SUPREME COURT OF INDIA

Purno Agitok Sangma

Vs.

Pranab Mukherjee

Election Petition No.1 of 2012

(Altamas Kabir CJI., P.Sathasivam, Surinder Singh Nijjar, J.Chelameswar and Ranjan Gogoi JJ.)

05.12.2012

JUDGMENT

ALTAMAS KABIR, CJI.

1. The Petitioner herein was a candidate in the Presidential elections held on 19th July, 2012, the results whereof were declared on 22nd July, 2012. The Petitioner and the Respondent were the only two duly nominated candidates. The Respondent received votes of the value of 7,13,763 and was declared elected to the Office of the President of India. On the other hand, the Petitioner received votes of the value of 3,15,987.

2. The Petitioner has challenged the election of the Respondent as President of India on the ground that he was not eligible to contest the Presidential election in view of the provisions of Article 58 of the Constitution of India, which is extracted hereinbelow :-

> "58. Qualifications for election as President.- (1) No person shall be eligible for election as President unless he -
>
> (a) is a citizen of India,
>
> (b) has completed the age of thirty-five years, and (c) is qualified for election as a member of the House of the People.

2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.-For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor of any State or is a Minister either for the Union or for any State."

3. According to the Petitioner, at the time of filing the nomination papers as a candidate for the Presidential elections, the Respondent held the Office of Chairman of the Council of Indian Statistical Institute, Calcutta, hereinafter referred to as the "Institute", which, according to him, was an office of profit. It appears that at the time of scrutiny of the nomination papers on 2nd July, 2012, an objection to that effect had been raised before the Returning Officer by the Petitioner's authorized representative, who urged that the nomination papers of the Respondent were liable to be rejected. In response to the said submission, the representative of the Respondent sought two days' time to file a reply to the objections raised by the Petitioner. Thereafter, on 3rd July, 2012, a written reply was submitted on behalf of the Respondent to the objections raised by the Petitioner before the Returning Officer, along with a copy of a resignation letter dated 20th June, 2012, whereby the Respondent claimed to have resigned from the Chairmanship of the Institute. A reply was also filed on behalf of the Respondent to the objections raised by Shri Charan Lal Sahu. The matter was, thereafter, considered by the Returning Officer at the time of scrutiny of the nomination papers on 3rd July, 2012, when the Petitioner's representative even questioned the genuineness of the resignation letter submitted by the Respondent to the President of the Council of the Institute, Prof. M.G.K. Menon.

4. Having considered the submissions made on behalf of the parties, the Returning Officer, by his order dated 3rd July, 2012, rejected the Petitioner's objections as well as the objections raised by Shri Charan Lal Sahu, and accepted the Respondent's nomination papers. Accordingly, on 3rd July, 2012, the Petitioner and the Respondent were declared to be the only two duly nominated candidates for the Presidential election.

5. Immediately after the rejection of the Petitioner's objection to the Respondent's candidature for the Presidential elections, on 9th July, 2012, a petition was

submitted to the Election Commission of India, under Article 324 of the Constitution, praying for directions to the Returning Officer to re-scrutinize the nomination papers of the Respondent and to decide the matter afresh after hearing the Petitioner. The Election Commission rejected the said petition as not being maintainable before the Election Commission, since all disputes relating to Presidential elections could be inquired into and decided only by this Court. Thereafter, as indicated hereinabove, the Presidential elections were conducted on 19th July, 2012, and the Respondent was declared elected to the Office of the President of India on 22nd July, 2012.

6. Aggrieved by the decision of the Returning Officer in accepting the nomination papers of the Respondent as being valid, the Petitioner has questioned the election of the Respondent as the President of India under Article 71 of the Constitution read with Order XXXIX of the Supreme Court Rules, 1966, and, in particular, Rule 13 thereof. The said Rule, which is relevant for a decision in this petition, reads as follows:-

> "13. Upon presentation of a petition the same shall be posted before a bench of the Court consisting of five Judges for preliminary hearing and orders for service of the petition and advertisement thereof as the Court may think proper and also appoint a time for hearing of the petition. Upon preliminary hearing, the Court, if satisfied, that the petition does not deserve regular hearing as contemplated in Rule 20 of this Order may dismiss the petition or pass any appropriate order as the Court may deem fit."

[Emphasis supplied]

7. In keeping with the provisions of Rule 13 of Order XXXIX of the Supreme Court Rules, 1966, which deals with Election Petitions under Part III of the Presidential and Vice-Presidential Elections Act, 1952, the Election Petition filed by the Petitioner was listed for hearing on the preliminary point as to whether the petition deserved a hearing, as contemplated by Rule 20 of Order XXXIX, which provides as follows:

> "20. Every petition calling in question an election shall be posted before and be heard and disposed of by a Bench of the Court consisting of not less than five Judges."

8. Mr. Ram Jethmalani, learned Senior Advocate, appearing for the Petitioner, submitted that the Respondent's election as President of India, was liable to be declared as void mainly on the ground that by holding the post of Chairman of the Indian Statistical Institute, Calcutta, on the date of scrutiny of the nomination papers, the Respondent held an office of profit, which disqualified him from contesting the Presidential election.

9. Mr. Jethmalani urged that apart from holding the office of the Chairman of the aforesaid Institute, the Respondent was also the Leader of the House in the Lok Sabha which had been declared as an office of profit. Urging that since the Respondent was holding both the aforesaid offices, which were offices of profit, on the date of filing of the nomination papers, the Respondent stood disqualified from contesting the Presidential election in view of Article 58(2) of the Constitution.

10. Mr. Jethmalani submitted that Article 71 of the Constitution provides that all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision is to be final. Mr. Jethmalani submitted that there were sufficient doubts to the Respondent's assertion that on the date of filing of his nomination papers, he had resigned both from the office of Chairman of the Indian Statistical Institute, Calcutta, and as the Leader of the House in the Lok Sabha, on 20th June, 2012. Mr. Jethmalani urged that the doubt which had been raised could only be dispelled by a full-fledged inquiry which required evidence to be taken and cross-examination of the witnesses whom the Respondent might choose to examine. Accordingly, Mr. Jethmalani submitted that the instant petition would have to be tried in the same manner as a suit, which attracted the provisions of Section 141 of the Code of Civil Procedure, which reads as follows:

> "141. Miscellaneous Proceedings. - The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.
>
> Explanation – In this Section the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution."
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> In addition, learned counsel also referred to Rule 34 of Order XXXIX of the Supreme Court Rules, 1966, which provides as follows :-

"Order XXXIX, Rule 34

Subject to the provisions of this Order or any special order or direction of the Court, the procedure of an Election Petition shall follow as nearly as may be the procedure in proceedings before the Court in exercise of its Original Jurisdiction."

11. Mr. Jethmalani pointed out that in the Original Jurisdiction of the Supreme Court, provided for in Order XXII of the Supreme Court Rules, 1966, the entire procedure for institution and trial of a suit has been set out, providing for all the different stages in respect of a suit governed by the Code of Civil Procedure. Mr. Jethmalani submitted that the making of the procedure for trial of Election Petitions akin to that of the Original Jurisdiction of the Supreme Court, was a clear indication that the matter must be tried as a suit, if under Rule 13 of Order XXXIX, the Court consisting of 5 Judges was satisfied at a preliminary inquiry that the matter deserved a regular hearing, as contemplated in Rule 20 of the said Order.

