Kh. Amutombi Singh Vs Thangminlien Kipgen and Others

Court: Gauhati High Court

Date of Decision: Nov. 29, 2000

Acts Referred: Constitution of India, 1950 â€" Article 122, 179, 180(1), 188, 212
Representation of the People Act, 1951 â€" Section 152, 73

Citation: (2000) 3 GLT 579

Hon'ble Judges: J.N. Sharma, J; A.H. Saikia, J

Bench: Division Bench

Advocate: B.K. Das, G.N. Sahewalla, N. Jotendro Singh and Pran Bora, for the Appellant; A. Nilamani Singh, S.N. Sarma, A. Bimol Singh, N.M. Lahiri, A.K. Goswami, A.K. Bhattacharyya, K. Agarwal, H.S. Paonam, Vinod Singh, Asim Kumar Choudhury, T. Nandakumar Singh, A.G. and P.K. Roy Choudhury, for the Respondent

Final Decision: Dismissed

Judgement

1. This writ appeal has been filed against the order dated 23.11.2000 passed by the learned Single Judge of this Court in WP(C)6335/2000. The

matter relates to disqualification of an MLA under the Tenth Schedule of the Constitution of India. The operative portion of the stay order is

quoted below:

I accordingly direct as an interim measure that the impugned order of disqualifications dated 17.11.2K of the Speaker of the 7th Manipur

Legislative Assembly disqualifying the Petitioner from being a Member of the 7th Manipur Legislative Assembly under the Tenth Schedule to the

Constitution shall remain stayed.

...Thus, the impugned order dated 17.11.2K shall remain stayed and the Petitioner will be allowed to attend the Assembly, participate in the

proceeding and cast his vote as a Member of the 7th Manipur Legislative Assembly until further orders.

2. The brief facts are as follows:

One Amutombi Singh, an MLA filed an application before the Speaker of the 7th Legislative Assembly of the State of Manipur to disqualify the

present writ Petitioner on the ground of defection. His case was that this writ Petitioner along with 3 Ors. were elected as MLA of NCP.

Thereafter, 7th Legislative Assembly of the State ofManipur was notified first on 1.3.2000 and on that date itself by Anr. notification, the 6th

Legislative Assembly of the State of Manipur was dissolved and on the basis of the notification issued regarding constitution of the house on

1.3.2000, this writ Petitioner became an MLA entitled to all the rights and privileges as MLA and on 4.3.2000, this writ Petitioner along with 2

Ors. , had a split from the original party and they formed Anr. party in the name and style of "NCP(O)" and this split was notified to the Speaker

of the 6th Legislative Assembly, who according to the writ Petitioner was still in the office in view of the 2nd proviso to Article 179 of the

Constitution of India. (It may be stated here in that the earlier Speaker Babu Dhan Singh was not elected as MLA in the 7th Legislative Assembly

of the State of Manipur). Whether he continues to be a Speaker or not under the 2nd proviso to Article 179 of the Constitution of India, that may

not be relevant for determining the controversy in the present case, yet we looked to that aspect of the matter. On 4.3.2000 under Article 188 of

the Constitution of India, the Governor of Manipur issued a notification appointing Rishang Keishing as the person on his behalf to take oath of

affirmation according to the form set out for this purpose in the 3rd Schedule. Thereafter, on 7.3.2000 the Governor of Manipur issued Anr.

notification under Article 180(1) of the Constitution of India appointing Rishang Keishing as the Protem Speaker and the first session of the

Assembly was held on 8.3.2000. In order to appreciate the contention of the parties, let us have a look at Clause 3 of the Tenth Schedule of the

Constitution and that is quoted below:

3. Disqualification on ground of defection not to apply in case of split.-Where a member of a House makes a claim that he and any other members

of his Legislature party constitute the group representing a faction which has arisen as a result of the split in his original political party and such

group consists of not less than one-third of the members of such Legislative Party, -

(a) he shall not be disqualified under subparagraph (1) of paragraph 2 on the ground-

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority

authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or absention has not been

condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of such-paragraph (1) of

paragraph 2 and to be his original political party for the purposes of this paragraph.

