

Sri C N Balakrishna Vs. The State of Karnataka

Sri C N Balakrishna Vs. The State of Karnataka

SooperKanoon Citation : sooperkanoon.com/1194413

Court : Karnataka

Decided On : Apr-24-2018

Judge : Raghvendra S.Chauhan

Appeal No. : WP 12338/2018

Appellant : Sri C N Balakrishna

Respondent : The State of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE24H DAY OF APRIL 2018 BEFORE THE HONBLE MR.JUSTICE RAGHVENDRA S. CHAUHAN WRIT PETITION Nos.12338-12339/2018 (GM-RES) BETWEEN :

1.

2. SRI C. N. BALAKRISHNA S/O. NANJAPPA, AGED ABOUT50YEARS, HONBLE MEMBER OF KARNATAKA LEGISLATIVE ASSEMBLY, NO.193, SHRNAVANABELAGOLA ASSEMBLY CONSTITUENCY, R/AT CHOLENAHALLI, ADAGURU POST, KASABA HOBLI, CHENNARAYAPATNA TALUK, HASSAN DISTRICT. SRI B. B. NINGAIAH S/O. BOMMAIAH, AGED ABOUT50YEARS, HONBLE MEMBER OF KARNATAKA LEGISLATIVE ASSEMBLY, NO.124-MUDIGERE (SC) ASSEMBLY CONSTITUENCY, RESIDING AT BETTEGERE VILLAGE AND POST, BUDIGERE TALUK, CHIKKAMAGALURU DISTRICT. ...

PETITIONERS (BY SRI UDAYA HOLLA, SR. ADVOCATE FOR SRI USMAN P., ADVOCATE) AND:

1. THE STATE OF KARNATAKA REPRESENTED BY ITS CHIEF SECRETARY, VIDHANA SOUDHA, BENGALURU-560 001.

2. 3.

4. 5.

6.

7. 2 SECRETARY TO LEGISLATIVE ASSEMBLY & RETURNING OFFICER, ROOM NO.121, VIDHANA SOUDHA, BENGALURU-560 001. THE HONBLE SPEAKER KARNATAKA LEGISLATIVE ASSEMBLY, VIDHANA SOUDHA, BENGALURU-560 001. SRI B. Z. ZAMEER AHMED KHAN S/O. LATE ZIAULLA KHAN, AGED ABOUT 53 YEARS, RESIDING AT NO.34, BENSON CROSS ROAD, BENSON TOWN, BENGALURU-560 046. SRI N. CHELUVARAYASWAMY (SWAMYGOWDA), S/O. LATE NARASIMHE GOWDA, AGED ABOUT 58 YEARS, RESIDING AT IJJALAGHATTA VILLAGE, BRAHMADEVARAHALLI POST, HONANKERE HOBLI, NAGAMANGALA TALUK, MANDYA TALUK. SRI A. B. RAMESHABANDISIDDEGOWDA S/O. A. S. BANDISIDDEGOWDA, AGED ABOUT 51 YEARS, RESIDING AT AREKERE POST, SRIRANGAPATTANA TALUK, MANDYA DISTRICT-571 101. SRI H. C. BALAKRISHNA S/O H. G. CHENNAPPA, AGED ABOUT 53 YEARS, RESIDING AT "AMMA", NO.21(22), 1ST CROSS, KHB COLONY, 1ST STAGE, BASAWESHWARANAGAR, BENGALURU-560 079. 3 8.

9. SRI AKHANDA SRINIVAS MURTHY R S/O C. RAMAIAH, AGED ABOUT 48 YEARS, RESIDING AT NO.32, PRESENT NO.E-19, KAVALBYRASANDRA MAIN ROAD, R. T. NAGAR, SIDDHARTHA LAYOUT, BENGALURU-560 032. SRI IQBAL ANSARI S/O. S. M. ANSARI, AGED ABOUT 56 YEARS, RESIDING AT KOPPAL ROAD, ISLAMPUR, KOPPAL-583 227.

