

**By E-mail**

**THE GAUHATI HIGH COURT**

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**NO. HC.III-15/2018/5889 /G**

From: Sri S. Dhar,  
Registrar (Judicial),  
Gauhati High Court, Guwahati.

✓ To,

The District & Sessions Judge,  
Bajali / Barpeta / Baksa / Biswanath / Bongaigaon / Cachar / Charaideo/  
Chirang / Darrang / Dhemaji / Dhubri / Dibrugarh / Dima Hasao /  
Goalpara / Golaghat / Hailakandi / Hojai / Jorhat / Kamrup (M) / Kamrup  
/ Karbi Anglong / Karimganj / Kokrajhar / Lakhimpur/ Majuli / Morigaon /  
Nagaon / Nalbari / Sivasagar / Sonitpur /South Salmara - Mankachar/  
Tinsukia / Udalguri / West Karbi Anglong, Assam.

Dated Guwahati 18<sup>th</sup> November, 2023

Ref: Circulation of Judgment dated 09.11.2023, passed by Hon'ble Supreme  
Court of India in *Writ Petition (C) No. 699/2016*

Sir / Madam,


I am directed to forward herewith a copy of Judgment dated 09.11.2023,  
passed by Hon'ble Supreme Court of India in *Writ Petition (C) No. 699/2016* for  
information and circulation amongst all the Judicial Officers presiding over cases against  
sitting / former MPs / MLAs in your respective District for compliance.

With warm regards,

Encl: As stated above.

Yours faithfully,

  
18-11-2023  
**REGISTRAR (JUDICIAL)**

  
18/11/2023



2023 | JSC 991

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 699 OF 2016

ASHWINI KUMAR UPADHYAY

...PETITIONER(S)

VERSUS

UNION OF INDIA & ANR.

...RESPONDENT(S)

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

1. This Writ Petition under Article 32 of the Constitution of India, in the nature of *Public Interest*, seeks two distinct reliefs. The first prayer relates to *expeditious disposal of criminal cases against elected members of the Parliament and Legislative Assemblies*<sup>1</sup>. The second prayer relates to the constitutional validity of Section 8 of the Representation of Peoples Act, 1951. By this order, we dispose of this Writ Petition as regards the first prayer after formulating certain guidelines for expeditious disposal of the subject cases. We have also requested the learned Chief Justices of the respective High Courts to constitute a Special Bench to review and monitor the progress of these cases from time to time.

2. A short reference to the orders passed by this Court from time to time, affidavits of the State Governments, and reports of the High Courts as analyzed by

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Amicus in his written submissions are necessary before articulating the

<sup>1</sup> Hereinafter referred to as the 'subject cases'.

guidelines and disposing of the writ petition with appropriate directions. These proceedings commenced with notices being issued to the Union of India, State Governments and High Courts. At a later stage, this Court also appointed Shri Vijay Hansaria, Ld. Senior Advocate as Amicus Curiae. We place on record appreciation for his invaluable contribution and assistance.

3. In fact, this is not the first case in which the need for an expeditious disposal of criminal cases against elected members of the Parliament and Legislative Assemblies is examined. In *Public Interest Foundation v. Union of India*<sup>2</sup>, this court held:

*“10. We, accordingly, direct that in relation to sitting MPs and MLAs who have charges framed against them for the offences which are specified in Sections 8(1), 8(2) and 8(3) of the RP Act, the trial shall be concluded as speedily and expeditiously as may be possible and in no case later than one year from the date of the framing of charge(s). In such cases, as far as possible, the trial shall be conducted on a day-to-day basis. If for some extraordinary circumstances the court concerned is not being able to conclude the trial within one year from the date of framing of charge(s), such court would submit the report to the Chief Justice of the respective High Court indicating special reasons for not adhering to the above time-limit and delay in conclusion of the trial. In such situation, the Chief Justice may issue appropriate directions to the court concerned extending the time for conclusion of the trial.”*

4. At an early stage, this Court recorded the statement of the Ld. Additional Solicitor General that these proceedings are not adversarial in nature and that the Union would not be averse to setting up special courts for expeditious trial and disposal of the subject cases. By order dated 01.11.2017, this Court called upon

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<sup>2</sup> (2015) 11 SCC 433

the Union, States and the High Courts to respond to the idea of setting up special courts and the financial implications involved in its implementation.

5. After gathering the necessary information, the Union filed an affidavit as is evident from the order dated 14.12.2017, contemplating setting up twelve special courts exercising jurisdiction over multiple states. By the same order, the High Courts were called upon to identify and transfer the subject cases to the special courts that were to be established. The Union was also directed to bear the estimated expenditure of about Rs. 7.80 crores for running these twelve special courts.

