

Bhagwan Sharma Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-21-2011

Judge : Ashok Bhushan & Bharati Sapru

Appeal No. : Civil Misc. Writ Petition No. 63932 of 2011

Appellant : Bhagwan Sharma

Respondent : State of U.P. and Others

Advocate for Def. : Shri. P.N. Gupta

Advocate for Pet/Ap. : Shri. Ravi Kiran Jain

Judgement :

Ashok Bhushan, J.

This writ petition has been filed by the petitioner, a Member of Uttar Pradesh Legislative Assembly praying for writ of certiorari quashing the order dated 13/10/2011, passed by the Speaker, U.P. Vidhan Sabha declaring the petitioner to be disqualified under the Tenth Schedule of the Constitution of India.

We have heard Shri Ravi Kiran Jain, learned Senior Advocate assisted by Shri R.K. Awasthi and Abhishek Tripathi for the petitioner and Shri S.G. Hasnain, learned Additional Advocate General appearing for the respondent no.2.

Before we proceed to consider the respective submission raised by the learned counsel for the petitioner, facts in brief giving rise to this writ petition need to be noted. The petitioner, being a sponsored candidate of Bahujan Samaj Party from Dibai Assembly Constituency, District Bulandshahar was elected as Member of U.P. Legislative Assembly in the year 2007. On 06/8/2011, petitioner voluntarily left the Bahujan Samaj Party and joined the Samajwadi Party, which declaration was made by the petitioner in the presence of Shri Akhilesh Yadav, State President of Samajwadi Party, and its leader Shri Shiv Pal Yadav and other office bearers which facts were published in the several newspapers including Hindustan, Hindustan Times, Times Of India, Amar Ujala, Dainik Jagarn and Rashtriya Sahara along with photographs. A press conference was organized before the leaders of the Samajwadi Party, in which the petitioner accepted the membership of the Samajwadi Party. Coverage of the said press conference was also broadcasted by the electronic media in different channels like E. TV, Uttar Pradesh, India News, Sahara Samay and Zee News etc.

The respondent no.3 who is a State President of Bahujan Samaj Party filed a petition on 11/8/2011 before the Speaker stating that the petitioner has become disqualified w.e.f. 06/8/2011, due to voluntarily leaving the party and joining the Samajwadi Party. The petition was supported by an affidavit dated 11/8/2011 of Sri Swami Prasad Maurya, respondent no.3. A copy of the newspaper reports and other materials as referred to in the petition were part of the petition. The copy of the petition was served on the petitioner. The petitioner filed his reply to the petition dated 07/9/2011. Petitioner also made an application on 15/9/2011, for giving names of the correspondent of the newspapers. Again on 04/10/2011, an application was made by the petitioner to reject the petition under Order VII Rule 11 of Code of Civil Procedure. The respondent no.3 submitted his rejoinder affidavit on 13/9/2011. On 27/9/2011, Shri P.N. Gupta, counsel for the respondent no.3 submitted a C.D. which was taken on record. On 04/10/2011, the C.D. submitted by the respondent no.3 was displayed before the counsel for both the parties and the Speaker heard the parties and gave time to the parties to submit their writ submissions by 07/10/2011. On 07/10/2011, petitioner submitted written submission. The Speaker passed his order on 13/10/2011, declaring that the petitioner has become disqualified under para 2(1) (a) of the Tenth Schedule of

the Constitution of India. This petition has been filed challenging the said order.

Learned counsel for the petitioner pressing the stay application filed in support of the writ petition prayed that the order dated 13/10/2011 passed by the Speaker disqualifying the petitioner be stayed. He submitted that the petitioner is entitled for grant of ex-parte interim order. We, thus proceed to consider submissions which has been advanced in support of his prayer for grant of ex-parte interim order.

Following submissions have been advanced by the learned counsel for the petitioner.

1. The petition submitted by the respondent no.3 dated 11/8/2011, for disqualifying the petitioner being not in accordance with Rule 7 sub-rule 4 was liable to be dismissed under Rule 8 sub-rule 2 of, "The Members of Uttar Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987" (hereinafter called the "1987 Rules") since it did not contain a concise statement of the material fact and was not accompanied by the copy of the documentary evidence on which the petitioner relies. He submits that Rule 8, sub-rule 2 of the 1987 Rules, which requires the petition to be dismissed which does not comply with the requirement of Rule 7 of the 1987 Rules, is mandatory and contains a requirement as provided in Section 86 of The Representation of People Act, 1951 (hereinafter called the "Act, 1951").

