected the objection raised on behalf of petitioner mainly on the ground that the Returning Officer had not received the judgment of conviction of Sri Amit Kumar Mahto till the declaration of the results. The Returning Officer did not even take any steps to verify the correctness of the facts though the same was in news of local electronic media. The petitioner lost the election by 0.01 votes and, therefore, he challenged the voting of Mahto.

The undisputed fact as noted by the High Court is that Mahto was convicted at 02:30 p.m. on March 23, 2018 but at around 2.30 p.m., he was sentenced for 2 years imprisonment and, therefore, on that date, he stood disqualified. According to the author, this fallacy of the High Court that he stood disqualified on that day was uncalled for. The fact was that Amit Kumar Mahto cast his vote in the morning. His disqualification in terms of section 8 (3) of the RP Act would apply from the date of his conviction or would come into force as per English calendar beginning at midnight and cover a period of 24 hours. However, the High Court dismissed the Election Petition.

The petitioner came up before the Apex Court. At times, litigation on the first glance makes one wonder as to why they should have been the subject matter of decision by the apex court. The Supreme Court being the final court in the country, the law declared would be binding. In this case, some ray of hope was shown by the High Court to the candidate who was defeated by a margin of 0.01 votes. The judgment assumes importance as it has construed law which starting point of period of time. The courts namely the High Court as well as the apex court have considered several authoritative pronouncements while deciding the *lis*.

II. Contentions and Arguments

The result of the election was challenged by the petitioner as he was materially affected by improper reception of the vote of Mahto as according to him the vote was invalid. It was argued that there was non-compliance of section 8 of the Representation of Peoples Act, 1951 along with article 191 read with article 193 of the Constitution of India. The petitioner had preferred the petition under section 81 of the Representation of People Act, 1951 being a contesting candidate. The High Court in the election petition after the parties had completed their pleadings framed the following six questions:-

1. Whether Shri Amit Kumar Mahto has cast his vote in favour of respondent no.1 in Biennial Election to the Council of States, 2018 in connection with State of Jharkhand?
2. Whether on conviction and sentence of two years in Sessions Trial No. 481 of 2010 by the Additional Judicial Commissioner-XVIII, Ranchi, Shri Amit Kumar Mahto ceased to be a Member of Legislative Assembly and his disqualification came into effect immediately from the date of his conviction and sentence of two years and, therefore, the vote of Shri Amit Kumar Mahto could not have been taken into consideration at the time of counting?
3. Whether the disqualification of Shri Amit Kumar Mahto rendered his vote/illegal that was cast to respondent no.1 and, therefore, reception of his vote was improper and, thus, in terms of section 100 (1)(d)(iii) of the Representation of People Act, 1951, the election of respondent no.1 is liable to be declared void?
4. Whether the communication from the Returning Officer (e-mails dated March 24, 2018) rejecting the objection made on behalf of the petitioner on the

- ground that the Returning Officer had received the Judgment of conviction of Shri Amit Kumar Mahto till the declaration of the results, is absolutely illegal and unlawful?
5. Whether disqualification of Shri Amit Kumar Mahto in terms of section 8(3) of the Representation of People Act, 1951, takes effect from the date of his conviction and sentence of two years *i.e.*, March 23, 2018 which means the day as per English calendar beginning at midnight and covering a period of 24 hours *i.e.* with effect from March 23, 2018 at 00:00 hours?
 6. The respondent no.1 having been declared to be elected in the Biennial Election to the Council of States-2018 by a margin on 0.01 vote and in the event, the vote of Shri Amit Kumar Mahto which has been received improperly is ignored, then whether the petitioner is entitled to be declared successful and consequently for being elected as a Member of Rajya Sabha.

The petitioner examined himself and the Returning Officer Vinay Kumar Singh as witness number 1. The respondent did not examine any witness. The court even considered various documents before determining the issues in the election petition.