6. However, as the above-referred decision had policy and financial implications, after much deliberation, this Court reconsidered the matter and accepted the suggestion of the *Amicus*. That is, instead of setting up special courts, a specified court in each district, both at the sessions and magistrate level, be identified and earmarked for prioritized hearing of the subject cases. The Union, State Governments and High Courts were asked to respond to the new suggestion.

7. On 04.12.2018, the High Courts were directed to examine the matter and constitute as many sessions and magisterial courts within their jurisdiction as is considered proper and expedient. By the same order, it was also directed that the subject cases punishable with death/life against sitting and former MPs/MLAs should be taken up on a priority basis, followed by cases punishable with imprisonment up to 5 years or more. Thereafter, all other criminal cases against sitting MPs/MLAs, followed by similar cases against former MPs/MLAs were to be

taken up. This order also suggested that the designated courts will take up and hear the subject cases on a day-to-day basis.

8. On 05.03.2020, the High Courts were directed to provide information about the (i) the MP/MLA involved in a case, (ii) whether sitting or former, (iii) date of FIR, (iv) offence alleged, (v) date of filing of charge sheet, (vi) date of framing of charges, (vii) present status, (viii) stay of trial, if any by the High Court, (ix) expected time of completion of trial, (x) name of the court, and (xi) the district in which the case is filed. The initial information received from the High Courts related only to IPC offences. In order to have a comprehensive understanding of the subject cases, by an order dated 10.09.2020, this Court called for information about prosecution of MPs and MLAs under special legislations. The High Courts compiled the said information and submitted their reports to us in the form of affidavits.

9. On the basis of the above information, a comprehensive protocol, in the nature of guidelines for identification of designated courts, the number of such courts, the procedure and practice that they need to adopt and follow, witness protection, etc. was prepared by the learned *Amicus*. These were noted by this Court in the order dated 10.09.2020 and they are reproduced hereinbelow for ready reference:

(i) Special Courts in every district for MPs/MLAs:-

*a. Each High Court may be directed to assign/allocate criminal cases involving former and sitting legislators to as many Sessions Courts and Magisterial Courts as the respective High Courts may consider proper, fit and expedient having regard to the number and nature of pending cases. Such decisions may be taken by the High Courts within four weeks of the order.*

- b. The State Governments will issue necessary notification in terms of the recommendation of the High Court within two weeks from the receipt of the recommendation.
- c. Case records to be transferred expeditiously to the Special Courts.

(ii) Practice Directions :-

- a. Special Courts will give priority to the trial of cases in the following order:-
  - i. Offences punishable with death/life imprisonment;
  - ii. Offences punishable with imprisonment for 7 years or more;
  - iii. Other offences.
- b. Cases involving sitting legislators to be given priority over former legislators.
- c. Forensic laboratories will give priority in furnishing the report in respect of cases being tried by the Special Courts and will submit all pending reports within one month.
- d. State Governments/UTs will appoint/designate at least two Special Public Prosecutors for prosecuting cases in the Special Courts in consultation with District and Sessions Judge in the concerned District.
- e. No adjournment shall be granted except in rare and exceptional circumstances and for reasons to be recorded.
- f. The Superintendent of Police of respective Districts shall be responsible to ensure production of accused persons before the respective courts on the dates fixed and the execution of NBWs issued by the Courts.
- g. The SHO of the concerned police station shall be personally responsible for service of summons to the witnesses and their appearance and deposition in the court.
- h. Courts will use technology of video conferencing for examination of witnesses and appearance of the accused persons, to the extent possible.

(iii) Cases under stay :-

- a. This Hon'ble Court in *Asian Resurfacing of Road Agency Pvt. Ltd vs. CBI, 2018 (16) SCC 299*, held as under:-

*"If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months,*

unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.”

In view of the law laid down in the aforesaid case, trial courts to proceed with the trial notwithstanding any stay granted by the High Court unless fresh order is passed extending the stay by recording reasons.

b. In the alternative, Registrar Generals may be directed to place the matters involving MPs and MLAs before Hon'ble the Chief Justice for appropriate orders for urgent listing of such cases.

(iv) Witness Protection :-

a. Witness protection in all such cases is essential having regard to vulnerability of the witnesses and the influence exercised by the legislators facing criminal trials. This Hon'ble Court in the case of Mahender Chawla vs Union of India, 2018 (16) SCC 299 has framed “Witness Protection Scheme, 2018” and made it applicable to all the States till the enactment of suitable legislation by the Parliament or State legislatures.

b. Trial Courts shall consider granting of protection under the aforesaid scheme to all the witnesses, without any application by the respective witnesses.