10. SRI S. BHEEMANAIAK S/O. SAMYA NAIK, AGED ABOUT 44 YEARS, RESIDING AT 1516, RAJEEVNAGAR, 1ST CROSS, 1ST MAIN ROAD, HOSAPET, BALLARI DISTRICT-583 201. ... RESPONDENTS (BY SRI MADHUSUDHAN R. NAIK, ADV. GENERAL AND SRI A. S. PONNANNA, AAG FOR R-1; SRI ASHOK N. NAYAK, ADVOCATE FOR R-2; SRI JAYAKUMAR S. PATIL, SR. ADVOCATE FOR SRI ASHOK N. NAYAK, ADVOCATE FOR R-3; SRI K. G. RAGHAVAN, SR. ADVOCATE FOR SRI M. R. RAJAGOPAL, ADVOCATE FOR R-4, R-5, R-7 & R-8; SRI DHYAN CHINNAPPA, SR. ADVOCATE FOR SRI K. A. CHANDRASHEKAR, ADVOCATE FOR R-6; SRI RAVI VERMA KUMAR, SR. ADVOCATE FOR SRI S. RAJU, ADVOCATE FOR R-9; SRI SHASHIKIRAN SHETTY, SR. ADVOCATE FOR MS. FARAH FATHIMA, ADVOCATE FOR R-10) THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF QUO WARRANTO TO THE 4 RESPONDENTS NO. 4 TO 10 TO DEMIT THEIR OFFICE AS THE MEMBERS OF THE 14TH KARNATAKA LEGISLATIVE ASSEMBLY, FORTHWITH, AND DIRECT THE RESPONDENT NO. 3 TO DISQUALIFY THE RESPONDENT NOS. 4 TO 10 AS MEMBERS OF KARNATAKA LEGISLATIVE ASSEMBLY, WITH IMMEDIATE EFFECT AND ETC. THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON 17.04.2018, AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners have prayed for the following reliefs from this Court: A. Issue a writ in the nature of Quo Warranto to respondent Nos. 4 to 10 to demit their office as the Members of the 14th Karnataka Legislative Assembly, forthwith. B. Issue a writ in the nature of mandamus directing the 3rd respondent to disqualify the respondents 4 to 10 as Members of Karnataka Legislative Assembly with immediate effect. or in the alternative C. Issue a writ in the nature of mandamus directing the 3rd respondent to dispose of the disqualification petition No.1 of 2016 pending on the file of the 3rd respondent on or before 23.03.2018. 5 2. They have

also prayed for the following interim relief from this Court: For the reasons stated in Paragraph 24 supra, the petitioners most respectfully pray that this Hon'ble Court may be pleased to direct the 2nd respondent, the returning officer not to permit the respondents 4 to 10 either in participating or casting their votes in the ensuing election for Rajya Sabha as per the calendar of events published on 05.03.2018 and scheduled to be held on 23.03.2018, in the interest of justice.

3. The factual matrix of the case is that the petitioners were elected on tickets issued by the Janata Dal (Secular) ("the J.

D. (S)", for short) in the elections held in 2013; they are the Members of the Legislative Assembly ('MLA', for short). Similarly, in the election of 2013, the respondent Nos.4 to 10 were also elected as MLAs from the JD (S) party.

4. As four members of the Rajya Sabha were retiring on 30.06.2016, on 12.05.2016, the Election Commission of India issued a calendar of events for elections for the Rajya Sabha. On 06.06.2016, Mr. H. D. Kumaraswamy, the President of the Karnataka State J.D.(S) issued a whip to all the members of the Legislative Assembly belonging to the party. He directed them to vote for the official candidate of the J.D.(S) Party, namely Mr. B. M. Farooq. The said whip was also pasted on the rooms of the respondent Nos.4 to 10. And sufficient notice was given to them about the said whip.

5. Unlike the public elections, where secret ballot is practiced, the proceedings to the Rajya Sabha elections are designed in such a manner that the voter must disclose in whose favour he has cast his vote to the party agent/representative. This procedure is adopted in order to ensure that the whip issued by the party is not violated by a party member.

6. According to the petitioners, despite the whip issued by the President of the J.D. (S) to the respondent Nos.4 to 10, they did not vote for Mr. Farooq, who was the official candidate of J.

