EC's Order on Reducing Sikkim CM's Disqualification Period

Why in news?

The Election Commission has reduced the period of disqualification from electoral contest of Sikkim Chief Minister Prem Singh Tamang to one-year-and-a-month.

What was the charge?

- Mr. Tamang was convicted under the Prevention of Corruption Act.
- The charge was misappropriation of Rs.9.50 lakh in the purchase of milch cows for distribution, in 1996-97.
- His one-year prison term was upheld by the High Court and the Supreme Court.
- He went to jail and was released in August 2018.
- He was (controversially) appointed as the Chief Minister by the Sikkim Governor earlier in 2019.
- Mr. Tamang did not contest, but was elected legislature party leader by the Sikkim Krantikari Morcha (SKM), which won the election.
- This was in deep disregard of the Supreme Court's 2001 ruling in the case of late Tamil Nadu CM Jayalalithaa.
- [SC nullified her appointment as the CM in 2001 due to her conviction in 2000 in TANSI (Tamil Nadu Small Industries Corporation) case]
- Tamang's appointment as Chief Minister was challenged in the Supreme Court.

What was Tamang's response?

- Tamang approached the Election Commission for removing his disqualification.
- Under an amendment in 2003, any conviction under the anti-corruption law would attract the six-year disqualification.
- Tamang argued that the law prevailing at the time of his offence entailed disqualification from contesting elections only if the sentence was for a term of 2 years or more.
- So, the amendment in 2003 should not be applied to him.

What is the EC's decision?

- Under Section 11 of the Representation of the People Act, 1951, the EC has

the power to remove or reduce the disqualification attached to a conviction.
- With the EC's current order, Mr. Tamang is eligible to contest a byelection and retain his post.

Why is this a wrong precedent?

- EC's power under the Representation of the People Act has been used only rarely, and seldom in a case involving a conviction for corruption.
- Disqualification from contest is a civil disability created by electoral law to keep those convicted by criminal courts from entering elected offices.
- It is not a second punishment in a criminal sense.
- So, Tamang cannot argue that disqualification for a one-year term amounts to being given a punishment not prevalent at the time of the offence.
- The EC's decision also goes against a series of recent legislative and judicial measures to strengthen the legal framework against corruption.
- In all, the order is a morally wrong and a dangerous precedent that may end up reversing the trend towards decriminalising politics.
- Moreover, there is already a perception that the EC's actions are being partisan.
- Now, its order in favour of Mr. Tamang comes just a day after the ruling BJP struck an alliance with the SKM for bypolls to be held in October 2019.
- This is bound to further strain the Election Commission's credibility.

What is the way forward?

- The apex court has described corruption as a serious problem and one impinging on the economy.
- Legislators handle public funds, and there is good reason to keep out those guilty of misusing them.
- In 2013, the protection given to sitting legislators from immediate disqualification was removed.
- All these suggest that disqualification should be more strictly applied to those convicted for corruption.

Source: The Hindu

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