12. For the sake of comparison, Mr. Jethmalani referred to Section 87 of the Representation of the People Act, 1951, laying down the procedure for the trial of Election Petitions and providing that every Election Petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Mr. Jethmalani urged that in matters relating to election disputes it was the intention of the Legislature to have the same tried as regular suits following the procedure enunciated in Section 141 C.P.C.

13. Mr. Jethmalani then drew our attention to Article 102 of the Constitution and, in particular, Clause 1(1)(a) thereof, which, inter alia, provides as follows :-

"102. (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)……

(c)……

(d)……

(e)……

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."

14. Mr. Jethmalani submitted that language similar to the above, had been incorporated in Article 58(2) of the Constitution, which also provides that a person shall not be eligible for election as President, if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority, subject to the control of any of the said Governments. Mr. Jethmalani submitted that as in Explanation to Article 102, the Explanation to Clause (2) of Article 58 also indicates that a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State. Mr. Jethmalani urged that Article 102 cannot save a person elected to the Office of President from disqualification, if he holds an office of profit.

15. Mr. Jethmalani submitted that from the annexures to the affidavit filed on behalf of the Respondent it was highly doubtful as to whether the Respondent had actually resigned from the post of Chairman of the Institute on 20th June, 2012, or even from the Membership of the Congress Party, including the Working Committee, and from the office of the Leader of the Congress Party in Lok Sabha on the same date, as contended by him. Mr. Jethmalani submitted that from the copy of the letter addressed to Professor M.G.K. Menon, President of the Institute, it could not be ascertained as to whether the endorsement made by Professor Menon amounted to acceptance of the Respondent's resignation or receipt of the letter itself. Learned counsel urged that this was another case of "doubt" within the meaning of Article 71 of the Constitution of India which required the Election Petition to be tried as a suit for which a detailed hearing was required to be undertaken by taking evidence and allowing for cross- examination of witnesses.

16. It was also submitted that the expression "office of profit" has not been conclusively explained till today under the Presidential and Vice- Presidential Elections Act, 1952, nor any other pre-independence statute, and the same required

to be resolved by this Court. In this regard, Mr. Jethmalani referred to the decision of a three-Judge Bench of this Court in the case of Shibu Soren Vs. Dayanand Sahay Ors. [(2001) 7 SCC 425], in which the aforesaid expression came to be considered and in interpreting the provision of Articles 102(1)(a) and 191(1)(a), this Court held that such interpretation should be realistic having regard to the object of the said Articles. It was observed that the expression "profit" connotes an idea of some pecuniary gain other than "compensation". Neither the quantum of amount paid, nor the label under which the payment is made, may always be material to determine whether the office is one of profit. This Court went on further to observe that mere use of the word "honorarium" cannot take the payment out of the concept of profit, if there is some pecuniary gain for the recipient. It was held in the said case that payment of an honorarium, in addition to daily allowances in the nature of compensatory allowances, rent-free accommodation and chauffeur driven car at State expense, were in the nature of remuneration and is a source of pecuniary gain and, hence, constituted profit. Mr. Jethmalani urged that it was on the basis of such observation that the Election Petition in the said case was allowed.

17. Mr. Jethmalani also referred to the decision of this Court in the case of Jaya Bachchan Vs. Union of India Ors. [(2006) 5 SCC 266], wherein also the phrase "office of profit" fell for interpretation within the meaning of Article 102 and other provisions of the Constitution with regard to use of the expression "honorarium" and its effect regarding the financial status of the holder of office or interest of the holder in profiting from the office. It was observed that what was relevant was whether the office was capable of yielding a profit or pecuniary gain, other than reimbursement of out-of-pocket/actual expenses, and not whether the person actually received monetary gain or did not withdraw the emoluments to which he was entitled. The three-Judge Bench, which heard the matter, held that an office of profit is an office which is capable of yielding profits of pecuniary gain and that holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is "holding an office of profit". However, the question whether a person holds an office of profit has to be interpreted in a realistic manner and the nature of the payment must be considered as a matter of substance rather than of form. Their Lordships further observed that for deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained any monetary gain therefrom.

18. In the same connection, reference was also made to the decision of this Court in M.V. Rajashekaran Ors. Vs. Vatal Nagaraj Ors. [(2002) 2 SCC 704], where also the expression "office of profit" fell for consideration.

19. Mr. Jethmalani urged that having regard to the above, the Election Petition deserved a regular hearing, as contemplated in Rule 20 of Order XXXIX of the Supreme Court Rules, 1966.

20. Appearing for the Respondent, Mr. Harish Salve, learned Senior Advocate, submitted that election to the office of the President of India is regulated under the provisions of the Presidential and Vice-Presidential Act, 1952, hereinafter referred to as the "1952 Act", and, in particular Part III thereof, which deals with disputes regarding elections. Mr. Salve pointed out that Sections 14 and 14A of the Act specifically vest the jurisdiction to try Election Petitions under the 1952 Act with the Supreme Court, in the manner prescribed in the said sections. Accordingly, the challenge to a Presidential election would have to be in compliance with the provisions of Order XXXIX of the Supreme Court Rules, 1966, which deals with Election Petitions under Part III of the 1952 Act. Rule 13 of Order XXXIX of the Supreme Court Rules, therefore, becomes applicable and it enjoins that upon presentation of an Election Petition, the same has to be posted before a Bench of the Court consisting of five Judges, for preliminary hearing to satisfy itself that the petition deserves a regular hearing, as contemplated in Rule 20. For the sake of reference, Sections 14 and 14A of the 1952 Act, are extracted hereinbelow:-

> "14. (1) No election shall be called in question except by presenting an Election Petition to the authority specified in sub- section (2).
>
> 2) The authority having jurisdiction to try an Election Petition shall be the Supreme Court.
>
> (3) Every Election Petition shall be presented to such authority in accordance with the provisions of this Part and of the rules made by the Supreme Court under article 145.
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> 14A. (1) An Election Petition calling in question an election may be presented on one or more of the grounds specified in sub- section (1) of section 18 and section 19, to the Supreme Court by any candidate at such election, or—

(a) in the case of Presidential election, by twenty or more electors joined together as petitioners ;

(b) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners.

(2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under section 12, but not later than thirty days from the date of such publication."

21. Mr. Salve submitted that the nomination papers of the respective candidates had been scrutinized by the Returning Officer in accordance with the provisions of Section 5A of the 1952 Act. Referring to Sub-Section (3) of Section 5E, Mr. Salve submitted that after completing all the formalities indicated in Sub-Section (3), the Returning Officer had accepted the nomination papers of the Respondent as valid, which, thereafter, gave the Respondent the right to contest the election. Mr. Salve submitted that Section 14 of the 1952 Act was enacted under Clause (3) of Article 71 of the Constitution which provides that subject to the provisions of the Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice- President.

22. Mr. Salve submitted that the election of the President and Vice- President has been treated on a different level in comparison with the election of Members of Parliament and other State Legislatures. While Article 102 deals with election of Members to the House, Article 58 deals with the election of the President and the Vice-President of India, which has to be dealt with strictly in accordance with the law laid down in this regard. In support of his aforesaid contention, Mr. Salve referred to a Seven-Judge Bench decision of this Court in the case of Charan Lal Sahu Vs. Neelam Sanjeeva Reddy [(1978) 2 SCC 500], where the alleged conflict between Article 71(1) of the Constitution with Article 58 thereof was considered by this Court and it was held that Article 58 only provides for the qualification regarding the eligibility of a candidate to contest the Presidential elections and had nothing to do with the nomination of a candidate which required 10 proposers and 10 seconders. The provisions of Sections 5B and 5C of the 1952 Act were also considered and held not to be in conflict with Article 14 of the Constitution. Article 71(3) of the Constitution was also seen to be a law by which Parliament could regulate matters connected with the Presidential elections, including those relating to election disputes arising out of such an election. Relying on its own earlier

judgments, the Hon'ble Judges of the Bench held that there was no force in the attack to either Article 71(3) of the Constitution or the provisions of Sections 5B or 5C of the 1952 Act.

