



AN ANALYSIS ON THE LIMITED DISQUALIFICATION POWER OF THE SPEAKER WITH REFERENCE TO THE JUDGEMENT IN SHRIMANTH BALASAHEB PATIL V. HON'BLE SPEAKER, KARNATAKA LEGISLATIVE ASSEMBLY AND OTHERS

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country to concern the importance of party politics in a democracy and the requirement to have stability within the government to facilitate good governance, as mandated under the Constitution. Tenth Schedule was added in the Constitution to lay down the conditions setting out certain provisions as to disqualification on grounds of defections.² The Tenth Schedule was inserted in the Constitution in 1985.³ It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any person. A legislator is deemed to have defected if he either voluntarily gives up the membership of his party or disobeys the directives of the party leadership on a vote. This implies that a legislator defying (abstaining or voting against) the party whip on any issue can lose his membership of the House. The law applies to both Parliament and State Assemblies. There is no dispute that in India, since the framing of the Constitution, there was a constant demand for formulating a law on defection. It may be noted that India was one of the first countries to legislate on an Anti-Defection Law. Following the example of India, many other countries have followed the same.

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| Citation | Writ Petition (Civil) No. 992 OF 2019 |
| Name of the court | The Supreme Court of India |
| Bench | Justice N.V. Ramana, Justice Sanjiv Khanna and Justice Krishna Murari |
| Decision | 13 November, 2019 |
| Relevant provisions of law | Articles 32, 75(1B), 164(1) and 361B read with Tenth Schedule of the Constitution of India |

Introduction

Aaya Ram Gaya Ram was a phrase that became popular in Indian politics. The anti-defection law sought to prevent such political defections which may be due to reward of office or other similar considerations.¹ It is very much need in our

Facts of the Case in Nutshell

- i. After the 15th Karnataka Legislative Assembly, the followig were the results and secured seats by the respective parties:

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|---------|---------------|
| Parties | Secured seats |
|---------|---------------|

¹ <https://prsindia.org/theprsblog/the-anti-defection-law-explained>, visited on 20/08/2021.

² <https://economictimes.indiatimes.com/blogs/et-commentary/an-overview-on-tenth-schedule-of-the-constitution/>, visited on 23/08/2021.

³ <https://www.mea.gov.in/Images/pdf1/S10.pdf>, visited on 23/08/2021.



| | |
|--------|-----|
| BJP | 105 |
| INC | 80 |
| JD(S) | 38 |
| Others | 2 |

- ii. In spite of BJP emerging as the largest party, it was not successful to form the Government. INC and JD(S) formed a coalition government under the leadership of Sri. Kumaraswamy. But that government had a short life of some months. Then, the Chief Minister resigned on losing the trust vote on 23.07.2019.
- iii. A Disqualification Petition was instituted against 4 members (petitioners herein) of the Assembly on 11.02.2019. The main allegations against them were that they did not participate in the meetings of the party and the proceedings of the Assembly session and the conduct of all the aforesaid members was a clear violation of the whip issued by the party.
- iv. Thereafter, Petitioners are said to have submitted their resignations to the Speaker on 06.07.2019. Regarding that resignation the Speaker did not take any call. Aggrieved by the fact that their resignations were not accepted, and the trust vote being inevitable, those persons filed a Writ Petition before this hon'ble court. The speaker was directed to take a decision on the resignations by the hon'ble court. The Speaker did not take any decision on the resignation in spite of the order of

this Court. Simultaneously, on 12.07.2019 a whip was issued by the coalition party to their members to attend proceedings, and cautioned their disqualification if they do not agree.

Contentions/arguments raised by the counsels on behalf of the parties:⁴

On behalf of the Petitioners:

The connection and difference between resignation and disqualification under the Tenth Schedule of the Constitution is to be understood.

Once resignation was validly tendered, there was no question of the Speaker exercising his jurisdiction to disqualify a member. Disqualification under the Tenth Schedule was only with respect to a person who was a member, and not otherwise. Even if disqualification is held to be valid in law, the same cannot take away the right of the petitioners to contest in the upcoming elections, as there's no bar on the right to contest elections under Tenth Schedule of the Constitution.

It has been a matter of consistent practice that members disqualified under the Tenth Schedule can participate in the next elections. Any bar for a particular period is not anticipated by law with respect to disqualification under the Tenth Schedule.

