

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on: 20.05.2025
Pronounced on: 29.05.2025**

CJ Court

Case No. PIL No. 14/2015

Shah Mohd. Choudhary

...Petitioner(s)/Appellant(s)

Through: Petitioner in person.

v/s

State of J&K and others

.... Respondent(s)

Through:

Mr. U. K. Jalali, Sr. Adv. with
Ms. Shivani Jalali, Adv.
Ms. Monika Kohli, Sr. AAG
Mr. Siddhant Gupta, Adv.
Mr. Ajay Gandotra, Adv.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE.**

JUDGMENT

Per Oswal-J

1. This petition was filed by the petitioner, a practicing lawyer, in public interest for grant of the following reliefs:

“i) Certiorari:-

Quashing the Notification/SRO No. 122 of 9th April, 2015 issued by the respondent no. 4 by virtue of which, under Sub Section 6 of Section 50 of the Constitution of Jammu and Kashmir, the private respondents No. 6 to 13 have been nominated as Members of the Jammu and Kashmir Legislative Council against the seats available in the said House.

ii) Certiorari

Quashing the Bulletin-II dated 9th of March, 2015 issued by the respondent no. 4 where-under private respondents no. 6 to 13 have been nominated as Members of the Jammu and Kashmir Legislative Council against the seats available in the said House.

iii) Declaration:

Declaring the nominations of private respondents no. 6 to 13 as Members of Jammu and Kashmir Legislative Council illegal, unconstitutional, unsustainable, null and void.

iv) Quo-Warranto:-

Treating the private respondents no. 6 to 13 as Usurper to the Constitutional Public Position as they lack eligibility/qualifications prescribed under Sub Section 6 of Section 50 of the Constitution of Jammu and Kashmir for such nominations as Members of Jammu and Kashmir Legislative Council.

v) Mandamus:-

Commanding the official respondents to give due representation to socially and economically backward classes in the State, which was the mandate of constitution and intention of legislature.

vi) Any other appropriate writ, command, order or direction, this Hon'ble Court in the given circumstances of the case may otherwise deem appropriate in the interest of justice, equity and law, may also be passed.”

2. During the pendency of this petition, the Legislative Council ceased to be in existence with effect from 31.10.2019 with the enforcement of J&K Reorganization Act 2019. Section 14 of the J&K Reorganization Act 2019 provides for the Legislative Assembly only for the Union Territory of Jammu and Kashmir. Besides, the period of nomination of the private respondents to the Jammu and Kashmir Legislative Council also came to expire during the pendency of this petition.
3. Taking note of the above mentioned subsequent events and obduracy of the petitioner for adjudication of the petition on merits, notwithstanding the factum of the petition having been rendered infructuous, this Court vide order dated 27.07.2023 observed that the petitioner may submit before this Court as to whether the issues raised in this petition are alive as this Court is not expected to undertake any academic exercise, as cause of action does not survive any longer. Thereafter, the petition came to be

dismissed for non-prosecution vide order dated 28.03.2024, but was restored vide order dated 29.04.2024.

4. The petitioner has submitted that he has raised vital issues which require adjudication on merits, irrespective of the fact that J&K Legislative Council has ceased to be in existence and the term of the nominated members to the J&K Legislative Council has expired. The petitioner has relied upon the judgments of the Hon'ble Supreme Court of India in **Sheodan Singh v Mohan Lal Gautam, AIR 1969 SC 1024 and Loknath Padhan v. Birendra Kumar Sahu, AIR 1974, SC 505.**
5. *Per contra*, Mr. U. K. Jalali, learned Senior Counsel appearing for some of the private respondents, has argued that this petition has been rendered infructuous due to subsequent events, therefore, this petition deserves to be dismissed.
6. Heard and perused the record.
7. This is an admitted fact that as on date, J&K Legislative Council is not in existence and, also the term of the nominated members (respondent Nos. 6 to 13) to the J&K Legislative Council has expired. Therefore, even if this petition is adjudicated on merits, it would have no repercussions in future. This Court has already observed that the issues involved in this petition at present, are of only academic interest and this Court is not expected to undertake any academic exercise at the cost of other cases, involving issues of seminal importance.