2. The order of the Speaker of U.P. Legislative Assembly is an order which is based on no evidence, since the only evidence which has been filed by the respondent no.3 was newspaper reports mentioning that the petitioner who was elected as member of B.S.P has joined the Samajwadi Party which news paper reports cannot be relied as an evidence since there was no other evidence led by the respondent no.3.

3. On the date of hearing the Compact Disc (C.D.) was filed by the respondent no.3 without serving a copy to the petitioner which has been relied on by the Speaker in his order dated 13/10/2011, without giving any opportunity to the petitioner to lead evidence. In rebuttal which violates the principles of natural justice Shri Ravi Kiran Jain, learned Senior Advocate appearing for the petitioner

on the aforesaid submission contended that the impugned order passed by the Speaker is a nullity and deserves to be stayed by this Court.

Before proceeding to consider above submissions, we make it clear that our consideration of submissions of the petitioner is only with the object to decide as to whether the petitioner is entitled to an ex-parte interim order or not, and we may not be treated to have expressed any concluded opinion on the various issues raised at this stage.

The first submission of the learned counsel for the petitioner is based on Rule 7 sub-rule 4 and Rule 8 sub-rule 1 and sub-rule 2 of Rules, 1987 which is to the following effect:

“7 (1).....

(2).....

(3).....

(4)Every petition,-

(a) shall contain a concise statement of the material facts on which the petition is based, and

(b) shall be accompanied by copies of documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person a statement containing the names and addresses of such person and the gist of such information as furnished by each such person.

8.(1)On receipt of a petition under rule 7, the Speaker shall consider whether the petition complies with the requirements of that rule.

(2) If the petition does not comply with the requirements of rule 7, the Speaker shall dismiss the petition and intimate the petitioner accordingly.

.....”

Learned counsel for the petitioner submits that the petition does not disclose the material facts and deserves to be dismissed. He submits that the compliance of Rule 7 sub-rule 4 of the Rules, 1987 is mandatory and it is akin to Section 86 of the Act, 1951 which enjoins dismissal of an election petition which does not contain material facts and material particulars. The copy of the petition has been annexed as Annexure-1 to the writ petition. The concise statement of material facts have been given in the petition to the effect that although the petitioner who is a member of Bahujan Samaj party from which he was elected in the U.P. Legislative Assembly, but on 06/8/2011, petitioner voluntarily relinquished the membership of Bahujan Samaj Party and joined the Samajwadi party. On 06/8/2011, the petitioner in presence of Shri Akhilesh Yadav, State President of Samajwadi party and leader Shri Shiv Pal Yadav and office bearers made a declaration of joining the Samajwadi Party which was published in the various newspapers namely; Hindustan, Hindustan Times, Times Of India, Amar Ujala, Dainik Jagaran and Rashtriya Sahara along with the photographs. In a press conference held on 06/8/2011 along with the leaders of the Samajwadi Party, petitioner joined the membership of Samajwadi party due to which he was disqualified from the Membership of the U.P. Legislative Assembly. The Electronic Media has also covered the above press conference called by the Samajwadi Party in various channels like ETV, Uttar Pradesh, India News, Sahara Samay and Zee News etc.

From the above allegations which are contained in paragraphs 4 to 8 of the petition, we are satisfied that the material facts have been mentioned. Petitioner has annexed along with the petition, copies of newspapers along with photographs which are part of Annexure-1, thus the documentary evidence of news paper as referred to in the petition was also annexed.

Shri Ravi Kiran Jain, learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in Azhar Husain Vs. Rajiv Gandhi, AIR 1986 SC 1253, paragraphs 6,9 and 11, where the apex court has laid down that the election petition not disclosing the material facts and material particulars is liable to be dismissed under Section 86 of the Act, 1951. Section 86 of the Act, 1951 which has been held to be mandatory.

In the present case, Section 86 of the Act, 1951 is not applicable. 1987 Rules, which has been relied on by the learned counsel for the petitioner are the rules framed by the Speaker which is a subordinate legislation. The 1987 Rules, have been held to be directory and breach of the aforesaid rules framed by the Speaker have been held not to vitiate the order of the Speaker.

The Three Judges Bench of this Court in Dr Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and Ors, 2004 (8) SCC 747 had an occasion to consider the similar submissions in respect of the rules framed by the Speaker, Bihar Legislative Assembly. Rule 7 of the 1987 Rules, which were up for consideration before the Apex court were akin to Rule 8 sub-rule 2 of the 1987 Rules, which have been held to be directory by the apex court. Paragraph 16 of the said judgment is relevant which is quoted below:

“16. Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said Rule and sub-rule (6) of the same Rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The heading of Rule 7 is “Procedure”. Sub- rule (1) of this Rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said Rule and sub-rule (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rule being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provision in the Tenth

Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires."