On behalf of the Respondents:

The Court's discretion in checking the exercise of the power vested in the Speaker is quite limited. Moreover, the Speaker, being the master of the House, can impose any restriction pursuant to the act of

⁴ Sub-head B in the judgement of Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka

Legislative Assembly and Others, Writ Petition (Civil) No. 992 OF 2019.



disqualification. Since acts of disqualification took place within the House and therefore it is well within the inherent powers of the Speaker to impose any sanction consequent to the act of defection. Speaker's power becomes equivalent to that of a toothless tiger without such power of sanction.

There's a distinction between ordinary whips and those which are more necessary for the survival of the Government. For ex: a trust vote, a no confidence motion, or even a whip relating to the budget. The essential whip issued by the party must be followed per se, and that a member could not refuse to appear/vote with respect to the same. And if he does so, it is voluntary giving up of membership of a party.

The sole purpose of the Tenth Schedule is to check defections in bulk. On the said purpose and ground, the petitioners cannot be allowed to contest the re-elections because that would dilute the effect of disqualification and democracy. The disqualified members should not be allowed to contest fresh elections as there being a clear bar for acceptance of the nomination of disqualified candidates under Section 36 of The Representation of the People Act, 1951.

Issues framed in the case:

The following issues were framed for consideration before the court:

1. Whether the Writ Petition challenging the order of the Speaker under Article 32 is maintainable?
2. Whether the order of the Speaker rejecting the resignation and disqualifying the

Petitioners is in accordance with the Constitution?

3. Even if the Speaker's order of disqualification is valid, does the Speaker have the power to disqualify the members for the rest of the term?

4. Whether the issues raised require a reference to the larger Bench?

Observations of the court on the issues framed:

1. Maintainability of the writ petition

The contour of the Court's writ jurisdiction has been long established in several decisions. Where the law provides for a hierarchy of appeals, the parties must exhaust the available remedies before resorting to writ jurisdiction of this Court.⁵ At the same time, this Court in some decisions has held that this doctrine is not a rule of law, but essentially a rule of policy, convenience and discretion and thus not a compulsion and where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction, warrants this Court may exercise its writ jurisdiction even if the parties had other adequate legal remedies.⁶

Judicial review exercised by the court under its writ jurisdiction under Article 32 of the Constitution forms part of the basic structure of the Constitution. After the decision in one of the landmark case⁷ by this court itself which held, the Speaker, while exercising the power to disqualify, is a Tribunal and the validity of his orders are

⁵ U.P. State Spinning Co. Ltd. v. R.S. Pandey, (2005) 8 SCC 264.

⁶ State of Uttar Pradesh v. Mohammad Nooh, AIR 1958 SC 86; Harbanslal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107.

⁷ Kihoto Hollohan vs Zachillhu and Others, 1992 SCR (1) 686, 1992 SCC Supl. (2) 651.



subjected to judicial review. With reference to the judgment in that said case⁸, the court held that there is no explicit or implicit bar to adjudicate the issue under the writ jurisdiction of the court.

2. Constitutionality of the order of the speaker rejecting the resignation and disqualifying the petitioners

It is true that 33rd Constitutional Amendment changed the constitutional position by conferring discretion on the Speaker to reject the resignation. However, such discretion is not unqualified, as the resignation can only be rejected if the Speaker is “satisfied that such resignation is not voluntary or genuine. Determination of whether the resignations were voluntary or genuine cannot be based on the ipse dixit of the Speaker, instead it has to be based on his satisfaction. Even though the satisfaction is subjective, it has to be based on objective material showing that resignation is not voluntary or genuine. When a member tenders his resignation in writing, the Speaker must immediately conduct an inquiry to ascertain if the member intends to relinquish his membership. The inquiry must be in accordance with the provisions of the Constitution and the applicable rules of the House. This satisfaction of the Speaker is subject to judicial review.

The 33rd Constitutional Amendment requires acceptance of resignation by the Speaker. Thus, merely addressing a resignation letter to the Speaker would not lead to the seat automatically falling vacant. The Speaker has to accept such resignation for the seat to become vacant. However, as

discussed in this paper, the Speaker has limited discretion for rejecting the resignation. If the resignation is voluntary or genuine, the Speaker has to accept the resignation and communicate the same.

In view of the above discussion, the court held that the Speaker can reject a resignation only if the inquiry demonstrates that it is not voluntary or genuine. The inquiry should be limited to ascertaining if the member intends to relinquish his membership out of his free will. Once it is demonstrated that a member is willing to resign out of his free will, the Speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any other extraneous factors while considering the resignation. The satisfaction of the Speaker is subject to judicial review.

