

A Study on Disproportionate Assets Case

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Abstract

Twenty-one years after the case began, State Of Karnataka v. Selvi J.Jayalalithaa & Others has ended with the conviction of all the accused under the Prevention of Corruption Act. Two judges of the Supreme Court, each authoring a judgment, allowed the appeal of the State of Karnataka against the Karnataka High Court judgment and restored the judgment of the trial judge, John Michael D'Cunha. The sentence of the main accused, former Tamil Nadu Chief Minister Jayalalithaa, abates since she is no longer alive. V.K. Sasikala must now go to prison for four years, and for six years more she cannot stand for election. With two strokes of the pen, the political landscape of Tamil Nadu has been drastically altered. With the finality of this ruling, the long arm of the law has caught up with the accused, but it also needs to be noted that it took a long and meandering course to do so.

KEYWORDS : Disproportionate asset ,Acquittal, Judgment etc.

INTRODUCTION :-

In the mid-90s, Jayalalitha was booked for amassing wealth to the tune of Rs 66 crore-which was disproportionate to her known sources of income-following a complaint by a DMK worker. Jayalalitha is the accused number one in the case followed by Shashikala Natarajan, Sudhakaran-foster son of Jayalalitha-and Illavarasi.

The charge against her was that her assets were around Rs3 crore in 1991 and had grown to around Rs 66 crore between 1991-1996.The AIADMK was voted out in 1996 as it was perceived to be corrupt.

FROM THE BEGINNING

In 1996, Subramanian Swamy filed a criminal complaint under the Act, alleging accumulation of vast wealth through corrupt acts by the erstwhile Chief Minister abetted by her close aide. What is required under Section 13(1)(e) is for the prosecution to prove that the assets of the public servant are disproportionate to his or her known sources of income. Once done, there is a presumption of guilt. It is a provision designed to combat corruption by public servants, and for guilt or innocence to be quickly established.

Except that in this case it took 18 years for the judgment of the trial court to be handed down. A battery of ingenious lawyers filed a steady stream of jurisdictional objections and interim applications on technical and procedural aspects, and then spun them out through appeals to the High Court and Supreme Court. Some were remarkably innovative; for example, the plea that Ms. Sasikala did not understand English and therefore the hundreds of pages of documents should be translated into Tamil. It took several years to resolve this issue, and then some more time before the documents were

translated. (They were probably never referred to again.) One thing this case demonstrates is the failure of the courts to speedily dispose of such petitions and ensure that these cases are fast-tracked, which is what proper governance demands.

The case was transferred to Karnataka following attempts by prosecutors in Tamil Nadu to oblige the principal accused, who by this time was back in power as Chief Minister. Two appointments made there proved crucial — the no-nonsense trial judge, Judge D’Cunha, and a seasoned prosecutor, the eminent lawyer B.V. Acharya. In September 2014, the former rendered the judgment, 18 years after inception of the case. He found that during the period 1991-1996, the extent of disproportionate wealth was to the tune of ₹58 crore. The main accused was sentenced to four years of imprisonment and asked to pay a fine of ₹100 crore. Ms. Sasikala, guilty of abetment, also got a four-year term with a fine of ₹10 crore.

An appeal was filed in the Karnataka High Court. Bail was denied and the accused moved the Supreme Court. Chief Justice H.L. Dattu granted bail. But curiously, he directed the disposal of the appeal by the High Court in three months. He did so without any request from the accused, and gave no reason. The last thing an accused wants is an early trial, and the first thing a convicted leader wants is an early hearing of the appeal. The accused in this case benefited on both counts. This capsulated time period would deprive the prosecution of adequate time to present its arguments.

THEN, AN ACQUITTAL

In May 2015, Justice C.R. Kumaraswamy of the Karnataka High Court acquitted all the accused. A cursory reading of his judgment shows up its errors. He sharply reduced the value of assets. He steeply increased the income, inflating the amount of loans taken. He brought down the disproportionate wealth to about ₹2.8 crore. Even then, there was an 8.12% gap which he sought to overcome by applying a 1976 judgment of the Supreme Court in *Krishnanand Agnihotri v. State of Madhya Pradesh*. There the disproportionate amount was only ₹11,000, which was less than 10% of the total income, and the court said that this small difference could be condoned. Justice Kumaraswamy did not explain how that could become the norm for a case such as this. It was a judgment crying out for reversal.

Fortunately, that has now been done. Justice P.C. Ghose in his judgment running into more than 500 pages has examined every facet of the case in detail. He lauded the trial court for being “meticulous, sensitive, vigilant and judicious in appraisal”; by contrast, he deplored the failure of the High Court “to appreciate the evidence in the correct legal context”. With regard to the loans, he held that the High Court had premised its finding on “an inflated and patently incorrect figure”. Justice Ghose delved in detail into all the loans, the gifts, the valuation of the properties, other incomes and the marriage expenses of Ms. Sasikala’s nephew, and for each one of these upheld the finding of the trial court. The High Court’s finding on the percentage of disproportionate assets being 8.12% was “based on completely wrong reading of the evidence on record compounded by incorrect arithmetical calculations”. The trial court’s judgment was restored in toto. The decision of the Supreme Court in *Krishnanand Agnihotri* was held to have no application to the

facts of this case. He noticed a close connection between Jayalalithaa and Ms. Sasikala and their collaboration in many transactions, including purchases of large properties and opening of about 50 bank accounts, and held the latter to be guilty of abetment and conspiracy. Although the appeal against Jayalalithaa stood abated, Ms. Sasikala's conviction and sentence and that of her relatives, Sudhakaran and Ilavarasi, stood restored.

