

P. V.Narasimha Rao

Vs

State (CBI/SPE)

(S. C. Agarwal, G. N. Ray, Dr. A. S. Anand, S. P. Bharucha,

S. Rajendra Babu JJ)

17.04.1998

JUDGMENT

BHARUCHA J

1. On 26th July, 1993, a motion of No-confidence was moved in the Lok Sabha against the minority government of P.V.Narasimha Rao. The support of 14 members was needed to have the no-confidence motion defeated. On 28th July, 1993, the no-confidence motion was lost, 251 members having voted in support and 265 against. Suraj Mandal, Shibu Soren, Simon Marandi and Shailender Mahto members of the Lok Sabha owing allegiance to the Jharkhand Mukti Morcha (the JMM), and Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadicharan Das, Abhay Pratap Singh and Haji Gulam Mohammed, members of the Lok Sabha owing allegiance to the Janta Dal, Ajit Singh group (the J.D. A.S.), voted against the no-confidence motion. Ajit Singh, a member of the Lok Sabha owing allegiance to the J.D.A.S., abstained from voting thereon.

2. It is the respondents' case that the abovenamed members agreed to and did receive bribes, to the giving of which P.V.Narasimha Rao, M.P. and Prime Minister, Satish Sharma, M.P. and Minister, Buta Singh, M.P., V. Rajeswar Rao, M.P., N.M. Ravanna, Ram Linga Reddy, M.L.A., M. Veerappa Moily, M.L.A. and Chief Minister, State of Karnataka, D.K. Adikeshavulu, M. Thimmogowda and Bhajan Lal, M.L.A. and Chief Minister, State of Haryana, were parties, to vote against the no-confidence motion. A prosecution being lunched against the aforesaid alleged bribe givers and bribe takers subsequent to the vote upon the no-confidence motion, cognizance was taken by the Special Judge, Delhi.

3. The charge framed against P.V.Narasimha Rao reads thus:

"That you P.V.Narasimha Rao between July and August, 1993 at Delhi and Bangalore were party to a criminal conspiracy and agreed to or entered into an agreement with your co-accused Capt. Satish Sharma, Buta Singh, V.Rajeshwara Rao, HM Revanna, Ramlinga Reddy, M. Veerappa Moiley, D.K. Audi Keshvalu, M. Thimmegowda, Bhajan Lal, JMM (Jharkhand Mukti Morcha) MPs Suraj Mandal, Shibu Soren, Simon Marandi, Shailendra Mahto (approver, since granted pardon on 8.4.97), Janta Dal (Ajit Group) MPs Ajit Singh, Ram Lakhan Singh Ydav, Ram Sharan Yadav, Roshan Lal, Anadi Chran Das, Abhay Pratap Singh, Haji Ghulam Mohd. Khan and late G.C.Munda to defeat the no-confidence motion moved on 26.7.93 against the then Congress (I) Govt. headed by you by illegal means viz. To offer or cause to

offer and pay gratification other than the legal remuneration to your co-accused persons namely J.M.M. and Janta Dal (A) MPs named above as a motive or reward for their helping in defeating the said no confidence motion moved by the opposition parties and in pursuance of the said agreement you paid or caused to pay several lacs of rupees to the above referred JMM and Janta Dal (A) MPs who obtained or attempted to obtain the same in the manner stated above and thereby you have committed an offence punishable u/S 120 B IPC r/w Sections 7, 12 and 13(2) r/w 13(i)(d) of the PC Act 1988 and within my cognizance. Secondly you P.V.Narasimha Rao in pursuance of the aforesaid criminal conspiracy during the aforesaid period and at the aforesaid place abetted the commission of offence punishable u/S 7 of P.C. Act by above referred JMM and Janta Dal (A) MPs and thereby you have committed an offence punishable u/S 12 of the P.C. Act and within my cognizance." Similar charges were framed against the other alleged bribe givers.