23. The Petitioner, C.L. Sahu, had also challenged the election of Shri Giani Zail Singh as President of India and such challenge was repelled by this Court upon holding that the Petitioner had no locus standi to file the same.

24. Mr. Salve lastly referred to the decision of this Court in Mithilesh Kumar Vs. R. Venkataraman Ors. [(1987) Supp. SCC 692], wherein, on a similar question being raised, a five-Judge Bench of this Court reiterated its earlier views in the challenge made to the election of Shri Neelam Sanjeeva Reddy and Shri Giani Zail Singh as former Presidents of India.

25. Mr. Salve then urged that since the provisions of Order XXXIX of the Supreme Court Rules framed under Article 145 of the Constitution had been so framed in accordance with Section 14 of the 1952 Act, the provisions of Section 141 of the Code of Civil Procedure could not be imported into deciding a dispute relating to a challenge to the election of the President.

26. Mr. Salve submitted that Rule 13 of Order XXXIX of the Supreme Court Rules, 1966, stood substituted on 9th December, 1997, and the substituted provision came into effect on 20th December, 1997. In the Original Rule which came to be substituted, there was no provision for a preliminary hearing to be conducted to establish as to whether the Election Petition deserved a regular hearing. However, in view of repeated and frivolous challenges to the elections of almost all of the Presidents elected, the need for such an amendment came to be felt so as to initially evaluate as to whether such an Election Petition, challenging the Presidential election, deserved a regular hearing.

27. Mr. Salve then submitted that the post of Chairman of the Indian Statistical Institute, Calcutta, was not an office of profit as the post was honorary and there was no salary or any other benefit attached to the said post. Learned counsel submitted that even if one were to accept the interpretation sought to be given by Mr. Ram Jethmalani that the office itself may not provide for any direct benefit but that there could be indirect benefits which made it an office of profit, the said post neither provides for any honorarium nor was capable of yielding any profit which could make it an office of profit. Mr. Salve submitted that the law enunciated in the decisions cited by Mr. Ram Jethmalani in the case of Shibu Soren (supra) and Jaya

Bachchan (supra) was good law and, in fact, the post which the Respondent was holding as Chairman of the Institute was not an office of profit, which would disqualify him from being eligible to contest as a candidate for the office of President of India.

28. As to the holding of the post of Leader of the House, Mr. Salve submitted that the holder of such a post is normally a Cabinet Minister of the Government and is certainly not an appointee of the Government of India so as to bring him within the bar of Clause (2) of Article 58 of the Constitution of India. In support of his contention that the provisions of Section 141 CPC would not apply in the facts of this case, Mr. Salve referred to the decision of this Court in Mange Ram Vs. Brij Mohan Ors. [(1983) 4 SCC 36], wherein the Code of Civil Procedure and the High Court Rules regarding trial of an Election Petition, were considered, and it was held that where necessary, the provisions of the Civil Procedure Code could be applied, but only when the High Court Rules were not sufficiently effective for the purpose of the production of witnesses or otherwise during the course of trial of the petition. Mr. Salve also referred to a three-Judge Bench decision of this Court in Ravanna Subanna Vs. G.S. Kaggeerappa [AIR 1953 SC 653], which was a case from Mysore relating to the election of a Councilor under the Mysore Town Municipal Act, 1951. Of the two questions raised, one of the points was with regard to the question as to whether the Appellant therein could be said to be holding an office of profit under the Government thereby attracting the provisions relating to disqualification. On a plain meaning of the expression "office of profit", Their Lordships, inter alia, observed that the word "profit" connotes the idea of pecuniary gain and if there really was a gain, its quantum or amount would not be material, but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit. Their Lordships went on further to observe as follows :

> "From the facts stated above, it can reasonably be inferred that the fee of Rs.6 which the non-official Chairman is entitled to draw for each sitting of the Committee, he attends, is not meant to be a payment by way of remuneration or profit, but it is gain to him as a consolidated fee for the out-of-pocket expenses which he has to incur for attending the meetings of the Committee. We do not think that it was the intention of the Government which created these Taluk Development Committees which were to be manned exclusively by non- officials, that the office of the Chairman or of the Members should carry any profit or remuneration."

Mr. Salve urged that in the instant case as well, the post of Chairman of the Indian Statistical Institute, Calcutta, did not yield any profit to the holder of the post, which was entirely meant to be an honour bestowed on the holder thereof. Mr. Salve also referred to the decision of this Court in the case of Shibu Soren (supra) which had already been referred to by Mr. Ram Jethmalani, and pointed out that Article 102(1)(a) of the Constitution of India deals with disqualification from being chosen as a Member of the two Houses or from being a Member of either House of Parliament and did not affect the post of President of India.

29. The last decision referred to by Mr. Salve in the above context was that of this Court in Madhukar G.E. Pankakar Vs. Jaswant Chobbildas Rajani [(1977) 1 SCC 70], where also the expression "office of profit" came to be considered. In paragraph 31 of the said decision, reference was made to the earlier decision of this Court in Ravanna Suvanna's case (supra) and the ratio of the said decision was tested in relation to Insurance Medical Practitioners. It was held that the petitioner did derive profit, but the question was whether he held an office under the Government. Since mere incumbency in office is no disqualification, even if some sitting fee or insignificant honorarium is paid, it was ultimately held that the ban on candidature or electoral disqualification, must have a substantial link with the end, may be the possible misuse of position as Insurance Medical Practitioner in doing his duties as Municipal President.

30. On the other question with regard to the acceptance of the Respondent's resignation from the post of Chairman of the Institute held by the Respondent, Mr. Salve submitted that the alleged discrepancy in the signatures of the Respondent in his letter of resignation addressed to the President of the Institute with his other signatures, was no ground to suspect that the said document was forged, particularly when it was accepted by the Respondent that the same was his signature and that he used both signatures when signing letters and documents. In this regard, Mr. Salve referred to the Constitution Bench decision of this Court in Union of India Ors. Vs. Gopal Chandra Mishra Ors.[(1978(2) SCC 301], wherein the question as to when a resignation takes place or is to take effect, has been considered in some detail. While considering the various aspects of resignation, either with immediate effect or from a future date, one of the propositions which emerged from the ultimate conclusions arrived at by this Court was that in view of the provisions of Article 217(1)(a) and similar provisions in regard to constitutional functionaries like the President, Vice-President, Speaker, etc. the resignation once submitted and communicated to the appropriate authority

becomes complete and irrevocable and acts ex proprio vigore. The only difference is when resignation is submitted with the intention of resigning from a future date, in such case it was held that before the appointed date such resignation could be rescinded.

31. The next case referred to by Mr. Salve in this regard is the decision rendered by this Court in Moti Ram Vs. Param Dev [(1993) 2 SCC 725], where a similar question arose with regard to resignation from the office of the Chairman of the Himachal Pradesh Khadi and Village Industries Board, with a request to accept the resignation with effect from the date of the letter itself. Considering the said question, this Court held that a person holding the office of Chairman of the said Board should resign from the said office and the same would take effect from the date of communication of the resignation to the Head of the Department in the Government of Himachal Pradesh.