(v) Monitoring by High Courts

a. Each High Court shall register a Suo Moto case with the title “In Re: Special Courts for MPs/MLAs” to monitor the progress of cases pending in the State and ensure compliance of direction of this Hon'ble Court.

b. The writ petition, so registered shall be heard by a Division Bench of the High Court to be constituted by the Chief Justice.

c. A Senior Advocate shall be appointed as Amicus Curiae.

d. The State shall be represented by the Advocate General or an Additional Advocate General.

e. A senior Police Officer of the rank not below Inspector General of Police shall be present in the Court in each hearing to furnish requisite information, as and when required.

f. Each Special Court will send a monthly status report to the High Court and the High Court, on examination of the same, will issue necessary directions to ensure speedy disposal of cases.

g. The case shall be heard by the High Court at such interval as may be necessary; however, at least once three months.”

10. After hearing the Union and State Governments, we sought the opinion on the above referred suggestions along with an action plan for rationalization of the special courts from the Chief Justices of the respective High Courts<sup>3</sup>. This being an important order, the relevant portion is extracted herein;

*“16. With respect to increasing the number of Special Courts and rationalizing the pending criminal cases, we deem it appropriate that, before passing any specific direction in respect thereto, it would be appropriate to direct the learned Chief Justice of each High Court to formulate and submit an action plan for rationalization of the number of Special Courts necessary, with respect to the following aspects:*

- a. Total number of pending cases in each district*
- b. Required number of proportionate Special Courts*
- c. Number of Courts that are currently available*
- d. Number of Judges and the subject categories of the cases*
- e. Tenure of the Judges to be designated*
- f. Number of cases to be assigned to each Judge*
- g. Expected time for disposal of the cases*
- h. Distance of the Courts to be designated*
- i. Adequacy of infrastructure*

*17. The learned Chief Justices while preparing the action plan should also consider, in the event the trials are already ongoing in an expeditious manner, whether transferring the same to a different Court would be necessary and appropriate.*

*18. The learned Chief Justices of the High Courts shall also designate a Special Bench, comprising themselves and their designate, in order to monitor the progress of these trials.*

*19. The learned Chief Justices are also requested to give their comments on the other suggestions of the learned amicus, as extracted by us in our order dated 10.09.2020 and this order. They are also requested to send us additional suggestion, if any, for the purpose of expedient disposal of pending criminal cases against legislators. The action plan, with the comments and suggestions of the learned Chief Justices of the High Courts, are to be sent to the Secretary General of this Court, preferably within a week. A copy may also be sent to the learned amicus curiae by way of e-mail.*

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<sup>3</sup> See order dated 16.09.2020.



20. *We further request the learned Chief Justices of all the High Courts to list forthwith all pending criminal cases involving sitting/former legislators (MPs and MLAs), particularly those wherein a stay has been granted, before an appropriate bench(es) comprising of the learned Chief Justice and/or their designates. Upon being listed, the Court must first decide whether the stay granted, if any, should continue, keeping in view the principles regarding the grant of stay enshrined in the judgment of this Court in Asian Resurfacing of Road Agency Private Limited v. CBI, (2018) 16 SCC 299. In the event that a stay is considered necessary, the Court should hear the matter on a day-to-day basis and dispose of the same expeditiously, preferably within a period of two month, without any unnecessary adjournment. It goes without saying that the Covid-19 condition should not be an impediment to the compliance of this direction, as these matters could be conveniently heard through video conferencing.”*

11. In continuation of the above referred order dated 16.09.2020, further directions were issued and information was sought regarding – (a) available infrastructural facilities<sup>4</sup>; (b) extension of witness protection as provided in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615<sup>5</sup>; (c) orders withdrawing prosecution under section 321 Cr.P.C.<sup>6</sup>; and (d) transfer of judicial officers<sup>7</sup>. The necessary information was provided through affidavits.

12. *Present status on case pendency:* A comprehensive picture of the pending subject cases in various courts spread across the States and Union Territories is made available to us. The following table evidences the number of cases pending against MPs and MLAs in each State and Union Territory as of December 2018, December 2021 and the latest being November 2022.

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<sup>4</sup> order dated 06.10.2020.

<sup>5</sup> order dated 04.11.2020.

<sup>6</sup> order dated 10.08.2021.

<sup>7</sup> order dated 10.08.2021 clarified later by order dated 10.10.2021 and 12.07.2023.