D. (S) party. Instead, on 11-06-2016, they voted for Mr. K.C. Ramamurthy, the official candidate of the Indian National Congress. Thus, they clearly violated the

whip issued by the President of the J.

D. (S).

7. Consequently, on 20.06.2016, the petitioners submitted a disqualification petition, under Rule 6 (2) of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 ("the Rules, for short), before the Hon'ble Speaker of the Karnataka Legislative Assembly, the respondent No.3. In the petition, the petitioners prayed that respondent Nos. 4 to 10 should be declared as disqualified in terms of Article 191 (2) and Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India. The respondent Nos. 4 to 10 filed their statements of objection. The petitioners, in turn, filed their rejoinder. But, despite the pleadings being complete, in spite the lapse of more than one and a half years, the respondent No.3 has yet to decide the disqualification petition.

8. Again four members of the Rajya Sabha were scheduled to retire on 20.04.2018. Therefore, by Notification dated 05.03.2018, the Election Commission of India has published the calendar of events for election of the Members of Rajya Sabha. According to the calendar, the election for the Rajya Sabha were scheduled for 23.03.2018.

9. According to the petitioners, in case the respondent No.3 does not decide the disqualification petition prior to the holding of the Rajya Sabha election, the respondent Nos. 4 to 10 are again likely to defy the whip of the J.D.(S) Party, and will again vote for the official candidate sponsored by the Indian National Congress Party. Hence, this writ petition with the prayers, and the interim prayer mentioned hereinabove filed prior to 23.03.2018.

10. Prof. Ravi Verma Kumar, the learned Senior Counsel for the respondent No.9, has raised a preliminary objection with regard to the maintainability of the writ petition. According to the learned Senior Counsel, the petitioners are seeking an interim prayer that Secretary to the Legislative Assembly and Returning Officer, the respondent No.2, should be directed to debar the respondent Nos.4 to 10 from participating in, and in casting their votes in the ensuing election for the Rajya Sabha scheduled to be held on 23.03.2018. Furthermore, according to the learned

Senior Counsel, the interim prayer is substantially a main prayer of these writ petitions. For the urgency pleaded, and the tactic employed by the petitioners in approaching this court immediately prior to the scheduled election of the Rajya Sabha clearly reveal that the petitioners would like this court to interfere with the election process of the election to the Rajya Sabha. Relying on Article 329 of the Constitution of India, the learned Senior Counsel has pleaded that the said provision totally prohibits the Courts from interfering with election matters once the calendar of events of election has been declared. According to Article 329 (b) of the Constitution of India, an election can be challenged only by presenting an election petition after the elections are over. In order to further buttress this plea, the learned Senior Counsel has relied on the case of *Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others* [(1978) 1 SCC405]. 10 Secondly, the writ petitions are hit by delay and laches. For, according to the petitioners, they had filed the disqualification petition as far back as one and a half years. Yet, they have approached this Court after a delay of one and a half years. Therefore, the petitions deserve to be dismissed on these two grounds.

11. On the other hand, Mr. Udaya Holla, the learned Senior Counsel for the petitioners, submits that an interim prayer does not decide the maintainability of the writ petition. It is the main prayer (s) which would determine the maintainability of a petition. According to the petitioners, they are seeking a writ of mandamus to the respondent No.3 to decide the disqualification petition, as the respondent No.3 is sitting over the petition for the last one and a half years, or more. Moreover, relying on the case of *RAJENDRA SINGH RANA AND OTHERS v. SWAMI PRASAD MAURYA AND OTHERS* [(2007) 4 SCC270], the learned Senior Counsel has pleaded that defiance of the whip entails disqualification in terms of Para 2 of the Tenth Schedule of the Constitution of India. The subsequent decision of the 11 Hon'ble Speaker, disqualifying the legislator, does not postpone the incurring of disqualification by the legislator. In fact, the disqualification relates to the date of defiance of whip. Hence, a decision taken by the Hon'ble Speaker is a decision ex-post facto. Thus, notwithstanding the pendency of the disqualification petition, the respondent Nos. 4 to 10 stand disqualified from 11.06.2016, i.e., from the date they had defied the whip. Hence, the petitioners have sought a writ of Quo