32. On a different note, Mr. Salve pointed out from the Election Petition itself that the allegations made in paragraph 2(XVI) were verified by the Petitioner, both in the verification and the affidavit affirmed on 20.8.2012, as being true and correct on the basis of information received and believed to be correct. Mr. Salve submitted that under Rule 6 of Order XXXIX of the Supreme Court Rules, allegations of fact contained in an Election Petition challenging a Presidential election were required to be verified by an affidavit to be made personally by the Petitioner or by one of the Petitioners, in case there were more than one, subject to the condition that if the Petitioner was unable to make such an affidavit for the reasons indicated in the proviso to Rule 6, a person duly authorized by the Petitioner would be entitled, with the sanction of the Judge in Chambers, to make such an affidavit. Mr. Salve submitted that in the instant case there was no such occasion for the verification to be done by the Petitioner.

33. In regard to the post of "Leader of the House", Mr. Salve referred to the Practice and Procedure of Parliament, with particular reference to the Lok Sabha, wherein with regard to the resignation from the membership of other bodies, in the case of the Leader of the House, the procedure followed was that when a Member of the Lok Sabha representing Parliament or Government Committees, Boards, Bodies, sought to resign from the membership of that body by addressing the Speaker, he is required to address his resignation to the Chairman of that Committee, Board or Body and he ceases to be member of the Committee when he vacates that office. Mr. Salve submitted that by tendering his resignation to the Congress President and Chairperson of the Congress Party in Parliament on 20th

June, 2012, with immediate effect, such resignation came into force forthwith and no further formal acceptance thereof was necessary.

34. Mr. Salve submitted that notwithstanding the submissions made in regard to the expression "holder of an office of profit", the said argument was also not available to the Petitioner, since by virtue of amendment to Section 3 of the Parliament (Prevention of Disqualification) Act, 1959, in 2006, the office of Chairman of the Institute was excluded from the disqualification provisions of Article 58(2) of the Constitution of India. Mr. Salve submitted that the aforesaid Act had been enacted to declare that certain offices of profit under the Government, including the post of Chairman in any statutory or non-statutory body, would not disqualify the holders thereof from being chosen as, or for being Members of Parliament as contemplated under Article 102(1)(a) of the Constitution. By virtue of the said amendment, a new Table was inserted after the Schedule to the Principal Act which would be deemed to have been inserted with effect from 4th April, 1959. The Indian Statistical Institute, Calcutta, has been placed at Serial No.4 of the Table. Accordingly, the submissions advanced by Mr. Jethmalani with regard to the Respondent holding an office of profit as Chairman of the Institute on the date of filing of nomination for election to the Office of President, were incorrect and the same were liable to be discarded.

35. Mr. Salve submitted that having regard to the submissions made on behalf of the parties, the Election Petition filed by Shri Purno Agitok Sangma did not deserve a regular hearing, as contemplated in Rule 20 of Order XXXIX of the Supreme Court Rules, 1966, and was liable to be dismissed.

36. The learned Attorney General, Mr. Goolam E. Vahanvati, firstly urged that the expression "office of profit" ought not to be interpreted in a pedantic manner and has to be considered in the light of the duties and functions and the benefits to be derived by the holder of the office. Mr. Vahanvati pointed out that the post of Chairman of the Institute was a purely honorary post, meant to honour the holder thereof. It did not require the active participation of the Chairman in the administration of the Institute, which was looked after by the President and his Council constituted under the Rules and Regulations of the Institute. Mr. Vahanvati also submitted that the post was purely honorary in nature and did not benefit the holder thereof in any way, either monetarily or otherwise, nor was there any likelihood of any profit being derived therefrom. Accordingly, even if Mr. Jethmalani's submission that on the date of filing of nominations the Respondent

continued to hold the said office, it would not disqualify him from contesting the Presidential election.

37. In this regard, the learned Attorney General referred to the decision of this Court in Consumer Education Research Society vs. Union of India Ors. [(2009) 9 SCC 648], wherein the provisions of the 1959 Act, as amended by the Amending Act of 2006, regarding the disqualification of persons holding offices of profit from continuing as Members of Parliament, were under consideration. Considering the provisions of Articles 101(3)(a) and 103 in the Writ Petitions filed before this Court under Article 32 of the Constitution, the constitutionality of the Parliament (Prevention of Disqualification) Amendment Act, 2006, came to be questioned on the ground that the said Act retrospectively added to the list of "offices of profit" which do not disqualify the holders thereof for being elected as Members of Parliament. The Writ Petitioners contended that the amendment had been brought in to ensure that persons who had ceased to be Members of Parliament on account of incurring disqualifications, would be re-inducted to Parliament without election, which, according to the Writ Petitioners, violated the provisions of Articles 101 to 104 of the Constitution.

38. The said question was answered by this Court by holding that the power of Parliament to enact a law under Article 102(1)(a) includes the power of Parliament to enact such law retrospectively, as was held in Kanta Kathuria Vs. Manak Chand Surana [(1969) 3 SCC 268] and later followed in the decision rendered in Indira Nehru Gandhi Vs. Raj Narain [1975 (Supp) SCC 1]. Accordingly, if a person was under a disqualification at the time of his election, the provisions of Articles 101(3)(a) and 103 of the Constitution would not apply and he would continue as a Member of Parliament, unless the High Court in an Election Petition filed on that ground declared that on the date of the election, he was disqualified and consequently declares his election to be void. In other words, the vacancy under Article 101(3)(a) would occur only after a decision had been rendered on such disqualification by the Chairman or the Speaker in the House.

39. Reference was also made to the decision of this Court in Karbhari Bhimaji Rohamare Vs. Shanker Rao Genuji Kolhe Ors. [(1975) 1 SCC 252], wherein this Court held that a Member of the Wage Board for the sugar industry constituted by the Government of Maharashtra, which was an honorary post and the honorarium paid to the Members was in the nature of a compensatory allowance, exercised powers which were essentially a part of the judicial power of the State. Such Members did not, therefore, hold an office under the Government.

40. Further reference was made to another decision of this Court in Pradyut Bordoloi Vs. Swapan Roy [(2001) 2 SCC 19], in which the post of a Clerk Grade I in Coal India Ltd., a Company having 100% shareholding of Government, was held not to be an office of profit, which disqualified its holder under Section 10 of the Representation of the People Act, 1951, or under Article 191(1)(a) of the Constitution of India. While deciding the case, this Court had occasion to observe that the expression "office of profit" had not been defined in the Constitution. It was observed that the first question to be asked in this situation was as to whether the Government has power to appoint and remove a person on and from the office and if the answer was in the negative, no further inquiry was called for. However, if the answer was in the positive, further inquiries would have to be conducted as to the control exercised by the Government over the holder of the post. Since in the said case, the Government of India did not exercise any control on appointment, removal, service conditions and functioning of the Respondent, it was held that the said Respondent did not hold an office of profit under the Government of India, and his being a Clerk in the Coal India Ltd. did not bring any influence or pressure on him in his independent functioning as a Member of the Legislative Assembly.