Sr. No.	State/UT	Case in Dec. 2018	Cases in Dec. 2021	Cases as in November 2022		
				Total cases	More than 5 years	Case load per judge
1	2	3	4	5	6	7
1.	Andhra Pradesh	109	146	92	50	92
2.	Arunachal Pradesh	6	16	4	1	Between 1 to 4
3.	Assam	38	69	75	33	Between 0 to 2.5
4.	Bihar	304	571	546	381	Average 7.3
5.	Chhattisgarh	24	12	10	2	Average 1.1
6.	Delhi	124	97	93	27	Average 16
7.	Goa	15	12	19	5	Between 2 to 8
8.	Gujarat	119	33	28	11	Between 1 to 3
9.	Haryana	35	46	48	18	Between 0 to 2
10.	Himachal Pradesh	34	68	70	17	Between 1 to 19
11.	Jharkhand	160	207	198	72	Between 1 to 37
12.	Karnataka	161	150	221	61	Between 13 to 156
13.	Kerala	312	401	384	22	Between 0 to 59
14.	Madhya Pradesh	168	260	329	51	Between 25 to 210
15.	Maharashtra	303	470	482	169	Between 1 to 31
16.	Manipur	12	4	10	1	Between 1 to 4
17.	Meghalaya	3	5	4	4	Between 1 to 2
18.	Mizoram	4	1	0	0	Not applicable
19.	Nagaland	1	0	0	0	Not applicable

20.	Orissa	331	360	454	323	Between 0 to 30
21.	Punjab	34	74	91	16	Between 0 to 4
22.	Rajasthan	46	56	57	21	Between 1 to 4
23.	Sikkim	0	0	0	0	0
24.	Tamil Nadu	321	328	260	60	Between 1 to 22
25.	Telangana	99	50	17	4	Between 1 to 16
26.	Tripura	16	0	0	0	Not Applicable
27.	Uttar Pradesh	992	1339	1377	719	Average 9.31
28.	Uttarakhand	34	10	15	2	Not furnished
29.	West Bengal	269	136	244	23	Between 0 to 31
30.	Andaman & Nicobar (U.T.)	0	0	0	0	Not applicable
31.	Chandigarh (U.T.)	—	10	10	1	Between 0 to 5
32.	Dadra & Nagar Haveli (U.T.)	2	0	0	0	Not applicable
33.	Jammu & Kashmir (U.T.)	12	7	6	6	Not furnished
34.	Ladakh (U.T.)	—	—	—	—	—
35.	Lakshadweep (U.T.)	—	—	—	—	—
36.	Puducherry (U.T.)	34	36	31	16	Between 1 to 12
<b>Total</b>		<b>4122</b>	<b>4974</b>	<b>5175</b>	<b>2116</b>	

13. *Analysis:* The above referred table shows that there are as many as 5,175 subject cases pending as of November, 2022. Of these, cases that are pending for more than 5 years are as many as 2,116, which figure is more than 40% of such pendencies. This is a large number.

14. These cases have a direct bearing on our political democracy. Hence, there is a compelling need to make every effort to ensure that these cases are taken up on priority and decided expeditiously. Confidence and trust of the constituency in their political representative, be it an MP or an MLA, is necessary for an interactive, efficient and effective functioning of a parliamentary democracy. However, such confidence is difficult to expect when figures, as indicated in the above referred table, loom large in our polity.

15. In fact, there are no two views about the compelling need to take up and dispose of the subject cases expeditiously. We have no doubt in our mind that even the political representative, be it MP or an MLA, involved in the prosecution would also seek a quick disposal of these cases. However, the problem lies elsewhere. It seems systemic, perhaps institutional, and takes within its sweep many factors including the method of adversarial litigation that we have adopted. Yet, at every stage of the practice and procedure that we adopt, there is scope for reform. It is in this context that we have earnestly conducted and monitored this case for the last seven years.

16. Having analyzed the all India data on the pendency of subject cases in States and Union Territories, we have at the outset noted a considerable asymmetric disposition between states and even between districts within a State, on factors that have a bearing on early disposal. This is evident from the stark difference that exists in the actual number of pending cases between States and even districts within States. There are also variations in the availability of judges to decide the cases, the case load per judge, the speed at which the cases are decided, the state of physical and technological infrastructure, availability of

prosecutors, etc. There is yet another aspect, and this may not be amenable to data collection, but has a direct bearing on our endeavor for an early disposal of these cases. The practice and procedure prevalent in every court is distinct and is sometimes deep-rooted. There are many factors, which may be historical, cultural, regional or linguistic, that influence the work ethic in a court. This is where the role of the Bar becomes important, and therefore, their participation becomes crucial. Once we recognize the inextricable connection and interdependence of the Bar and the Bench, the need to focus and address these issues comes to light. At this stage, we are merely attempting to identify factors that must be taken into account while making an accurate assessment for an effective and expeditious disposal of the subject cases.