The petitioner contended that the statute uses the word 'date' with reference to an event. It is a question of law that it has to be held that the event occurred at the intersection of the previous day and the present day, namely, at 0.01. The reasoning of this argument was that the day begins at 0.01 hours and fractions are never counted. The contention was that even though the conviction and sentence was recorded at 2.30 pm, the date of such conviction by a deeming fiction would commence on 0.01 am, *i.e.*, when March 22 lapsed. And it was further submitted that the 'date' is relevant and therefore, the vote of Amit Mahto was invalid. The Court considered the provision of article 191 read with section 8 of Representation of People Act 1951. The Court synchronized between article 191(1)(e) of the Constitution with section 8 of the RP Act. The seat became vacant immediately on the 'date' of conviction because of the disqualification.

The Court referred to the recent judgment pertaining to election in the matter of *Saritha Nair*. The Court held that in election matters, court was not dealing with fundamental rights or a common law right, rather a statutory right and an election petition lies in special jurisdiction. The petitioner even contended that word 'date' has to be taken to mean the whole day and fractions of the day will have to be disregarded. The Court did not accept

the said contention and held that judgment in *Pashupati Nath Singh v. Harihar Prasad Singh*⁵ (hereinafter referred to as 'Pashupati Nath') would not be applicable to the facts of the case and rightly held that the facts were either converse to that of *Pashupati Nath* or a mirror image. The Court even distinguished the judgments in *Prabhu Dayal Sesma v. State of Rajasthan*⁶, *Tarun Prasad Chatterjee v. Dinanath Sharma*⁷ and the reliance placed on *B.R. Kapur v. State of T.N.*⁸ The Court, however, accepted the contention that section 8 (3) of RP Act and article 193 of the Constitution are not of penal consequence and therefore beneficial construction should not be given. The Court accepted that disqualification was to arrest the criminalisation of the politics but the court considered the time when it would apply and held that presumption of innocence would evaporate much before the conviction and or sentence would be against the settled legal principles. The Court rightly held that law of insurance and law under the Environment Protection would also be of no avail to the petitioner. The Court relied on the recently decided matter where the court interpreted the term 'day date' and had applied the principle of event happening as events of disqualification were the words used and upturned the decision of the High Court of Jharkhand to certain extent.

Decision of the High Court

Ultimately, the learned Judge has, after discussing the arguments of the petitioner, refused to grant any relief and refused to permit recounting of votes. As the Election Commission was not made a party, relief was not granted by way of inferences. The court decided issues 1, 2, 3 and 5, in favour of the petitioner and yet it refused to grant any relief to him. While reading this judgment what can be found is that the learned judge has discussed the submissions of the petitioner and has come to the conclusion that the candidate was disqualified. The learned judge has held that the day and date would be as per 24 hours of the calendar and would start at midnight.

The questions numbers 1, 2, 3 and 5 were decided in favour of the petitioner. As far as question no. 4 is concerned, the Court did not give its opinion. The High Court held that in

⁵AIR 1968 SC 1064

⁶ (1986) 4 SCC 59.

⁷ (2000) 8 SCC 649.

⁸ (2001) 7 SCC 231.

view of the decision in *Lily Thomas v. Union of India*⁹ and of article 102 read with article 191 of the Constitution, the affirmative terms of the said Articles will not permit the deferring of the date from which disqualification will come into force and therefore, answered issues 2, 3 and 5 against the petitioner. The learned judge of the High Court even went on to decide the term 'date' as used in section 8(1), 8(2) and 8(3) of the Representation of People Act, 1951 and came to the conclusion that date which would now mean point of time when the event took place rather than the whole day. Thus 'day' would mean all the working hours of the date and not the moment when the case is called out. The learned judge went on to even consider the case under the insurance laws and other laws and came to the conclusion that a legal day commences from 12 a.m. in the midnight till the same hour of the following night for the purpose of encompassing the period. However, the court went on to define the term 'thereupon' and tried to harmoniously construe the provisions and read down the provisions. The learned judge placed heavy reliance on decisions in *Sushil Kumar Agarwal v. Meenakshi Sadhu*,¹⁰ *Shailesh Dhairyawan v. Mohan Balkrishana Lulla*¹¹ and *Anurag Mittal v. Saily Mishra Mittal*¹² to come to the conclusion as follows:

