

Legal Current Affairs-

Bombay High Court: Under Section 62(5) of the RP Act, undertrials are also barred from voting; allowing prisoners to vote does not reinforce the system.

Recently in the case of Mohammad Nawab Mohammad Islam Malik @ Nawab Malik versus The Directorate of Enforcement and Anr., the Bombay HC ruled that the prohibition on permitting a prisoner to vote under Section 62(5) of the Representation of the People Act 1951 applies to an undertrial as well as a convict.

A single bench of Justice NJ Jamadar held *"If a full play is given to the provisions contained in section 2(d) and Section 62(5) of the RP Act 1951, an inference becomes inescapable that a person in custody, either post-conviction or during the course of investigation or trial, is prohibited from casting vote in any election."*

Furthermore, the Court stated that allowing a person who is otherwise excluded from electing to vote would not advance democracy.

According to Justice NJ Jamadar, democratic values are reinforced when the voting process is free of blemishes and all those involved are trustworthy. The court stated that one of the goals of enacting the prohibition on an imprisoned person voting under paragraph (5) of Section 62 of the Representation of the People's Act was to prevent or end the criminalization of politics.

He further stated that, *"It would be sufficed to note that the concept of 'democracy' transcends 'electoral democracy'. Purity of electoral process and probity of the participants therein, are also of equal significance in strengthening the democratic principles....I am, therefore, not inclined to accede to the broad proposition that permitting the persons (who are otherwise not qualified to vote in the election) strengthens the democracy."*

Background-

On Monday, the court issued the ruling in response to a motion filed by NCP leaders requesting freedom for a few hours in exchange for the signature of a bond to vote in the upcoming Maharashtra Legislative Council elections. The individuals are being held in judicial custody while the Enforcement Directorate investigates separate money laundering allegations.

The ED, which was represented by ASG Anil Singh, denied their petitions, citing a prohibition under section 62(5) of the Representation of the People's Act that prevents a person who has been convicted of a crime from participating in an election.

During the arguments, Deshmukh's Senior Advocate Vikram Chaudhri argued that while the accused had an unrestricted right to vote, the court had unrestricted authority to lift the voting ban.

The court, however stated, *"It is trite, discretion has to be exercised within the bounds of law. Conversely, there is no unfettered discretion, even in the Courts, to validate a course of action, which the law proscribes."*

Senior Advocate Amit Desai, representing Malik and assisted by Rashmikant and Partners, argued that under 62(5) of the RP Act, there was no full prohibition on voting and that only if the person was placed in jail could he be barred from voting. However, this physical flaw might be remedied by providing temporary voting bail.

Justice Jamadar concurred in the decision that the court might use its authority if the accused is deserved. For example, he may have been detained only to prevent the individual from voting. However, both NCP leaders have been in prison for a long time and do not appear to have been detained with the intention of preventing them from voting, he added.

Only a few weeks ago, a Special PMLA court denied both NCP leaders Anil Deshmukh and Malik permission to vote in the Rajya Sabha elections on June 10, 2022.

According to the ED, Deshmukh took use of his position as state home minister by collecting Rs 4.70 crore from a number of Mumbai bars via the help of certain police officers. Malik was detained by the ED on February 23 this year in a money laundering case involving fugitive criminal Dawood Ibrahim and his associates.