Warranto against the respondent Nos. 4 to 10. Therefore, the petitioners are not interfering with the election process for holding the elections for the Rajya Sabha. Thus, the writ petitions do not fall within the prohibition prescribed by Article 329 (b) of the Constitution of India. Secondly, the writ petitions are not hit by delay and latches. For, the petitioners had hoped that the respondent No.3 would have performed his constitutional duty of deciding the disqualification petition within a reasonable time. However, when the petitioners realized that the respondent No.3 was intentionally not deciding the petition in order to continue to draw the political support of the 12 respondent Nos. 4 to 10 for agenda of the Congress party, and especially to seek their support for the ensuing elections for the Rajya Sabha, the petitioners have approached this Court. Moreover, a writ of Quo Warranto can be sought at any time, for the person holding a public office is alleged to be a usurper of the office. Hence, the writ petitions are not hit by delay and latches. Hence, the writ petitions are maintainable.

12. Heard the learned Senior Counsel for the parties.

13. Needless to say, the maintainability of a writ petition is determined by the main relief sought by the petitioners, and not by the interim relief prayed for. As mentioned above, in the present writ petitions, the petitioners are seeking a writ of mandamus against the respondent No.3, and a writ of Quo Warranto against the respondent Nos.4 to 10. Only incidentally, have the petitioners raised an interim prayer for preventing the respondent Nos.4 to 10 from participating in the election of Rajya Sabha which was scheduled to be held on 23.03.2018. 13 Furthermore, since the said election is already over, and yet the petitioners are pressing the writ petition, this clearly indicates that their intention is to seek a writ of mandamus against the respondent No.3, and to question the legitimacy of the respondent Nos. 4 to 10 in holding the public office as MLAs. Hence, the writ petitions do not interfere with the election process. Therefore, the writ petitions are not hit by the bar contained in Article 329 (b) of the Constitution of India. Thus, the writ petitions are maintainable.

14. Furthermore, the petitioners are justified in claiming that they had a bona fide belief that the respondent No.3 would discharge his constitutional duty within a

reasonable time. However, when they saw through the game plan of the respondent No.3, especially with the approaching elections for the Rajya Sabha, the petitioners have approached this Court. Hence, the writ petitions are not hit by delay and laches. Thus, the preliminary objection, raised by Prof. Ravi Verma Kumar, the learned Senior Counsel, is unacceptable. 14 15. Mr. Udaya Holla, the learned Senior Counsel, has raised the following contentions before this Court:- Firstly, free and fair election, and representative democracy are basic structures of the Constitution of India. Being the custodian of the Constitution, the Judiciary is bound to safeguard the basic structures of the Constitution. Therefore, the Judiciary plays a pivotal role in not just interpreting the provision of the Constitution, but more so in ensuring that the Constitutional provisions are implemented keeping in mind the Constitutional mandate and philosophy. Secondly, the political development of the country has witnessed both progressive events, and regressive steps. Democracy seems to be stable at the macro level. But at the micro level, the lure of money and power has convinced politicians, of all hues, to indulge in defection and to defy the whips issued by their party. Thus, such clever moves destabilize democracy and threaten the existence of the nation as a liberal democracy. Keeping in mind the evil of political defection, the Tenth Schedule was introduced into 15 the Constitution by the Forty-eighth amendment in 1985. The Tenth Schedule deals with disqualification on grounds of defection, and on the ground of disobedience of a whip. Emphasizing Para 2, and Para 6 of the Tenth Schedule, the learned Senior Counsel has vehemently argued that although the responsibility of declaring a member of the House of Legislature as "disqualified", has been bestowed upon the Hon'ble Speaker of the Legislature, but a member becomes disqualified from the date he/she has disobeyed the whip. Therefore, it is not necessary to wait for the decision of the Hon'ble Speaker in order to declare a MLA as disqualified. Therefore, as the MLA is disqualified from the date he/she defied the whip, any action done by him stands vitiated. Thirdly, the disqualification of an MLA is not from the date that he is declared to be disqualified by the Hon'ble Speaker, but it relates to the date on which the whip was violated by the MLA. In order to buttress this plea, the learned Senior Counsel has relied on the case of RAJENDRA SINGH RANA AND OTHERS (supra). Therefore, according to 16 the learned Senior Counsel, the respondent Nos. 4 to