105. Arguments were advanced on behalf of the petitioner on Issue Nos. 2, 3 & 5 that with regard to conviction of Amit Kumar Mahto vide judgment dated 23.03.2018, the day will be counted from 00 hours. I accept the submissions of the learned counsel for the petitioner. I find that respondent no. 1 has tried to make out a case that if this interpretation is given, the provision of Section 8 (3) of the Representation of People Act will become ultra vires under Article 191 of the Constitution of India and placed reliance on the judgment passed in the case of *Lily Thomas*, wherein Hon'ble Supreme Court has struck down the provision of Section 8(4) of the Representation of People Act, where Parliament wisdom has given time to convicted person for filing appeal on the ground that the Parliament cannot make a provision to defer the date on which the disqualification of a sitting Member will have effect and prevent his seat becoming vacant on account of the disqualification under Article 102(1)(e) or Article 191(1)(e) of the Constitution and provision of Section 8 (3) of the Representation of People Act has been framed under the aforesaid constitutional provisions. There is no question of any contradiction, if the view is taken that the date commences from 12 Midnight to 12 Midnight in

⁹ (2013) 7 SCC 653.

¹⁰ (2019) 2 SCC 241.

¹¹ (2016) 3 SCC 619.

¹² (2018) 9 SCC 691

- view of different judgments of the Hon'ble Supreme Court. Accordingly, Issue Nos. 2, 3 & 5 are decided in favour of the petitioner.
106. So far grant of reliefs prayed for by the election petitioner is concerned, I am of the view that admittedly, in this election petition, the issues have been decided on the basis of pleadings and written statements and prayers made in the plaint. As there is no prayer for recounting of votes, nor Election Commission of India has been made a party in the election petition, no relief can be granted to the petitioner by drawing inferences.
107. Further, I am of the view that this election petition is related to Biennial Election for Member of Rajya Sabha in which respondent no. 1 has been elected in accordance with the system of proportional representation by means of the single transferable vote which is a highly technical issue and this Court is not competent to deal with this issue. So, the reliefs as prayed for to set aside the election of respondent no. 1 and to declare the petitioner to be elected as a Member of Rajya Sabha cannot be allowed.

III. Issues before the Supreme Court

Two appeals came to be preferred by the parties: one preferred by Pradeep Kumar Sonthalia as petitioner and the other by the returned candidate. The Civil Appeal No.611 of 2020 was by the petitioner whereas Dhiraj Prasad Sahu preferred another Civil Appeal challenging findings on issues no. 1, 2, 3 and 5. The apex court had taken up the matter for decision with the following words:

An interesting but important question of far-reaching consequence arises for consideration in these appeals. It is this-Whether the vote cast by a Member of the Legislative Assembly in an election to the Rajya Sabha, in the forenoon on the date of election, would become invalid, consequent upon his disqualification, arising out of a conviction and sentence imposed by a Criminal Court, in the afternoon on the very same day?

Reference to several decisions were made, the latest being *Saritha Nair* and the judgment by the Apex Court in *Chatha Rice Mill*. Though the spheres of applicability of law in all the three cases were different, the common feature for which the judgment in *Chatta Rice Mills* was relied on the expression 'date and time' and the applicability of the fraction of the day.

As the High Court had noted certain undisputed facts namely - Amit Kumar Mahto had cast his vote in favour of Dhiraj Prasad Sahu, Amit Kumar Mahto had cast his vote at 9.15 a.m. on March 23, 2018, and the Apex Court held that it was required to decide only two surviving issues namely:

(I) Whether the vote admittedly cast by Shri Amit Kumar Mahto in favour of Shir Dhiraj Prasad Sahu at 9.15 A.M. on 23.03.2018 should be treated as an invalid vote on account of the disqualification suffered by the voter under article 191(1) (3) of the Constitution of India read with section 8(3) of the Representation of People Act, 1951, by virtue of his conviction and sentence by the Sessions Court in a Criminal case, rendered at 2.30 P.M. on the very same date 23.03.2018; and

(ii) Whether, in the event of the first issue being answered in the affirmative, the election petitioner is entitled to be declared as duly elected automatically.

