

## **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**