4. The charge framed against Suraj Mandal of the J.M.M. reads thus:

"Firstly you between July and August, 1993 at Delhi and Bangalore were party to a criminal conspiracy and agreed to or entered into an agreement with your co-accused P.V.Narasimha Rao, Capt. Satish Sharma, Buta Singh, V. Rajeshwara Rao, H.M.Revanna, Ramlinga Reddy, M. Veerappa Moiley, D.K. Audi Keshvalu, M. Thimmegowda, Bhajan Lal, JMM (Jharkhand Mukti Morcha) MPs Shibu Soren, Simon Marandi, Shailendra Mahto (Approver, since granted pardon on 8.4.97), Janta Dal (Ajit Group) MPs, Ajit Singh, Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anandi Charan Dass, Abhey Partap Singh, Haji Ghulam Mohd. Khan and late G.C.Munda to defeat the no confidence motion moved against the then Congress (I) Government headed by accused Shri P.V.Narasimha Rao on 26.7.93 by illegal means viz. To obtain or agree to obtain gratification other than legal remunerations from your above named accused persons other than JMM and Janta Dal (A) MPs as a motive or reward for defeating the no confidence motion and in pursuance thereof above-named accused persons other than JMM and Janta Dal (A) passed on several lacs of rupees to you or your other co-accused namely JMM and Janta Dal (A) MPs which amounts were accepted by you or your said co-accused persons and thereby you have committed an offence punishable u/S 120B r/w Sections 7,12,13(2) r/w section 13(i)(d) of the P.C. Act and within my cognizance. Secondly, that you being a public servant while functioning in your capacity of Member of Parliament (10th Lok Sabha) during the aforesaid period and at the aforesaid places in pursuances of the aforesaid conspiracy demanded and accepted from your co-accused other than JMM & JD(A) MPs mentioned above a sum of Rs. 280 lacs for yourself and other JMM MPs named above other than your legal remuneration as a motive or reward for defeating above referred no confidence motion move against the then Govt. of Congress (I) headed by your co-accused Shri P.V.Narasimha Rao and thereby you have committed an offence punishable u/S 7 of the P.C. Act and within my cognizance. Thirdly, you during the aforesaid period and at the aforesaid places being a public servant while functioning in your aforesaid capacity of Member of Parliament by corrupt or illegal means and by abusing your position as a said public servant obtained for yourself or your other co-accused i.e. JMM MPs named above the pecuniary advantage to the extent of Rs. 280 lacs and thereby committed an offence punishable u/S 13(2) read with Section 13(i)(d) of P.C.Act and within my cognizance. Fourthly, that you during the pendency of

investigation of present case while writ petition No. 789/96 was pending disposal in Hon'ble High Court between February to April, 1996 at Delhi, Ranchi and other places intentionally caused to bring false evidence into existence by fabricating or causing to fabricate the documents or records i.e. books of accounts, proceeding books, etc. of JMM Central Office, Ranchi for the purpose of being used in any stage of judicial proceedings and thereby committed an offence u/s 193 IPC and within my cognizance. Similar charges were framed against the other alleged bribe takers of the J.M.M. Similar charges were also framed against the alleged bribe takers of the J.D., A.S., except that there was no charge against them under Section 193 of the Indian Penal Code. Shailender Mahto of the J.M.M., it may be mentioned, later turned approver and was pardoned.

5. The persons sought to be charged as aforesaid filed petitions in the High Court at Delhi seeking to quash the charges. By the judgment and order which is under challenge, the High Court dismissed the petitions. Hence, these appeals were heard by a bench of three learned judges and then referred to a Constitution Bench. The argument on behalf of the appellants to be considered by the Constitution Bench, broadly put, is that, by virtue of the provisions of Article 105, they are immune from the prosecution and that, in any event, they cannot be prosecuted under the Prevention of Corruption Act, 1988. Privilege.

6. Article 105 of the Constitution reads thus:

"105. Powers, Privileges, etc., of the House of Parliament and of the members and committees thereof. - (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No Member of Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, papers, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of the Parliament."

