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Court : Guwahati

Decided On : Mar-10-2003

Judge : H.K.K. Singh, J.

Acts : Constitution of India

Appeal No. : WP (C) No. 1519 of 2002

Appellant : Y. Erabot and anr.

Respondent : Speaker, Manipur Legislative Assembly and anr.

Advocate for Def. : N. Kotishwar, Adv.

Advocate for Pet/Ap. : Ashok Potsangbam, Adv.

Disposition : Petition allowed

Judgement :

H.K.K. Singh, J.

1. Heard Mr. Ashok Potsangbam, learned Sr counsel for the petitioners and Mr. N. Kotishwar learned counsel appearing for the respondents.

2. Matter relates to Bulletin issued by the Secretary, Manipur Legislative Assembly being Bulletin Part-II dated 26.10.2002 (Axinexure A/8) which is reproduced below :

'BULLETIN PART-II

Saturday, October 26, 2002/Kartika 4,1924 (Saka)

The following Members of the Manipur Legislative Assembly have ceased to be members of the Manipur State Congress Party due to suspension from the membership of the Manipur State Congress Party with effect from 10.10.2002.

1. Shri Erabot Yumkham -15 - Wangkhei (Apex Court)

2. Shri Vivek Raj Wangkhem-4 - Kshetrigao (Apex Court)

The Hon'ble Speaker is, accordingly, pleased to declare them as unattached members of the Manipur Legislative Assembly with immediate effect.

Sd/- The. Chourajit Singh

Secretary

Manipur Legislative Assembly.'

3. By this Bulletin as quoted above, 2 (two) M.L.As, namely, 1) Shri Erabout Yumkhan and 2) Shri Vivek Raj Wangkhem, have been declared unattached Members of the Manipur Legislative Assembly. These two petitioners came up to this court submitting that there is no provision for declaring any M.L.A. to be unattached Member within the purview and scope of the Tenth schedule of the Constitution of India. In this connection, Mr. Ahsok Potsangbam, learned Sr counsel submits that the matter is no more res integra in view of the judgment passed by the Apex Court in G. Vishwanathan, Appellant v. Hon'ble Speaker Tamil Nadu, Respondent reported in (1996) 2 SCC 353.

4. Mr. N. Kotishwar, learned counsel for the respondent No. 2, submits that the above decision of the Supreme Court may not be strictly applicable in the present case as, in the present case at hand, the rigour of the provisions of the Tenth Schedule of the Constitution of India may not be attracted as there is no indication or anything to show that the petitioners were or are likely to be disqualified under the provision of the Tenth Schedule.

5. I have considered the matter.

6. Law declared by the Supreme Court is the law of the land and in fact the above decision of the Apex Court has been followed and applied by various High Courts including this Court in the case of W. Nipamacha Singh and 2 Ors., Petitioners v. Hon'ble Speaker, Manipur Legislative Assembly and Anr., reported in 2001 (2) GLT 130. In this regard, para No. 11, Judgment of the Apex Court, in the case of G, Viswanathan (supra) held :

'11. It appears that since the explanation to para 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purpose of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'.....

7. Further, in para 12 of the aforesaid judgment of the Apex Court, it was also held :

'12. We are of the view that labelling of a member as 'unattached' finds no place nor has any recognition in the Tenth Schedule. It appears to us that the classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House, (1) one who has been elected on his being set up by a political party as a candidate for election as such member; (2) one who has been elected as a member otherwise than as a candidate set up by any political party-usually referred to as an 'independent' candidate in an election ; and (3) one who has been nominated. The categories mentioned are exhaustive. In our view, it is impressible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. If a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise, he voluntarily gives up his membership of

the political party and incurs the disqualification. Being treated as 'unattached' is a matter of mere convenience outside the Tenth Schedule and does not alter the fact to be assumed under the explanation to para 2(1). Such an arrangement and labelling has no legal bearing so far as the Tenth Schedule is concerned. If the contention urged on behalf of the appellant is accepted it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief, namely, breath of faith of the electorate. We are, therefore, of the opinion that the deeming of fiction must be given full effect for otherwise the expelled member would escape the rigour of the law which was intended to curb the evil of defections which has polluted our democratic polity.'

8. Accordingly, I am of the opinion that the petitioners cannot be treated as 'unattached' for the purpose of Tenth Schedule of the Constitution. Hence, the rule is made absolute and the Bulletin Part-II dated 26.10.2002, as in Annexure-A/B to the Writ petition is quashed.

9. This writ petition is allowed and disposed of.

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