10 are deemed to be disqualified from 11.06.2016. Fourthly, once an onerous responsibility has been bestowed upon the Hon'ble the Speaker to decide a disqualification petition, he cannot sit tightly over the same, and permit the legislators, who have defied the whip, to continue to function as legislators. Since the post of Speaker of the House is a public office, it is a post of public trust. In case, the Hon'ble Speaker does not decide the disqualification petition, he undermines the public trust, thereby weakening the Rule of Law. Fifthly, relying on the case of KIHOTO HOLLOHAN v. ZACHILLHU AND OTHERS [1992 SUPP (2) SCC651, the learned Senior Counsel has pleaded that the Hon'ble Speaker acts as a Tribunal. Hence, he is amenable to judicial review. Moreover, relying on the case of SPEAKER, HARYANA VIDHAN SABHA v. KULDEEP BISHNOI AND OTHERS [(2015) 12 SCC381, the learned Senior Counsel submits that this court has ample power to direct the 17 Hon'ble Speaker to decide the disqualification petition within a stipulated timeframe. Sixthly, the disqualification petition is pending before the Hon'ble Speaker since 20.06.2016. Despite the lapse of more than one and a half years, the petition is yet to be decided. Considering the fact that the State Elections are around the corner, it is imperative for the Hon'ble Speaker to decide the petition as expeditiously as possible, and certainly, prior to the dissolution of the Legislative Assembly. Lastly, in the alternative, since the Speaker is not performing his constitutional duty in deciding the disqualification petition, this court has sufficient power to declare the respondent Nos.4 to 10, as disqualified, from the date they had defied the whip.

16. On the other hand, Prof. Ravi Verma Kumar, the learned Senior Counsel for the respondent No.9, and Mr. K. G. Raghavan, the learned Senior Counsel for the respondent Nos.4, 5, 7 and 8, and other learned counsel 18 have raised the following counter-contention before this court:- Firstly, relying on Para 6 and 7 of the Tenth Schedule of the Constitution of India, the learned Senior Counsel have stressed that the jurisdiction to declare a member of the Legislative Assembly as "disqualified", is solely vested in the Hon'ble Speaker of the Legislative Assembly, or the Chairman of the House, as the case may be. Since his decision is a final one, the power of judicial review is rather limited. Relying on the case of KIHOTO HOLLOHAN (supra), the learned Senior Counsels have pleaded that the power of judicial review can be exercised only after the Hon'ble Speaker has pronounced

his decision upon the disqualification petition. The power of judicial review cannot be exercised at an interlocutory stage of the proceedings. Therefore, this court can neither direct the Hon'ble Speaker to decide the case in time bound period, nor can declare the members of the Legislative Assembly as disqualified. 19 Secondly, till the Hon'ble Speaker declares a MLA to be disqualified under the Tenth Schedule of the Constitution of India, he or she cannot be deemed to be disqualified from the date he/she has defied the whip. Therefore, the disqualification incurs from the date of the decision of the Hon'ble the Speaker, although the disqualification may relate back to the date when the whip was disobeyed. Hence, relying on the de-facto doctrine, the learned Senior Counsel have argued that any act done by the respondent Nos. 4 to 10 in the interregnum period of their alleged defiance of the whip, and the final order passed by the Hon'ble Speaker, would not vitiate their actions. Thirdly, during the pendency of the present writ petitions, the respondent Nos. 4 to 10, have already resigned from their post of MLA. Therefore, the present writ petitions have become infructuous. Thus, they should be dismissed as infructuous.