Thus, the submission of the petitioner that the petition was liable to be dismissed by the Speaker, cannot be prima facie accepted. Another limb of submission of the learned counsel for the petitioner is that the Speaker committed error in not referring the petition to a committee for submitting a preliminary inquiry report as required under Rule 8 sub-rule 4 of the 1987 Rules. Rule 8 sub-rule 4 of the 1987 Rules, is quoted below:

“8.(1).....

(2).....

(3).....

(4) After considering the comments if any, in relation to the petition, received under sub-rule (3) within the period allowed, the Speaker may either proceed to determine the question or, if he is satisfied having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for submitting a preliminary inquiry report in respect thereof.”

A perusal of the above sub-rule indicates that it is not mandatory for a Speaker to refer all complaints to a committee. A discretion has been given to the Speaker either to proceed to determine the question or, if he is satisfied having regard to the nature and circumstances of the case he may refer the petition to a committee.

In the present case, the Speaker after receiving the complaint issued notice to the petitioner forwarding the complaint to examine the question. No error can be said to have been committed by the Speaker in not referring the question to the committee.

The second submission of the learned counsel for the petitioner is that the order of the Speaker is based on no evidence. He submits that the only evidence which was filed along with the petition was newspaper reports and the petitioner had not disclosed the names of correspondents and editors who have published the news nor the petitioner was permitted to examine the correspondents and the editors hence the newspapers could not have been relied.

In support of his submission Shri Ravi Kiran Jain, learned Senior Counsel appearing for the petitioner has placed reliance on the Judgement of the Supreme Court in Samanta and Balakrishnan Vs. George Fernandes, AIR 1969 SC 1201 and Laxmi Raj Shetty Vs. State of U.P. and Ors, AIR 1988 SC 1274.

The Speaker in the impugned order has not based his decision only on the news paper reports. The Speaker has also relied on the C.D. which contains the press conference of Samajwadi Party and the statement issued by the State President of Samajwadi Party. The speaker has also relied on the conduct of the petitioner in not issuing any contradiction to any newspaper or any T.V. channels who had published the newspaper item and story of the petitioner leaving the Bahujan Samajwadi Party and joining the Samajwadi Party on 06/8/2011. An inference has rightly been drawn by the Speaker that the petitioner being the sitting member of the Bahujan Samajwadi Party who having not contradicted any of the news at the relevant time, his conduct in not issuing any contradiction is a relevant fact which could be relied on. The denial of the said news publications were made for the first time when the petitioner submitted his reply to the petition by filing an application and affidavit on 07/9/2011, i.e. after a month. The reference of news leaving the party by the petitioner was shown by the electronic media in different T.V. channels which fact was pleaded in paragraph 8 of the petition. It is true that the C.D. of the news item published by some of the channels was filed before the Speaker during the course of hearing and not along with the petition, which at best may be an irregularity, which do not fatal to the proceedings. The objection of the petitioner that the C.D. was not served on him was also noticed and met by the Speaker in his order stating that the C.D. was played during the course of hearing which was also seen by the representatives/learned counsel for the petitioner.

We are not persuaded prima facie to accept the submission of the learned counsel for the petitioner that the C.D. could not have been relied by the petitioner in support of his decision. Thus, the submission of the learned counsel for the petitioner that the impugned order passed by the Speaker is based on no evidence cannot be prima-facie accepted.

The third submission of the learned counsel for the petitioner is that the impugned order passed by the Speaker is vitiated due to noncompliance of the principles of natural justice since the copy of the C.D. was not served on the petitioner when it was accepted by the Speaker during the course of hearing.

It is true that the Speaker while deciding the question of disqualification under the Tenth Schedule of the Constitution of India acts as a Tribunal, and the order of the Speaker has to be in conformity with the principles of natural justice.

In the present case, the copy of the petition had been filed by the respondent no.3 on 11/8/2011 along with all its annexures including the newspaper reports which were served on the petitioner which were replied by him by filing an objection and an affidavit by the petitioner on 07/9/2011.

Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in Balchandra L Jakholi and Ors Vs. B.S. Yedurappa and Ors, (2011) 7 SCC 1. The Apex Court in the facts of the said case held that the principles of natural justice and fair play were violated by the Speaker. In the said case notices were not served on the petitioners and the show cause notice was affixed on their official residence without the documents, whereas in the present case the petition along with the documents were served on the petitioner which was also replied. The Apex Court in the above case held that the extraneous considerations were writ large on the face of the order of the Speaker, due to which the order was set-aside. The aforesaid case was on its own fact and the facts and circumstances of the present case are clearly distinguishable. In the petition filed by the respondent no.3, there is a specific mention of media coverage of press conference dated 06/8/2011 of the Samajwadi Party and publication of the said news in ETV, Uttar Pradesh, India News, Sahara Samay and Zee T.V etc.