17. Having analyzed the data and information available on record, two conclusions emerged - first, there are multiple factors that have a direct bearing on the disposal of the subject cases, and second, there is substantial variation from state to state, and district to district, with respect to each of these factors. These conclusions – the plurality of considerations and their asymmetry between State to State and even district to district, have a direct bearing on the decision on a measure that we may adopt for early disposal of the subject cases.

18. We have monitored these proceedings from 2017 onwards and have examined the data and information brought to our notice by the High Courts. We have also gone through the affidavits filed on behalf of the State Governments which have shown equal concern and earnestness in ensuring early disposal of the subject cases. With the assistance of the learned *Amicus*, we have formulated

certain guidelines that will enable the completion of investigation, smooth conduct of trial, removal of impediments and conclusion of the subject cases at the earliest.

19. Having considered the matter in detail, we are of the opinion that there exist multiple factors. Each of these influences early disposal of the subject cases. This, coupled with their dissimilarity from State to State, makes it difficult for this Court to form a uniform or standard guideline for trial courts across the length and breadth of this country to dispose of the subject cases. We have gone through the affidavits filed by the High Courts explaining the situation that exists within their jurisdiction. The High Courts have been dealing with these issues on the judicial as well as on the administrative side, and they are alive to the position that exists in each of their district courts. Under Article 227, the High Courts are entrusted with the power of superintendence over the district judiciary<sup>8</sup>. We deem it appropriate to leave it to the High Courts to evolve such method or apply such measure that they deem expedient for an effective monitoring of the subject cases.

20. Having considered the matter in detail, we direct that:

- (i) Learned Chief Justices of the High Courts shall register a suo-motu case with the title, "*In Re: designated courts for MPs/MLAs*" to monitor early disposal of criminal cases pending against the members of Parliament and Legislative Assemblies. The suo-motu case may be heard by the Special Bench presided by the Learned Chief Justice or a bench assigned by them.
- (ii) The Special Bench hearing the suo-motu case may list the matter at

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<sup>8</sup> Though Constitution uses the expression 'subordinate' to describe the district judiciary, it is not to be understood in the literal sense. In fact, this Court in *All India Judges Association v. Union of India & Ors.*, 2023 SCC OnLine SC 673, has held that district judiciary is a part of our basic structure.

regular intervals as is felt necessary. The High Court may issue such orders and/or directions as are necessary for expeditious and effective disposal of the subject cases. The Special Bench may consider calling upon the Advocate General or the Public Prosecutor to assist the Court.

- (iii) The High Court may require the Principal District and Sessions Judge to bear the responsibility of allocating the subject cases to such court or courts as is considered appropriate and effective. The High Court may call upon the Principal District and Sessions Judge to send reports at such intervals as it considers expedient.
- (iv) The designated courts shall give priority:
  - (i) first to criminal cases against MP's & MLA's punishable with death or life imprisonment then to (ii) cases punishable with imprisonment for 5 years or more, and then hear (iii) other cases.The Trial Courts shall not adjourn the cases except for rare and compelling reasons.
- (v) The learned Chief Justices may list cases in which orders of stay of trial have been passed before the Special Bench to ensure that appropriate orders, including vacation of stay orders are passed to ensure commencement and conclusion of trial.
- (vi) The Principal District and Sessions Judge shall ensure sufficient infrastructure facility for the designated courts and also enable it to adopt such technology as is expedient for effective and efficient functioning.
- (vii) The High Courts shall create an independent tab on their website providing district-wise information about the details of the year o

filing, number of subject cases pending and stage of proceedings. We make it clear that while monitoring the subject cases, the Special Bench may pass such orders or give such additional directions as are necessary for early disposal of the subject cases.

21. With these directions, we dispose of this Writ Petition with respect to the first prayer concerning the expeditious disposal of criminal cases against elected members of Parliament and Legislative Assemblies.

22. This Writ Petition will now be listed for hearing on the other issue relating to the constitutional validity of Section 8 of the Representation of Peoples Act, 1951. We also place on record our appreciation for the efforts taken by the learned Amicus Curiae.

.....CJI.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Pamidighantam Sri Narasimha]

.....J.  
[Manoj Misra]

New Delhi;  
November 09, 2023