17. In rejoinder, Mr. Udaya Holla, the learned Senior Counsel, has submitted that mere resignation of the 20 respondent Nos. 4 to 10, would not make the writ petitions infructuous. Even if the said respondents have resigned, that does not preclude the Hon'ble Speaker from deciding the disqualification petition. Since the Speaker has a constitutional responsibility to decide a disqualification petition, he cannot escape from discharging the said responsibility on the pretext that the said respondents have resigned. Furthermore, if the said respondents were declared to be disqualified, as mentioned above, the disqualification would relate back to the date of their defying the whip. Therefore, the benefits derived by them while holding the post of MLA such as their salaries, and perks can be recovered from them. According to the learned Senior Counsel, while the de-facto doctrine applies to acts done in the interest of public, or third parties, it does not apply to the benefits which the wrongdoer has received for himself. In order to buttress this proposition, the learned Senior Counsel has relied on the case of VEERENDRA KUMAR GAUTAM AND OTHERS v. KARUNA NIDHAN UPADHYAY AND OTHERS [(2016) 14 SCC18. 21 18. Undoubtedly, the Tenth Schedule was inserted in the Constitution of India by the Fifty-second amendment in order to

achieve certain salutary goals: one of the goals was to combat the evil of political defections which undermine the very foundation of our democracy. Keeping in mind this national and constitutional goal, the Tenth Schedule not only prescribes the circumstances, which would entail disqualification of a Legislator, but also bestows a responsibility on the high ranking office of the Speaker of the Legislative Assembly, or the Chairman of the House to disqualify the legislator. Therefore, a constitutional duty has been imposed upon the Hon'ble Speaker to decide the disqualification petition as expeditiously as possible, and certainly within a reasonable time.

19. In the case of *KIHOTO HOLLOHAN* (supra), the Apex Court had elaborately discussed the scope and ambit of the Tenth Schedule. The Hon'ble Supreme Court had clearly opined that "the power to decide disputed disqualification under Para 6 (1) (of the Tenth Schedule of the Constitution of 22 India) is pre-eminently of a judicial complexion". It had also declared that "the Speaker, or the Chairman, acting under Para 6 (1) of the Tenth Schedule is a Tribunal". Thus, it is subject to the power of judicial review.

20. But, while dealing with the inter-relationship between the finality given to the decision of the Hon'ble the Speaker, and the power of judicial review, the Hon'ble Supreme Court held that the power of judicial review cannot be applied at the interlocutory stage. It is only after a final decision has been taken by the Hon'ble Speaker that the Constitutional Court would be free to exercise its power of judicial review. But, even then, the power should be exercised on well-known grounds, namely jurisdictional error i.e., infirmities based on violation of constitutional mandate, mala fide, non-compliance with rules of natural justice, and perversity.

21. However, while relying on the case of *KIHOTO HOLLOHAN* (supra), in the case of *KULDEEP BISHNOI* (supra), the Apex Court held that, under Article 226 of the 23 Constitution of India, the High Court does have the power to direct the Hon'ble the Speaker to decide a disqualification petition within the stipulated period of time. Hence, the learned counsel for the respondents are unjustified in claiming that this court is denuded of the power to direct the Hon'ble Speaker to decide the disqualification petition within certain given time-frame.

22. But on the other hand, Mr. Udaya Holla, the learned Senior Counsel, is unjustified in claiming that the legislators are deemed to be disqualified even prior to their being declared as "disqualified" by the Hon'ble Speaker. In the case of RAJENDRA SINGH RANA (supra), the issues before the Apex Court were whether a legislator becomes disqualified from the date of the decision of the Speaker, or the disqualification relates back to the date of the defiance of the whip?. While answering these issues, the Apex Court held that "therefore, in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraphs of the 24 Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex-post facto. The fact that in terms of para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (sic it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted".

23. But, merely because a disqualification is retrospective in nature, it does not mean that the requirement of a decision of the Speaker is done away with. As opined in the case of KIHOTO HOLLOHAN (supra), the power to decide a disputed disqualification is of a judicial complexion. Therefore, till the Hon'ble Speaker, as the Tribunal, does not decide the issue, the legislator cannot be deemed to be disqualified. It is after the decision is pronounced, a finding is given, and a declaration is made that the legislator is "disqualified", only then such a disqualification would operate retrospectively. Hence, the contention raised by Mr. Udaya Holla, that the legislators are deemed to be disqualified from the date of the defiance of the whip till the date of final decision of the Hon'ble Speaker, is unsustainable.