7. Mr. P.P.Rao addressed us on behalf of P.V.Narasimha Rao. Mr. D.D. Thakur on behalf of Satish Sharma, Mr. Kapil Sibal on behalf of Bhajan Lal and Dr. Surat Singh on behalf of some of the J.D., A.S.M.Ps. All of them relied upon sub article(2) of Article 105. Only Mr. P.P.Rao learned counsel for P.V.Narasimha Rao, relied, in addition, upon sub article(3) thereof.

Article 105(2).

8. By reason of sub-article (1) of Article 105, members of Parliament enjoy freedom of speech subject only to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament. That express provision is made for freedom of speech in Parliament in sub-article(1) of Article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and unrestricted by the exceptions contained therein. This is recognition of the fact that members need to be free of all constraints in the matter of what they say in Parliament if they are effectively to represent their constituencies in its deliberations. Sub-article (2) of Article 105 puts negatively what sub-article (1) states affirmatively. Both sub-articles must be read together to determine their content. By reason of the first part of sub-article (2) no member is answerable in a court of law or any similar tribunal for what he has said in Parliament. This again is recognition of the fact that a member needs the freedom to say what he thinks is right in Parliament undeterred by the fear of being proceeded against. A vote, whether cast by voice or gesture or the aid of a machine, is treated as an extension of speech or a substitute for speech and is given the protection that the spoken word has. Two comments need to be made in regard to the plain language of the first part of sub-article (2). First, what has protection is what has been said and a vote that been cast, not something that might have been said but was not, or a vote that might have been cast but was not. Secondly, the protection is broad, being "in respect of". It is so given to secure the freedom of speech in Parliament that sub-article (1) provides for. It is necessary, given the role members of Parliament must perform. The protection is absolute against court proceedings that have a nexus with what has been said, or a vote that has been cast in Parliament. The second part of sub-article (2) provides that no person shall be liable to any proceedings in any court in respect of the publication of any report, papers, votes or proceedings if the publication is by or under the authority of either House of Parliament. A person who publishes a report or papers or votes or proceedings by or under the authority of Parliament is thereby given protection in the same broad terms against liability to proceedings in any court connected with such publication. The Constitution having dealt with the all - important privilege of members of Parliament to speak and vote therein as they deem fit, freed of the fear of attracting legal proceedings concerning what they say or how they vote, provides for other powers, privileges and immunities in sub-article (3). Till defined by Parliament by enactment, they are such as were enjoyed before the Constitution came into force; that is to say, they are such as were enjoyed by the House of Commons just before 26th January, 1950. For it to be established that any power, privilege or immunity exists under sub-article (3), it must be shown that that power, privilege or immunity had been recognised as inhering in the House of Commons at the commencement of the Constitution. So important was the freedom to speak and vote in Parliament though to be that it was expressly provided for, not left to be gathered, as other powers, privileges and immunities were, from the House of Commons. In so far as the immunity that attaches to what is spoken in Parliament and to a vote given therein is concerned, provision is made in sub-article (2); it is only in other respects that sub-article (3) applies. For the sake of completeness, though we are not here concerned with it, we must add that sub-article (4) gives the protection of the sub-articles that preceded it to all who have the right to address the House, for example, the Attorney General.

9. The provisions of Article 105 and of Article 194, which is in the same terms but deals with the privileges of Legislative Assemblies, have been examined by this Court in the past. In the case of Pandit M.S.M. Sharma Vs. Shri Sri Krishna Sinha and Others, [1959] Supp. 1 S.C.R.806, a portion of the speech made by a member of a Legislative Assembly had been expunged by the orders of the Speaker. Nonetheless, the speech was published in its entirety in a newspaper of which the petitioner was the editor. He was called upon to show cause why action should not be taken against him for

breach of privilege of the Legislative Assembly and he challenged the notice by a petition under Article 32. S.R.Das, C.J., speaking for the majority on the Constitution Bench which heard the writ petition, observed that Parliamentary privilege in England was defined in May's Parliamentary Practice as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals". The privileges of the House of Commons, as distinct from those of the House of Lords, were defined