The Court did not delve into the issues of non-joinder of Election Commission of India and prayer for recounting of votes.

Ratio of the Supreme Court

The ratio in the said decision is that a vote cannot be annulled till the outcome of criminal case and that conviction which was subsequent cannot precede the event. The expression 'date' as appearing in section 8 (3) of RP Act would be the time of happening of the events of disqualification and not prior *thereto i.e.* it can't be from 0.00 a.m. The scheme of article 191 (1) is different and the term 'date' has to be given in the meaning by the Apex Court in the judgment under analysis. The disqualification cannot be affected before the conviction. The Common question in both the cases, namely, *Chatha Case* and *Pradeep Case* were related to time, when the levy of tax would apply and the time when conviction would operate as a disqualification.

The conviction recorded and punishment which was imposed in the afternoon could not invalidate the vote cast in the morning even before the event occurred. Thus, Supreme Court decision has held that it cannot be contended that the word 'date' used in the statute should be understood to relate back to 00:01 am. Thus, the reverse situation cannot be made applicable. It would be relevant for us to refer to the reference quoted by learned Chief Justice S.A. Bobde, in the decision of *Pradeep Kumar* reads as follows :

It may not. If tested against each one of Sub-clause (a) to (d) of Clause (1) of article 191 we would find that the interpretation offered by the appellant would not survive. Justice Oliver Wendell Holmes, Jr. In *Henry R. Towne v. Mark Eisner* while dealing with the construction of a word in the constitution as well as a statute, observed : -

A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and tie in which it is used.

Thus, a conjoint reading of two decisions namely, *Chatha* and *Pradeep Kumar* go to show that after the advent of e-notification, not date but 'time' is the essence of the applicability of an event taking place.

IV. Analysis of Supreme Court decision

The decision proceeds on three premises, **one** Amit Kumar Mahto has cast his vote in the morning, **two** by virtue of conviction and sentence by Sessions Court in criminal case which was handed down at 2.30 p.m., the vote of Mahto was not invalid and **third** the election petition interpreted article 191 of the Constitution read with provisions of the Representation of People Act, 1951 while deciding the holds that the disqualification under article 191 of the Constitution would be post conviction of a person for any of the offences and the seat would become vacant, and his name would be liable to be deleted as a voter.

The RP Act, more particularly section 8, also deals with disqualification on conviction. Both article 191 and section 8 of the RP Act have to be read in sync. The period of disqualification under section 8(3) comprehends commencement of the period as well as its expiry. Thus, the Apex Court after referring to the decision in *Jyoti Basu v. Debi Ghosal*¹³ refused to accept the term 'on the whole of the day' as referred by the Apex Court in *Pashupati Nath Singh v. Harihar Prashad Singh*¹⁴ and held that the facts of the case taken for analysis was converse to that in *Pashupati Nath Case* and therefore, relying on *Chatha Case* and the decisions under criminal jurisprudence, came to the conclusion that disqualification cannot precede conviction though *Chatha Case* was applied in the different

¹³ 1982 1 SCC 691.

¹⁴ AIR 1968 SC 1064.

context as it was in the realm of information given to the Returning Officer. Relevant portion of the judgment is referred verbatim:

1. In our view to hold that a Member of the Legislative Assembly stood disqualified even before he was convicted would grossly violate his substantive right to be treated as innocent until proved guilty. In Australia this principle has been described as an aspect of the rule of law known both to Parliament and the Courts, upon which statutory language will be interpreted *K-Generation Pty. Ltd. v. Liquor Licensing Court*, (2009) 83 ALJR 327.
2. In the present case, it would be significant to add that it is not necessary to make a declaration incompatible in the use of the word date with the general rule of law since the word date is quite capable of meaning the point of time when the event took place rather than the whole day.

and again, in concluding part summed up artistically as:

1. Therefore, on the first issue we hold that the vote cast by Shri Amit Kumar Mahto at 9:15 a.m. on 23.03.2018 was rightly treated as a valid vote. To hold otherwise would result either in an expectation that the Returning Officer should have had foresight at 9:15 a.m. about the outcome of the criminal case in the afternoon or in vesting with the Election Commission, a power to do an act that will create endless confusion and needless chaos.
2. In view of our above answer to the first issue, the second issue does not arise for consideration. Therefore, the Civil Appeal No. 611 of 2020 is dismissed. Civil Appeal No. 2159 of 2020 is allowed, setting aside the findings of the High Court on issue Nos. 2, 3 and 5 framed by the High Court. There will be no order as to costs.