41. The learned Attorney General lastly cited the decision of this Court in Ashok Kumar Bhattacharyya Vs. Ajoy Biswas Ors. [(1985) 1 SCC 151], where also what amounts to an office of profit under the Government came up for consideration and it was held that the employees in the local authority did not hold offices of profit under the Government and were not, therefore, disqualified either under Articles 102(1)(a) and 191(1)(a) of the Constitution of India or the provisions of the Bengal Municipal Act, 1932. Their Lordships held that on an analysis of the provisions of the Act, it was quite clear that though the Government exercised a certain amount of control and supervision, the respondent who was an Accountant Incharge of the Agartala Municipality in the State of Assam, was not an employee of the Government and was at the relevant time holding an office of profit under a local municipality, which did not bring him within the ambit of Article 102(1)(a) of the Constitution.

42. The learned Attorney General submitted that the Disqualification Act is not a defining Act and was never meant to be and one cannot import the definition in the Schedule where only the Institute is mentioned. Sharing the sentiments expressed by Mr. Salve, the learned Attorney General submitted that the Election Petition was liable to be dismissed.

43. Replying to the submissions made by Mr. Harish Salve and the learned Attorney General, Mr. Ram Jethmalani asserted that the 1959 Act was, in fact, a defining Act and falls under Entry 73 of the First List in the Seventh Schedule to the Constitution, which empowers the Parliament to legislate in regard to elections to Parliament, to the legislatures of the States and to the offices of President and Vice-President and the Election Commission. Mr. Jethmalani also reiterated that the Institute was controlled by the Central Government. The Act under which the Institute was formed was an Act by the Central Government and the post of Chairman must, therefore, be held to be an office of profit under the Central Government.

44. Reiterating his earlier stand that the Election Petition deserved to be regularly heard, Mr. Jethmalani referred to the decision of this Court in M.V. Rajashekaran's case (supra), in which the Chairman of a One-man Commission, appointed by the Government of Karnataka to study the problems of Kannadigas and was accorded the status of a Minister of Cabinet rank and was provided by a budget of Rs.5 lakhs for defraying the expenses of pay and day-to-day expenditure of the Chairman, was held to be holding an office of profit under the Government. This Court observed that the question as to whether a person held an office of profit under the Government or not, would have to be determined in the peculiar facts and circumstances of the case.

45. Mr. Jethmalani lastly referred to the decision in the Consumer Education Research Society case (supra), which had been referred to by the learned Attorney General, and drew the attention of the Court to the observations made in the judgment in paragraph 77, where it had been observed that what kind of office would amount to an office of profit under the Government and whether such an office of profit is to be exempted, is a matter to be considered by the Parliament. While making legislation exempting any office, the question whether such office is incompatible with his position as an M.P. and whether his independence would be compromised and whether his loyalty to the Constitution will be affected, has to be kept in mind to safeguard the independence of the Members of the legislature and to ensure that they were free from any kind of undue influence from the executive. Mr. Jethmalani contended that since the Respondent had held office under the Central Government, it will have to be considered as to whether his functioning as the President of India would, in any way, be compromised or influenced thereby.

46. While replying, Mr. Jethmalani introduced a new dimension to his submissions by urging that the Rules and Bye-laws of the Institute did not permit a Chairman,

once appointed, to resign from his post. Accordingly, even if the Respondent had tendered his resignation to the President, Dr. Menon, the same was of no effect and he continued to remain as the Chairman of the Institute. He was, therefore, disqualified from contesting the Presidential election and his election was liable to be declared void and in his place the Petitioner was liable to be declared as the duly-elected President of the country.

47. The Constitution provides for the manner in which the election of a President or a Vice-President may be questioned. Article 71 provides for matters relating to or connected with the election of a President or a Vice- President. Clause (1) of Article 71 provides that all doubts and disputes arising out of or in connection with the election of a President or Vice- President shall be inquired into and decided by the Supreme Court whose decision shall be final. Sub-clause (3) provides that subject to the provisions of the Constitution, Parliament may, by law, regulate any matter, relating to or connected with the election of a President or a Vice-President. In addition, the Presidential and Vice-Presidential Elections Act was enacted in 1952 with the object of regulating certain matters relating to or connected with elections to the Office of President and Vice- President of India. As indicated by Mr. Salve, Sections 14 and 14A of the 1952 Act, specially vest the jurisdiction to try Election Petitions thereunder with the Supreme Court in the manner indicated therein. In fact, Part III of the said Act deals with disputes regarding elections to the posts of President and Vice-President of India, which contains Sections 14 and 14A, as also Sections 17 and 18 which empower the Supreme Court to either dismiss the Election Petition or to declare the election of the returned candidate to be void or declare the election of the returned candidate to be void and the Petitioner or any other candidate to have been duly elected.

48. In view of Sub-section (3) of Section 14 of the Act, the Supreme Court has framed Rules under Article 145 of the Constitution which are contained in Order XXXIX of the Supreme Court Rules, 1966. As has been discussed earlier, Rule 13 of Order XXXIX provides that upon presentation of a Petition relating to a challenge to election to the post of President of India, the same is required to be posted before a Bench of the Court consisting of five Judges for preliminary hearing and to consider whether the Petition deserved a regular hearing, as contemplated in Rule 20 of Order XXXIX, and, in that context, such Bench may either dismiss the Petition or pass any appropriate order as it thought fit.

49. It is under the aforesaid Scheme that the present Election Petition filed by Shri Purno Agitok Sangma challenging the election of Shri Pranab Mukherjee as the

President of India has been taken up for preliminary hearing on the question as to whether it deserved a regular hearing or not.

50. The challenge is based mainly on the allegation that on the date of filing of nominations, the Respondent, Shri Pranab Mukherjee, held "offices of profit", namely,

(i) Chairman of the Indian Statistical Institute,

Calcutta; and

(ii)Leader of the House in the Lok Sabha.

In regard to the aforesaid challenges, Mr. Ram Jethmalani, appearing for the Petitioner, had urged that in order to arrive at a conclusive decision on the said two points, it was necessary that a regular hearing be conducted in respect of the Election Petition to ascertain the truth of the allegations made by the Petitioner. It was also submitted that the same required a full scale hearing in the manner as contemplated under Section 141 of the Code of Civil Procedure, as would be evident from Order XXXIX read with the provisions relating to the Original Jurisdiction of the Supreme Court, contained in Part III of the Supreme Court Rules, 1966.

51. On the other hand, it has been urged by Mr. Harish Salve, appearing for the Respondent, that on the date of filing of nominations, Shri Pranab Mukherjee was neither holding the Office of Chairman of the aforesaid Institute nor was he the Leader of the House in the Lok Sabha, inasmuch as, in respect of both the posts, he had tendered his resignation on 20th June, 2012.

52. There is some doubt as to whether the Office of the Chairman of the Indian Statistical Institute is an office of profit or not, even though the same has been excluded from the ambit of Article 102 of the Constitution by the provisions of the Parliament (Prevention of Disqualification) Act, 1959, as amended in 2006. Having been included in the Table of posts saved from disqualification from membership of Parliament, it must be accepted to be an office of profit. However, as argued by Mr. Salve, categorising the office as an "office of profit" did not really make it one, since it did not provide any profit and was purely honorary in nature. There was neither any salary nor honorarium or any other benefit attached

to the holder of the said post. It was not such a post which, in fact, was capable of yielding any profit, which could make it, in fact, an office of profit.

53. The said proposition was considered in Shibu Soren's case (supra) where it was held that mere use of the word "honorarium" would not take the payment out of the concept of profit, if there was some pecuniary gain for the recipient in addition to daily allowances in the nature of compensatory allowances, rent-free accommodation and chauffeur driven car at State expense.