It is useful to quote para 8 of the petition which is to the following effect:

“LANGUAGE”

The reply by the petitioner was given in paragraph 11 which is to the following effect.

“11. That the contents of Paragraph of the Petition are wrong and denied. It is submitted that the averment made in para no.8 of the petition is only reiteration of the facts as stated in the preceding paragraphs. The answering opposite/deponent denies the authenticity of any reports as has been published or broadcasted by the

Media.”

The reply given by the petitioner to paragraph 8 of the petition is only a general denial. The C.D. has been submitted by the petitioner during the course of hearing on 27/9/2011. On 04/10/2011, the hearing took place before the speaker. During the hearing before the Speaker the C.D. was played before the parties which was also seen by the petitioner’s counsel. The speaker after hearing on 04/10/2011 permitted the parties to file their written submissions up to 07/10/2011 which were submitted by the parties. The objections raised by the petitioner in their written submission has also been looked into and considered. Thus, the submission of the learned counsel for the petitioner that principles of natural justice were vitiated in accepting the C.D. during the course of hearing cannot be accepted.

It is relevant to note that proceeding before the Speaker is not a proceeding akin to a trial or a suit or a disciplinary proceedings against an employee. A Three Judge Bench of the Apex Court in Jagjit Singh Vs. State of Haryana and Ors, 2006 (11) SCC 1 has laid down following in paragraph 14 which is quoted below:

“14. At the outset, we may mention that while considering the plea of violation of principles of natural justice, it is necessary to bear in mind that the proceedings under the Tenth Schedule are not comparable to either a trial in a court of law or departmental proceedings for disciplinary action against an employee. But the proceedings here are against an elected representative of the people and the judge holds the independent high office of a Speaker. The scope of judicial review in respect of proceedings before such Tribunal is limited. We may hasten to add that howsoever limited may be the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated. The yardstick to judge the grievance that reasonable opportunity has not been afforded would, however, be different. Further, if the view taken by the Tribunal is a reasonable one, the Court would decline to strike down an order on the ground that another view is more reasonable. The Tribunal can draw an inference from the conduct of a Member, of course, depending upon the facts of the case and totality of the circumstances.”

In the facts of the present case, thus prima-facie the submission of the petitioner's counsel cannot be accepted that the order of the Speaker has been passed in violation of the principles of natural justice.

The scope of judicial review of an order passed by the Speaker under the Tenth Schedule of the Constitution of India has been explained by the Apex Court in several judgments. The Constitution Bench of the Apex Court in *Kihoto Hollohan Vs. Zachillhu and Ors*, 1992 Suppl (2) SCC 651 has laid down following in paragraph 109 which is quoted below:

"109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136 and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, noncompliance with rules of natural justice and perversity."

The Apex Court in *Dr. Mahachandra Prasad Singh's case* (supra) has also laid down following in paragraph 8.1 which is quoted below:

"8.1. This authoritative pronouncement clearly lays down that the decision of the Chairman or the Speaker of the House can be challenged on very limited grounds, namely, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity and further a mere irregularity in procedure can have no bearing on the decision".

Thus, the judicial review of the decision of the Speaker is permissible only on limited grounds as noted above by the Apex Court.

In the facts of the present case, prima facie, we are not satisfied that any of the grounds as laid down by the Apex Court are available to the petitioner.

Learned counsel for the petitioner relying on paragraphs 125 and 126 of the judgment of the Apex Court in the case of *Kihoto Hollohan* (supra) has contended that in appropriate cases inter locutory orders can be passed to preserve the rights of the parties so that the proceedings do not become infructuous by any unilateral

overt acts of one side or the others during the pendency of the proceeding. There cannot be any dispute to the proposition that in exercise of writ jurisdiction this Court can in appropriate cases pass inter locutory orders, but as observed above, no prima-facie case being made out by the learned counsel for the petitioner to quash the order of the Speaker dated 13/10/2011, it is not a fit case for grant of any ex-parte interim order.

We are thus of the opinion that the petitioner is not entitled for an ex-parte interim order staying the order passed by the Speaker dated 13/10/2011. However, looking to the various issues raised in the petition, let a notice be issued to the respondent no.3 the contesting party.

Steps be taken within three days.

Respondents may file counter affidavit within two weeks.

List this petition for admission/final disposal on 12/12/2011.

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