Though the Apex Court has not considered the question from the angle of applicability of article 20 of the Constitution, as in article 20 (1) of the Constitution there is a strict prohibition against passing of retrospective law but against conviction under a law cannot be antedated or ante time. The term shall be convicted under offence and the word 'offence' would be applicable only after the offence is proved. In our case, he was not convicted when the voting took place. The law in force showed that he was not convicted of any offence when he voted. Thus, article 20 also could have been invoked in the facts as they emerge in the case taken for analysis. The interesting question which was posed was

whether the vote cast by a Member of the Legislative Assembly in an election to the Rajya Sabha, in the forenoon on the date of election, would become invalid, consequent upon his disqualification, arising out of a conviction and sentence imposed by a Criminal Court, in the afternoon on the very same day?

Thus, this important question was decided against the appellant by both the courts as it was held that conviction of Amit Kumar Mahto on March 20, 2018 was at 2.30 p.m. and he had cast his vote between 9 a.m. to 4 p.m. in the Vidhan Sabha, thus, the conviction did not affect the validity of voting. The author does not delve into other necessities of election but only on the extreme question of applicability of the judgment of the criminal court *vis-a-vis* validity of the vote cast by Sri Amit Kumar Mahto. The election petition was rightly dismissed.

The question of applicability of the date and time was considered earlier in *Chatha Case*. In the case of *Pradeep Kumar*, once again the question of timing as to when disqualification would come into force was raised and decided. The Court placed reliance on the decision in *Chatha Case* and dismissed the appeal preferred by the candidate who had lost the election and had challenged the decision of the High court which held that the disqualification of the convicted person would come into force on conviction but refused to grant relief. The law propounded by the Court was that the words ‘on the date’, would not mean from 00.12 a.m. The court further held that there would be no deeming fiction and conviction cannot be from a point of time anterior to the conviction being recorded. The Court stated that legal fiction cannot prevail over facts where law does not intend it to so prevail.

V. A note on cogent approach

The decision gives a quietus to the newly emerged question of time when disqualification would come into force. The judgment shows that how the courts should deal with election matters pertaining to the new emerging trends and the judgment can be said to be coherently discussing the issues of disqualification, criminology and what relief should be given. The judgment does not touch upon aspects which are redundant as the finding on issue no.1 was against the petitioner and the Apex Court did not feel it proper to raise new question or

rather answer the question which has become redundant and thereby avoided delving on irrelevant issues which would have no bearing on the future election matters which shows the meticulous manner in which the Apex Court has dealt with the issues raised before it by shifting to the important aspect like time when the disqualification sets on. The judgment can be said to be very cogently and coherently answering the questions posed in a systematic manner. The trinity of laws has been systematically answered step by step. The judgment can be said to be deciding a very important question which would have consequences in future. Let us assume that the vote was cast between 11 am and 2 pm.

It would have been a debatable question that conviction was there but sentencing was done later. Retrospective application of election laws could have been discussed but was not rightly discussed.

VI. Conclusion

It appears that the Apex Court has scotched the dispute about applicability of law as to criminality attached to Election Laws in India. The court interpreted the legislation by giving purposive meaning by interpreting the law as new as per the changed scenario.

The law as to effect of conviction on voting rights demonstrates that the disqualification under the Representation of Peoples Act, 1951 would be applicable only when the conviction was pronounced and communicated and came in to operation to the Election Commissioner and not prior to that. The Court held that the Court cannot give interpretative meaning which creates endless chaos. The Court considered the word 'date' as appearing in section 8 (3) of the Representation of Peoples Act and article 19 (1) (e) of the Constitution and stated that it cannot be given a meaning which would be against the mandate of statutory interpretation.