Justice Amitava Roy held that the facts of the case "demonstrate a deep-rooted conspiratorial design to amass vast assets without any compunction". He further held that judicial adjudication must be responsible, interpretation of law has to be purposive and artful defences must be cast aside. "A collective, committed and courageous turnaround is... imperative... Every citizen has to be a partner in this sacrosanct mission."

NOT A MOMENT TOO SOON

With that this case rests. In the circumstances, it is a timely judgment. For a week there has been a clamour to appoint Ms. Sasikala as the Chief Minister, claiming the support of an overwhelming number of MLAs. Governor Ch. Vidyasagar Rao resisted, doubtless seeking to await the judgment. He was criticised in many quarters for not following proper procedure. On the contrary, he deserves thanks for having spared the State the ignominy of having a Chief Minister moving from the Secretariat at Fort St. George in Chennai to Central Jail in Bengaluru in the space of a week.

One more thing the Governor needs to do is to ensure that the MLAs of the Tamil Nadu Assembly are able to choose their leader without fear or coercion. Given the swirling allegations of detention and captivity of the MLAs by Ms. Sasikala's men, it would be a subversion of the electoral and political process if their support were to be obtained by such means. It remains to be seen, however, if the Governor needs to exert himself in the matter; the Supreme Court judgment may have a Vardah effect on some political fortunes. Whatever that outcome may be, this emphatic judgment is to be welcomed as another assertion of the rule of law, with all its majesty and might. Be you ever so high (and aim even higher), the law is above you.

DA CASE: SASIKALA AND OTHERS GUILTY, SC RESTORES TRIAL COURT VERDICT

Since A 1 (Jayalalithaa) has expired, the appeals against her stands abated. Justice Ghose wrote the main Judgment and Justice Amitava Roy wrote a separate but concurring judgment. Sasikala, Ilavarasi and Sudhakaran have to surrender before trial court forthwith. VK Sasikala sentenced to four years imprisonment by trial court. So she has to serve rest of her jail sentence of three years and six months as she has already served almost six months in jail. Read This - SC Issues Notice To BCI On Plea For Weeding Out 'Sale Of Law Degrees From Letter Pad Colleges' VK Sasikala cannot contest elections for the next 6 years The Court was delivering their verdict on appeals filed by Karnataka Government against the May 11, 2015 acquittal of then Tamil Nadu Chief Minister Jayalalithaa her then aide N Sasikala and two others in a 21-year-old disproportionate assets case by the Karnataka High Court. The bench had reserved its verdict on June 7 last year. Jayalalithaa passed away on December 5 last year. During the

hearing the bench had indicated that merely possessing assets disproportionate to known income does not amount to corruption unless the source of that income is illegal. The appeals were pending in the apex court when Jayalalithaa fought the Assembly elections and came back to power. A special court in Bengaluru had on 27 September 2014 convicted Jayalalithaa, N. Sasikala Natarajan, V.N. Sudhakaran and J. Elavarasi for amassing wealth disproportionate to their income when Jayalalithaa was chief minister of Tamil Nadu between 1991 and 1996. The court had sentenced all of them to four years' imprisonment and imposed a fine of Rs.100 crore. The Karnataka high court on 11 May 2015 overruled the conviction, allowing Jayalalithaa to return as chief minister. The high court cited an error in computing the disproportionate assets and said they did not exceed the 10% of the stated income limit which warrants conviction. Apart from the Karnataka government (the prosecuting agency and the appellants) the court also heard an intervening application by BJP leader Subramanian Swamy. The SC bench had also asked Karnataka to prove that the source of money was Jayalalithaa and asked the prosecution to show evidence to the extent that the source of money was illegal. Karnataka had also requested confiscation of the immovable properties allegedly held by the four accused. In this regard, the trial court verdict had dealt with the assets of six companies allegedly attributed to the four accused. These are Indo Doha Chemicals and Pharmaceuticals Pvt Ltd., Signora Enterprises Pvt. Ltd., Ramraj Agro Mills Ltd., Meadow Agro Farms, Riverway Agro Products, Lex Property Development. The prosecution had alleged that these companies were operating "for and on behalf of Ms. Jayalalithaa". "In essence, these companies were used as receptacles of ill-gotten cash for which no explanation was given during investigation nor during the trial. Such cash becomes the basis for largescale property being purchased where all negotiations were done at the house of A-1 (Ms. Jayalalithaa)," senior advocate Sidharth Luthra, appearing for Karnataka had submitted. Luthra submitted that unexplained/unaccounted cash inflows started when the co-accused of Jayalalithaa took over as additional directors of the companies without buying any shares. He submitted that the companies enjoyed inter-se transactions and even filed belated income tax returns, sometimes after a delay of five years. The companies, though incorporated before the check period, did not commence any business until the year 1994. In his reply, senior advocate Harin Raval for Jayalalithaa questioned Karnataka's locus standi to file an appeal against the High Court judgment setting aside the attachment of the companies' assets.

CONCLUSION :-

Finally, the curtain has come down on one of India's most high-profile corruption cases. Twenty-one years after the case began, State Of Karnataka v. Selvi J.Jayalalithaa & Others has ended with the conviction of all the accused under the Prevention of Corruption Act. Two judges of the Supreme Court, each authoring a judgment, allowed the appeal of the State of Karnataka against the Karnataka High Court judgment and restored the judgment of the trial judge, John Michael D'Cunha. The sentence of the main accused, former Tamil Nadu Chief Minister Jayalalithaa, abates since she is no longer alive. V.K. Sasikala must now go to prison for four years, and for six years more she cannot stand for election. With two strokes of the pen, the political landscape of Tamil Nadu has been drastically altered. With the finality of this ruling, the long arm of the law

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