54. Similar was the view expressed in Jaya Bachchan's case (supra) where also this Court observed that what was relevant was whether the office was capable of yielding a profit or pecuniary gain, other then reimbursement of out-of-pocket/actual expenses and not whether the person actually received any monetary gain or did not withdraw the emoluments to which he was entitled. In other words, whether a person holding a post accepted the benefits thereunder was not material, what was material is whether the said office was capable of yielding a profit or pecuniary gain.

55. In the instant case, the office of Chairman of the Institute did not provide for any of the amenities indicated hereinabove and, in fact, the said office was also not capable of yielding profit or pecuniary gain.

56. In regard to the office of the Leader of the House, it is quite clear that the Respondent had tendered his resignation from membership of the House before he filed his nomination papers for the Presidential election. The controversy that the Respondent had resigned from the membership of the Indian National Congress and its Central Working Committee allegedly on 25th June, 2012, was set at rest by the affidavit filed by Shri Pradeep Gupta, who is the Private Secretary to the President of India. In the said affidavit, Shri Gupta indicated that through inadvertence he had supplied the date of the Congress Working Committee meeting held on 25th June, 2012, to bid farewell to Shri Mukherjee on his nomination for the Presidential Election being accepted. In any event, the disqualification contemplated on account of holding the post of Leader of the House was with regard to the provisions of Article 102(1)(a) of the Constitution, besides being the position of the leader of the party in the House which did not entail the holding of an office of profit under the Government. In any event, since the Respondent tendered his resignation from the said post prior to filing of his nomination papers, which was duly acted upon by the Speaker of the House, the challenge thrown by the Petitioner to the Respondent's election as President of

India on the said ground loses its relevance. In any event, the provisions of the Parliament (Prevention of Disqualification) Act, 1959, as amended in 2006, excluded the post of Chairman of the Institute as a disqualification from being a Member of Parliament.

57. The Constitutional Scheme, as mentioned in the Explanation to Clause (2) of Article 58 of the Constitution, makes it quite clear that for the purposes of said Article, a person would not be deemed to hold any office of profit, inter alia, by reason only that he is a Minister either for the Union or for any State. Article 102 of the Constitution contains similar provisions wherein in the Explanation to clause (1) it has been similarly indicated that for the purposes of the said clause, a person would 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. The argument that the aforesaid provisions of Article 102, as well as Article 58 of the Constitution, could not save a person elected to the office of President from disqualification, if he held an office of profit, loses much of its steam in view of the fact that as would appear from the materials on record, the Respondent was not holding any office of profit either under the Government or otherwise at the time of filing his nomination papers for the Presidential election.

58. The various decisions cited on behalf of the parties in support of their respective submissions, clearly indicate that in order to be an office of profit, the office must carry various pecuniary benefits or must be capable of yielding pecuniary benefits such as providing for official accommodation or even a chauffeur driven car, which is not so in respect of the post of Chairman of the Indian Statistical Institute, Calcutta, which was, in fact, the focus and raison d'etere of Mr. Jethmalani's submissions.

59. We are also not inclined to accept Mr. Jethmalani's submissions that once a person is appointed as Chairman of the Indian Statistical Institute, Calcutta, the Rules and Bye-laws of the Society did not permit him to resign from the post and that he had to continue in the post against his wishes. There is no contractual obligation that once appointed, the Chairman would have to continue in such post for the full term of office. There is no such compulsion under the Rules and Bye-laws of the Society either. In any event, since the holder of the post of Chairman of the Institute has been excluded from disqualification for contesting the Presidential election, by the 2006 amendment to Section 3 of the Parliament (Prevention of

Disqualification) Act, 1959, the submissions of Mr. Jethmalani in this regard is of little or no substance.

60. We are not convinced that in the facts and circumstances of the case, the Election Petition deserves a full and regular hearing as contemplated under Rule 20 of Order XXXIX of the Supreme Court Rules, 1966. Consequently, Mr. Jethmalani's submissions regarding the applicability of Section 141 of the Code of Civil Procedure for trial of the Election Petition is of no avail. We are also not convinced that Section 141 of the Code is required to be incorporated into a proceeding taken under Order XXXIX of the Supreme Court Rules read with Part II of the Presidential and Vice-Presidential Elections Act, 1952, which includes Sections 14 to 20 of the aforesaid Act and Article 71 of the Constitution of India.

61. It may not be inappropriate at this stage to mention that this Court has repeatedly cautioned that the election of a candidate who has won in an election should not be lightly interfered with unless circumstances so warrant.

62. We are not inclined, therefore, to set down the Election Petition for regular hearing and dismiss the same under Rule 13 of Order XXXIX of the Supreme Court Rules, 1966.

63. In the facts and circumstances of the case, the parties shall bear their own costs in these proceedings.

JUDGMENT

RANJAN GOGOI, J.

64. I have had the privilege of going through the opinion rendered by the learned Chief Justice of India. With utmost respect I have not been able to persuade myself to share the views expressed in the said opinion. The reasons for my conclusions are as indicated below -

65.. The short question that has arisen for determination in the Election Petition, at this stage, is whether the same deserves a regular hearing under Rule 20 of Order XXXIX of the Supreme Court Rules, 1966.

66. The Election Petition in question has been filed challenging the election of the respondent to the office of the President of India (hereinafter referred to as ‘the

President'). The election in which the petitioner and the respondent were the contesting candidates was held to the following Schedule:

|Issue of Notification calling the |16 June 2012 | |election | | |Last date for making Nominations |30 June, 2012 | |Date for scrutiny |2 July, 2012 | |Last date for withdrawal |4 July, 2012 | |Date of poll, if necessary |19 July, 2012 | |Date of counting, if necessary |22 July, 2012 |

67. Both the Election Petitioner as well as the respondent filed their nomination papers before the Returning Officer on 28.6.2012. A total of 106 nomination papers filed by 84 persons were taken up for scrutiny on the date fixed i.e. 2.7.2012. The petitioner objected to the validity of the nomination of the respondent on the ground that the respondent on the said date i.e. 2.7.2012 was holding the office of the Chairman of the Council of Indian Statistical Institute, Kolkata (hereinafter referred to as the Chairman ISI) which is an office of profit. According to the petitioner, at the request of the representative of the respondent, the scrutiny of the nomination of the respondent was deferred to 3.00 p.m. of the next day i.e. 3.7.2012 with liberty to file reply, if any, by 2.00 p.m. Coincidentally, certain objections having been raised to the nomination of the Election Petitioner, consideration of the same was also deferred to 11.00 a.m. of 3.7.2012. All the remaining nomination papers were rejected on the date fixed for scrutiny i.e. 2.7.2012.

68.. On the next date i.e. 3.7.2012 at the appointed time, i.e. 11.00 a.m. the scrutiny of the nomination papers of the Election Petitioner were taken up and Returning Officer accepted the same. Thereafter, within the time granted on the previous date i.e. 2.00 p.m., the respondent submitted a written reply to the objections raised by the petitioner alongwith a copy of a resignation letter dated 20.6.2012 by which the respondent claimed to have resigned from the office of the Chairman ISI. The scrutiny of the nomination papers of the respondent was taken up at 3.00 p.m. on 3.7.2012 and thereafter the same was accepted by the Returning Officer.

69.. As per the Schedule of the election published by the Election Commission the poll took place on 19.7.2012 and the result of the counting was announced on 22.7.2012 declaring the respondent to be duly elected to the office of the President of India.