3. Speaker’s power to disqualify the members for the rest of the term

It was concluded that the Speaker does not have any explicit power to specify the period of disqualification under the Tenth Schedule or bar a member from contesting elections after disqualification until the end of the term of the Legislative Assembly.

“One must be careful to remember that the desirability of a particular rule or law, should not in any event be confused with the question of existence of the same, and constitutional morality should never be replaced by political morality, in deciding what the Constitution mandates.”⁹

The Speaker, being a constitutional functionary, is generally presumed to have adjudicated with highest traditions of constitutionalism. In view of the same, a

⁸ Ibid.

⁹ <https://www.theleaflet.in/the-challenge-of-constitutional-morality-before-the-supreme-court/>, visited on 26/08/2021.



limited review was allowed for the courts to adjudicate upon the orders passed by the Speaker under the Tenth Schedule.

It was held that part of the impugned orders passed by the Speaker which specifies that the disqualification will last from the date of the order to the expiry of the term of the 15th Legislative Assembly of Karnataka to be ultravires the constitutional mandate, and struck down that portion of the disqualification orders. However, this does not go to the root of the order, and as such, does not affect the aspect of legality of the disqualification orders.

4. Necessity for reference to the larger bench

Being guided by the decisions rendered by two Constitutional Bench decisions of the Court in the Kihoto Hollohan case¹⁰ and Rajendra Singh Rana case¹¹, the judges were not persuaded for referring the present case to a larger bench as the mandate of the reference is that the court needs to be satisfied as to the existence of a substantial question of law on the Constitutional interpretation. However, this does not mean that every case of constitutional interpretation should be compulsorily referred to a Constitutional Bench.

Final order of the court

Orders passed by the Speaker for Disqualification were upheld to the extent of the disqualification of the Petitioners therein. However, the part of Speakers orders detailing the duration of disqualification, viz., from the date of the respective order till the expiry of the term of the 15th Legislative Assembly of Karnataka, was set aside. The

Speaker's power of disqualification was reiterated and his order was partially upheld.

Conclusion

The following propositions of law can be understood in the light of the above discussion:

The Speaker, while adjudicating a disqualification petition, acts as a quasi-judicial authority and the validity of the orders thus passed can be questioned before this Court under Article 32 of the Constitution. However, ordinarily, the party challenging the disqualification is required to first approach the High Court as the same would be appropriate, effective and expeditious.

Object and purpose of the Tenth Schedule is to curb the evil of political defection motivated by lure of office or rather similar considerations which endanger the foundation of our democracy.

The court has reiterated its earlier Constitution Bench judgment¹² in which it held that the order of the Speaker under Tenth Schedule can be subject to judicial review on four grounds: mala fide, perversity, violation of the constitutional mandate and order passed in violation of natural justice. In light of the existing Constitutional mandate, the Speaker is not empowered to disqualify any member till the end of the term.

There is a growing trend of the Speaker acting against the constitutional duty of being neutral. Further horse trading and corrupt practices associated with defection and change of loyalty for lure of office or wrong reasons have not abated. Thereby the citizens are denied stable governments. In these circumstances, there is need to consider

¹⁰ Supra note 7.

¹¹ Appeal (civil) 765 of 2007

¹² Supra note 7.



strengthening certain aspects, so that such undemocratic practices are discouraged and checked.

The Speaker's scope of inquiry for acceptance or rejection of resignation is limited to examine whether it was voluntary and genuinely. Once it is demonstrated that such resignation was voluntary, the Speaker has to accept the resignation.

Tenth Schedule recognizes the importance of political parties in our democratic set up especially in dealing with members of Parliament and legislative assemblies or Council. Being a member of political party on whose ticket he has been elected as a member, in the first place, he is generally expected to follow the direction of the party, which is one of the basic units in our democracy.¹³

“Neither under the Constitution nor under the statutory scheme it is contemplated that disqualification under the Tenth Schedule would operate as a bar for contesting re-elections” - Justice N.V. Ramana said in this judgment on behalf of the bench.¹⁴

In this way the Speaker's power of disqualification was reiterated and his order was partially upheld.

¹³ Kuldip Nayar v. Union of India, AIR 2006 SC 3127.

¹⁴ Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly and Others, Writ Petition (Civil) No. 992 OF 2019.