8. In **Loknath Pathan's case (supra)**, judgment in case titled **Sheodan Singh v. Mohan Lal Gautam, AIR 1969 SC 1024**, was taken note of and it was held as under:

"4. The position might be different if the allegation against the respondent were of corrupt practice. Then it would not be academic to consider whether or not the respondent was guilty of the corrupt practice charged against him, because a finding of corrupt practice has serious consequences. If the respondent is found guilty of corrupt practice during the election, not only his election would be declared void, but he would also incur certain electoral disqualifications. Section 8A provides that a person found guilty of a corrupt practice by an order under section 99 shall be disqualified for a period of six years from the date on which, that order takes effect. The purity of elections is of utmost importance in a democratic set up and the law has, therefore, taken serious note of practice in elections and laid down a disqualification for a period of six years on an order being made by the High Court recording a finding of corrupt practice at the time of disposing of the election petition. It is, therefore, obvious that when a corrupt practice is charged against the respondent in an election petition, the trial of the election petition must proceed to its logical end and it should be determined whether the corrupt practice was committed by the respondent or not., As pointed out by this Court in Sheodhan Singh v. Mohan Lal "no one can be allowed to corrupt the course of an election and get away with it either by resigning his membership or because of the fortuitous circumstance of the assembly having been dissolved. The public are interested in seeing that those who had corrupted the course of an election are dealt with in accordance with law." The decision of the question whether corrupt practice was committed by the respondent or not would not, therefore, be academic and the Court would have to decide it, even if in the meantime the Legislature is dissolved. That was precisely the view taken by this Court in Sheodhan Singh v. Mohan Lal. In that case the election of the respondent to the Uttar Pradesh Legislative Assembly was challenged by the appellant in an election petition on the ground that the respondent was guilty of corrupt practice during the election. The Uttar Pradesh Legislative Assembly was dissolved by the President during the pendency of the election petition before the High Court and a preliminary objection was, therefore, raised on behalf of the respondent that the election petition had ceased to be maintainable on account of the dissolution of the Uttar Pradesh Legislative Assembly. The High Court rejected the preliminary objection. It on merits it took the view that corrupt practice was not proved and

accordingly dismissed the election petition. The appellant thereupon preferred as appeal to this Court and in the appeal also the same preliminary objection was repeated on behalf of the respondent. This Court negated the preliminary objection. Hegde, J., speaking on behalf of the Court emphasized that the charge against the respondent was of corrupt practice and pointed out that if the creation of the appellant that the respondent was guilty of corrupt practice was found to be true, then not only his election would be declared void but he would also be liable to incur certain sectoral disqualification, and therefore, in the interest of purity of elections it was necessary that "those who had corrupted the course of an election are dealt with in accordance with law", and this purpose would stand defeated if the election petition were held to become infructuous on the dissolution of the Assembly. The learned Judge then proceeded to consider the relevant elections of the Act and after (1) [1959] 3 S.C.R. 417.referring to them, summarized his conclusion by saying : "From the above provisions it is seen that in an election petition the contest is really between the constituency on the one side and the person or persons complained of on the other. Once the machinery of the Act is moved by a candidate or an elector, the carriage of the case does not entirely rest with the petitioner. The reason for the elaborate provisions noticed by us earlier is to ensure to the extent possible that the persons who offered the election law are not allowed to avoid the consequences of their misdeeds." It will be seen that the emphasis in this decision was on the fact that the charge against the respondent was of corrupt practice and it was in this context that the Court held that where corrupt practices is alleged against the respondent in an election petition, the dissolution of the Legislature during the pendency of the election petition does not render, it infructuous. We fail to see how the ratio of this decision can have any application in the present case. Here there is no charge of any corrupt practice against the respondent. **The only ground on which the election of the respondent is sought to be invalidated is that he was disqualified at the date of nomination under s. 9A. This disqualification does not involve any act corrupting the course of an election. It has no other consequence than that of making the particular election void. It does not entail any electoral disqualification for the future.** There is, therefore, no analogy between the two situations and this decision cannot be called in aid by the appellant."

(emphasis added)

9. Further, in **P.H. Pandian v. P. Veldurai, (2013) 14 SCC 685**, the Hon'ble Supreme Court after taking note of the fact that the fresh elections have

been held in the State Legislative Assembly, held that the appeal has been rendered infructuous for all intents and purposes. And even if the appellant succeeds on the issue, it would be of no consequence because fresh election has already been taken place and the exercise of examining the challenge based on section 9 of the Act, would only be now of an academic exercise.

10. In the present case, the private respondents have not been elected but nominated to the J&K Legislative Council, which is no more in existence and if the petition is heard and decided on merits, it would be only an academic, time-consuming exercise in futility, without having any repercussions in future but of course resulting in wastage of precious judicial time.
11. In view of the above discussion, we are of the considered view that no fruitful purpose shall be served, if the petition at hand is decided on merits, as the same has been rendered infructuous due to subsequent events noted as above, by us. The petition is, accordingly, dismissed as having been rendered infructuous.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Jammu:
29.05.2025
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No