70. Contending that on all the relevant dates, including the date of scrutiny i.e. 2.7.2012, the respondent was holding the office of the Chairman of the Council of

Indian Statistical Institute, Kolkata as well as the office of Leader of the House (Lok Sabha) and Leader of the Congress Party in the Lok Sabha, which are offices of profit, the present Election Petition has been filed on the ground that by virtue of holding the aforesaid offices of profit the respondent was not qualified to be a candidate for the election to the office of the President of India and that the nomination submitted by the respondent was wrongly accepted by the Returning Officer. According to the Election Petitioner, the election of the respondent was liable to be declared void on the said ground. In the Election Petition filed as well as in the short rejoinder that has been brought on record by the Election Petitioner the claim of the respondent that he had resigned from the office of the Chairman, ISI on 20.6.2012 has been disputed. According to the petitioner the resignation letter dated 20.6.2012 is forged and fabricated and has been subsequently brought into existence to counter the case put up by the Election Petitioner. Insofar as the other offices are concerned, according to the Election petitioner, though the respondent had resigned from the Union Cabinet on 26.6.2012, he continued to remain a Member of Parliament and the Leader of the Congress Legislature Party in the Lok Sabha up to 25.07.2012 i.e. date of assumption of office as President of India. In fact the Respondent was shown as a Member of Parliament and as the Leader of the House in the official Website of the Lok Sabha till 2.7.2012.

71. The respondent i.e. the returned candidate has filed a short counter for the purposes of the preliminary hearing. According to the respondent the office of the Chairman, ISI, is not an office of profit as it does not carry any emoluments remuneration or perquisites. In any case, according to the respondent, he had submitted his resignation from the said office on 20.6.2012 which had been accepted by the President of the Institute on the same day. Insofar as the other two offices are concerned it is the case of the respondent that he had held the said offices by virtue of being a Cabinet Minister of the Union. According to the respondent, under the Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998 and the Rules framed thereunder the aforesaid offices do not carry any emoluments or perquisites or benefits beyond those attached to the office of a Cabinet Minister of the Union. Furthermore, according to the respondent, he had resigned from the Congress Party and the office of the Leader of the Legislature Party in the Lok Sabha on 20.6.2012 and from the Union Cabinet on 26.6.2012. Therefore he had ceased to hold any office of profit on the relevant date i.e. date of scrutiny or acceptance of his nomination.

72. Article 71 of the Constitution provides for matters relating to, or connected with, the election of the President or Vice President. Clause (1) of Article 71

provides that all doubts and disputes arising out of or in connection with the election of a President or Vice President shall be inquired into and decided by the Supreme Court. Under Clause (3), Parliament has been empowered, subject to the provisions of the Constitution, to make laws to regulate any matter relating to or connected with the election of the President or Vice President.

73. In exercise of the power conferred by Article 71(3) read with Entry 72 of List I of the Seventh Schedule to the Constitution, Parliament has framed the Presidential and Vice-Presidential Election Act, 1952 (Act 31 of 1952). Part III of the aforesaid Act makes provisions with regard to disputes regarding elections. Section 14 (1) provides that no election shall be called in question except by presenting an election petition to the authority specified in sub- section (2) i.e. the Supreme Court. Section 14(3) provides that every election petition shall be presented in accordance with the provisions contained in Part III of the Act and such Rules as may be made by the Supreme Court under Article 145 of the Constitution. The next provision of the Act that would require specific notice is Section 15 which provides that the Rules made by the Supreme Court under Article 145 of the Constitution may regulate the form of Election Petitions, the manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, and may require security to be given for costs. The rest of the provisions of the aforesaid Act would not require any recital insofar as the present case is concerned.

74.. By virtue of powers conferred by Article 145 of the Constitution, the Supreme Court Rules, 1966 (hereinafter referred to as the Rules) have been framed by the Supreme Court with the approval of the President of India in order to regulate the practice and procedure of the Court. Order XXXIX contained in Part VII of the Supreme Court Rules, 1966 deals with election petitions filed under Part III of the Presidential and Vice Presidential Elections Act, 1952. The provisions of Rule 13 (inserted w.e.f. 20.12.1997), Rule 20 and Rule 34 of Order XXXIX being relevant may be extracted hereinbelow:

> "13. Upon presentation of a petition the same shall be posted before a bench of the Court consisting of five Judges for preliminary hearing and orders for service of the petition and advertisement thereof as the Court may think proper and also appoint a time for hearing of the petition. Upon preliminary hearing, the Court, if satisfied, that the petition does not deserve regular

hearing as contemplated in Rule 20 of this Order may dismiss the petition or pass any appropriate order as the Court may deem fit.]

x x x x x

20. Every petition calling in question an election shall be posted before and be heard and disposed of by a Bench of the Court consisting of not less than five Judges.

x x x x x

34. Subject to the provisions of this Order or any special order or directions of the Court, the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Court in the exercise of its original jurisdiction."

75. Rule 13 of the Supreme Court Rules, 1966, as it existed prior to insertion of the present Rule 13 w.e.f. 20.12.1997 may also be extracted herein below for an effective determination of precise circumference of the 'preliminary hearing' contemplated by Rule 13: "Upon the presentation of the petition, the Judge in Chambers, or the Registrar, before whom, it is presented, may give such directions for service of the petition and advertisement thereof as he thinks proper and also appoint a time for the hearing of the petition."

76. A preliminary hearing for determination of the question as to whether an election petition deserves a regular hearing under Rule 20 did not find any place in the Supreme Court Rules till insertion of Rule 13 in the present form w.e.f. 20.12.1997. Rule 34 of Order XXXIX provides that the procedure on an Election Petition shall follow, as nearly as may be, the procedure in proceedings before the Supreme Court in the exercise of its original jurisdiction. The procedure applicable to proceedings in the exercise of the original jurisdiction of the Supreme Court is contained in Order XXIII of Part III of the Supreme Court Rules. Order XXIII, Rule 1 contemplates institution of a suit by means of a plaint. After dealing with the requirements of a valid plaint, Order Rule 6 provides that a plaint shall be rejected

(a) where it does not disclose a cause of action;

(b) where the suit appears from the statement in the plaint to be barred by any law.

14. To make the narration complete it will be necessary to note that the other provisions of Part III of the Rules deal with the procedure that would apply to the disposal of a suit filed under Order XXIII Rule 1 and, inter alia, provide for :

a) Issue and Service of Summons (Order XXIV)

b) Written statement set off and counterclaims(Order XXV)

c) Discovery and Inspection (Order XXVII)

d) Summoning and Attendance of witnesses (Order XXIX) e) Hearing of the suit (Order XXXI)

77. Order XXIII, Rule 6, as noticed above, was a part of the Rules alongwith Rule 13 as it originally existed. In other words, insertion of the new Rule 13 providing for a preliminary hearing was made despite the existence of the provisions of Order XXIII Rule 6 and the availability of the power to reject a plaint and dismiss the suit (including an Election Petition) on the twin grounds mentioned in Rule 6 of Order XXIII. Therefore a preliminary hearing under Order XXXIX Rule 13 would require the Court to consider something more than the mere disclosure or otherwise of a cause of action on the pleadings made or the question of maintainability of the Election Petition in the light of any particular statutory enactment. A further enquiry, which obviously must exclude matters that would fall within the domain of a regular hearing under Rule 20 would be called for in the preliminary hearing under Rule 13 of Order XXXIX. In the course of such enquiry the Court must be satisfied that though the Election Petition discloses a clear cause of action and raise triable issue(s), yet, a trial of the issues raised will not be necessary or justified in as much as even if the totality of the facts on which the petitioner relies are to be assumed to be proved there will be no occasion to cause any interference with the result of the election. It is only in such a situation that the Election Petition must not be allowed to cross the hurdle of the preliminary hearing. If such satisfaction cannot be reached the Election Petition must be allowed to embark upon the journey of a regular hearing under Order 20 Rule XXXIX in accordance with the provisions of Part III of the Rules. In my opinion, the above is the scope and ambit of the preliminary hearing under Order XXXIX,

Rule 13 of the Rules and it is within the aforesaid confines that the question raised by the parties, at this stage, have to be answered.