24. In the case of KULDEEP BISHNOI (supra), a Division Bench of the Hon'ble Punjab & Haryana High Court had declared five legislators as "unattached members of the Assembly with the right to attend Sessions only", while their disqualification petition was still pending before the Hon'ble Speaker. Deprecating the decision of the learned Division Bench in declaring the legislators as unattached members of the Assembly, the Hon'ble Supreme Court opined that "it is only after a final decision is rendered by the Speaker under 26 Para 6 of Schedule X of the Constitution that the jurisdiction of the High Court can be invoked."

The Apex Court further opined as under:

"It is in fact in the proceedings under Para 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order which is amenable to the writ jurisdiction of the High Court. It is in such proceedings that the question in relation to the disqualification is to be considered and decided. Accordingly, restraining the Speaker from taking any decision under Para 6 of Schedule X is beyond the jurisdiction of the High Court, since the Constitution itself has vested the Speaker with the power to take a decision under Para 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order."

Therefore, the High Court does not have the power to declare a MLA as disqualified while the disqualification petition is pending before the Hon'ble Speaker. 27 25. However, simultaneously, the Apex Court upheld the judgment of the learned Division Bench, and of the learned Single Judge, whereby the learned Single Judge had directed the Hon'ble Speaker to decide the disqualification petition within a specified period. Hence, the contention raised by Mr. Udaya Holla, the learned Senior Counsel that this court has ample power to declare a legislator as disqualified, during the pendency of the proceeding before the Hon'ble Speaker, is clearly unacceptable.

26. Considering the peculiar circumstances that the respondent Nos. 4 to 10 have resigned during the pendency of the present writ petitions, the question before this court is, whether this court would be justified in directing the Hon'ble Speaker to

still decide the disqualification petition, within a stipulated period, or not ?.

27. Undoubtedly, the Honble Speaker holds a public office; admittedly, the constitutional duty to adjudicate upon the disqualification petition is bestowed upon the Hon'ble Speaker. Therefore, while discharging his constitutional 28 duty, the Hon'ble Speaker not only fulfils the constitutional mandate, but also strengthens the faith of the people in the public office. If the Hon'ble Speaker is permitted to maintain a studied silence over a disqualification petition, the omission to take a decision will scuttle the constitutional duty and defeat the very purpose of Tenth Schedule of the Constitution. Moreover, the public at large would be convinced that the Hon'ble Speaker is refusing to exercise his quasi-judicial power for oblique political motives. Such a public impression would undermine the majesty of the office, and of Rule of Law. For, if a constitutional post holder is permitted to defy the constitution itself, the people will no longer respect the constitutional provisions. Considering the fact that a lis does exist before the Hon'ble Speaker, it is imperative that the lis is decided, one way or the other, even if there is not much to decide due to the resignation of the respondent Nos. 4 to 10. But, merely because respondent Nos. 4 to 10 have resigned from the post of MLA, it does not mean that the Hon'ble Speaker is precluded from exercising his power to declare them as disqualified. Since, a public 29 duty has been imposed upon the Hon'ble Speaker, the Hon'ble Speaker cannot escape the performance of the public duty. Hence, it is imperative that the Hon'ble Speaker should decide the disqualification petition pending before him.

28. What will be the consequences of his decision is too early for this court to express its opinion about. Therefore, the issue, whether such a disqualification would vitiate the action of the respondent Nos.4 to 10 during the period, from the date they had defied the whip, till the date they are formally declared to be disqualified by the Hon'ble Speaker, is left open.

29. But, considering the fact that the Karnataka Legislative Assembly is about to be dissolved on 08.05.2018, this court issues a writ of mandamus, and directs the Hon'ble Speaker to decide the disqualification petition, on or before 07.05.2018. Since one of the reliefs prayed for by the petitioners is being granted, obviously,

the writ petitions 30 have not become infructuous due to the resignation of the respondent Nos. 4 to 10.

30. For the reasons stated above, these petitions are partly allowed. No order as to costs. Np/- Sd/- JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com