78. At the very outset the issue with regard to the office of the Leader of the House and Leader of the Congress Party may be dealt with. Under the provisions of The Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998 Act and Rules framed there under no remuneration to the Leader of the House or the Leader of the Legislature Party in the House is contemplated beyond the salary and perquisites payable to the holder of such an office if he is a Minister of the Union (in the present case the Respondent was a Cabinet Minister of the Union). That apart, either of the offices is not under the Government of India or the Government of any State or under any local or other authority as required under Article 58 (2) so as to make the holder of any such office incur the disqualification contemplated thereunder. Both the offices in question are offices connected with the Lok Sabha. Any incumbent thereof is either to be elected or nominated by virtue of his membership of the House or his position as a Cabinet Minister, as may be. The Election Petition insofar as the aforesaid offices are concerned, therefore, do not disclose any triable issue for a full length hearing under Order XXXIX, Rule 20 of the Rules.

79. The next question is with regard to the office of the Chairman of the Council of Indian Statistical Institute, Kolkata. Whether the said office carries any remuneration and/or perquisites or the same is under the control of the Union Government as also the question whether the respondent had resigned from the said office on 20.6.2012 are all questions of fact which are in dispute and, therefore, capable of resolution only on the basis of such evidence as may be adduced by the parties. The Court, therefore, will have to steer away from any of the said issues at the present stage of consideration which is one under Order XXXIX, Rule 13. Instead, for the present, we may proceed on the basis that the office in question is an office of profit which the Respondent held on the relevant date (which facts, however, will have to be proved at the regular hearing if the occasion so arises) and on that assumption determine whether the election of the Respondent is still not void on the ground that, in view of the provisions of Article 58 (2) of the Constitution, the nomination of the Respondent had been wrongly accepted, as claimed by the respondent. In this regard the specific issue that has to be gone into as whether the office of the Chairman, ISI, Kolkata has been exempted from bringing any disqualification by virtue of the provisions of the Parliament (Prevention of Disqualification) Act 1959, as amended.

80. For an effective examination of the issue indicated above, the provisions of Articles 58, 84 and 102 of the Constitution would require a detailed notice and consideration. The said provisions are, therefore, extracted below:-

"Article 58 - Qualifications for election as President

(1) No person shall be eligible for election as President unless he--

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.--For the purposes of this Article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor1[***] of any State or is a Minister either for the Union or for any State.

1. The words or Rajpramukh or Uparajpramukh omitted by the Constitution (Seventh Amendment) Act, 1956, section 29 and Schedule.

Article 84 - Qualification for membership of Parliament

A person shall not be qualified to be chosen to fill a seat in Parliament unless he--

1[(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

1. Substituted by the Constitution (Sixteenth Amendment) Act, 1963, section 3, for clause (a) (w.e.f. 5-9-1963)

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.

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

1. Substituted by the Constitution (Fifty-second Amendment) Act, 1985, section 3, for (2) For the purposes of this Article (w.e.f. 1-3-1985).

2. Inserted by the Constitution (Fifty-second Amendment) Act, 1985, section 3 (w.e.f. 1-3-1985).

81. Article 58(1)(c) requires a presidential candidate to be qualified for election as a Member of the House of the People. Does it mean that whosoever is qualified for election as a Member of the House of the People under Article 84 and does not suffer from any disqualification under Article 102 becomes automatically eligible for election to the office of the President? In other words, do the provisions of Articles 58, 84 and 102 of the Constitution envisage a composite and homogenous scheme?

82. Under Article 58(1)(b) a Presidential candidate must have completed the age of 35 years. At the same time, under Article 58(1)(c) such a person must be eligible to seek election as a Member of the House of the People. Under Article 84(b) a candidate, seeking election to the House of the People must not be less than 25 years of age. In other words, a person qualified to be a Member of the House of the People but below 35 years of age will not be qualified to be a candidate for election to the office of the President. Similarly, to be eligible for membership of Parliament (including the House of the People) a candidate must make and subscribe an oath or affirmation according to the prescribed form. No such condition or stipulation is mandated for a Presidential candidate by Article 58. Insofar as Article 102 (1)(a) is concerned though holding an office of profit is a disqualification for election as or being a Member of either House of Parliament such a disqualification can be obliterated by a law made by Parliament. Under Article 58(2) though a similar disqualification (by virtue of holding an office of profit) is incurred by a Presidential candidate no power has been conferred on Parliament to remove such a disqualification. That apart, the Explanations to both Articles 58 and 102 contain provisions by virtue of which certain offices are deemed not to be offices of profit. The similarities as well as the differences between the two provisions of the Constitution are too conspicuous to be ignored or over looked. In a situation where Article 102(1)(a) specifically empowers Parliament to enact a law to remove the disqualification incurred for being a Member of Parliament by virtue of holding of an office of profit and in the absence of any such provision in Article 58 it will be impossible to read Article 58 alongwith Article 102 to comprehend a composite constitutional scheme. Keeping in view that the words in the Constitution should be read in their ordinary and natural meaning so that a construction which brings out the true legislative intent is achieved, Article 58 has to be read independently of Articles 84 and 102 and the purport of the two sets of Constitutional provisions have to be understood to be independent of each other. In fact such a view finds expression in an earlier

opinion of this Court rendered in Baburao Patel v. Dr. Zakir Hussain[1] which is only being reiterated herein.

83. The net result of the above discussion is that the Parliament (Prevention of Disqualification) Act, 1959 as amended by the Amendment Act No.31 of 2006 has no application insofar as election to the office of the President is concerned. The disqualification incurred by a Presidential candidate on account of holding of an office of profit is not removed by the provisions of the said Act which deals with removal of disqualification for being chosen as, or for being a Member of Parliament. If, therefore, it is assumed that the office of Chairman, ISI is an office of profit and the Respondent had held the said office on the material date(s) consequences adverse to the Respondent, in so far as the result of the election is concerned, are likely to follow. The said facts, will therefore, be required to be proved by the election Petitioner. No conclusion that a regular hearing in the present case will be a redundant exercise or an empty formality can be reached so as to dispense with the same and terminate the Election Petition at the stage of its preliminary hearing under Order XXXIX Rule 13. The Election Petition, therefore, deserves a regular hearing under Order XXXIX Rule 20 in accordance with what is contained in the different provisions of Part III of the Supreme Court Rules, 1966.

ORDER

I have had the advantage of reading the judgments of both My Lord the Chief Justice and my learned brother Justice Ranjan Gogoi. I regret my inability to agree with the conclusion recorded by the learned Chief Justice that the instant Election Petition does not deserve a regular hearing. I shall pronounce my reasons for such disagreement shortly.

[1] (1968) 2 SCR 133