3. So, if there is a split in the party according to Clause 3 of the Tenth Schedule, the question of disqualification does not arise. In this particular

case as indicated above, there were 4 members in the original party and out of it, 3 members formed a new party. Prima facie, it appears that this

writ Petitioner cannot be deemed to be disqualified in view of the Clause 3 of the Tenth Schedule quoted above. Further, it is the case of the writ

Petitioner that subsequently there was a merger of this newly formed party i.e. NCP(O) with MSCP. This split was recognised by Babu Dhan

Singh, the Speaker of the 6th Legislative Assembly by an order on 6.3.2000 and thereafter the present Speaker (Respondent No. 2) recognised

the split and the merger and bulletin was issued on 11.4.2000 and after having recognised the split and merger, the present Speaker (Respondent

No. 2) issued order disqualifying the writ Petitioner showing that there was fraud on the part of the writ Petitioner and he was misled. Whether this

question of fraud and misleading is correct or not, that will be the subject matter of the original writ application. Prima facie, we are satisfied that

there was a split in the original party and there was also a merger. So, this disqualification on the face of the materials referred to above does not

arise. So, prima facie, this writ Petitioner had a case to go for trial. There are some bonafide grounds which require scrutiny of the Court. Further

the balance of convenience and or irreparable loss and injury are on the side of the writ Petitioner. So, on the basis of the materials, we are

satisfied that the learned Single Judge correctly granted a stay in this matter. Further, it appears that this matter with regard to this Court is not res

integra inasmuch(as no doubt from the State of Manipur), this Court earlier granted stay order in CR 5049/94 M. Maniher Singh v. Speaker,

Manipur Legislative Assembly and Ors. and in CR 5185/94 W. Nipamacha Singh and Ors. v. Speaker, Manipur L.A. Imphal and Ors.

4. Mr B.K. Das, learned Counsel for Appellant made a strenuous argument that a person defeated in the election may not continue as a Speaker in

view of Article 179(a) of the Constitution and the 2nd Proviso will not come to help of such a person. We are not deciding the matter in this case

inasmuch as it may cause prejudice both to the writ Petitioner as well as to the Speaker himself. Further, the argument made by Mr B.K. Das,

learned Counsel with regard to other matter, on the merit also we are not dealing with that in view of the position stated above. Mr A. Nilamani

Singh, learned Counsel for writ Petitioner places reliance on Pashupati Nath Sukul and Others Vs. Nem Chandra Jain and Others, where in para

17 the Supreme Court pointed out as follows:

Invariably there is an interval of time between the constitution of House after a general election as provided by Section 73 of the Act and the

summoning of the first meeting of the House. During that interval an elected member of the Assembly whose name appears in the notification issued

u/s 73 of the Act is entitled to all the privileges, salaries and allowances of a member of the Legislative Assembly. One of them being the right to

function as an elector of an election held for filling a seat in the Rajya Sabha. That is the effect of Section 73 of the Act which says that on the

publication of the notification under it the House shall be deemed to have been constituted. The election in question does not form a part of the

Legislative proceedings of the House carried on at its meeting.

In para 19 further the Supreme Court pointed out as follows:

We are of the view that an elected member who has not taken oath but whose name appears in the notification published u/s 73 of the Act can

take part in all non-legislative activities of an elected member. The right of voting at an election to the Rajya Sabha can also be exercised by him. In

this case since it is not disputed that the name of the proposer had been included before the date on which he proposed the name of the Appellant

as a candidate in the notification published u/s 73 of the Act and in the eletoral roll maintained u/s 152 of the Act. It should be held that there was

no infirmity in the nomination. For the same reason even the electoral roll which contained the names of electoral members appearing in the

notification issued u/s 73 of the Act cannot be held to be illegal. That is how even Respondent No. 1 appears to have understood the true legal

position as he was also proposed as a candidate by an elector who had not yet made the oath or affirmation. The second contention also fails. No

other contention was pressed before us. We are, therefore, of the view that the findings recorded by the High Court on the basis of which the

election of the Appellant to the Rajya Sabha was set aside are erroneous.

5. This case again came up for consideration in Madhukar Jetly Vs. Union of India (UOI) and Others, wherein the Supreme Court laid down the

law as follows:

We have heard the learned Counsel for the Petitioner as well as learned Attorney General, who drew out attention to the decision of this Court in

Pashupati Nath Sukul v. Nem Chandra Jain. In that case two questions were raised for consideration and one of them was whether a person

elected as a member of a Legislative Assembly but who has not made and subscribed the prescribed oath or affirmation as required by Article 188

of the Constitution can validly propose a person as a candidate at an election held for filing a seat in the Rajya Sabha. Dealing with this contention

the Court examined the provisions of the Constitution and then came to the conclusion recorded in para 20 to the effect that an elected member

who had not taken oath but whose name appears in the notification published u/s 73 of the Act (Representation of the People Act, 1951) can take

part in all non-legislative activities of an elected member. Their Lordships further pointed out that the right of voting at an election to the Rajya

Sabha can also be exercised by him. This conclusion is based on the premise that the election to the Rajya Sabha does not form part of the

legislative proceedings of the House carried on at its meeting. Nor is the vote cast at such an election a vote given in the House on any issue arising

before the House (see para 18 at p. 418). This view had held the field. We are, therefore, satisfied that this is a matter duly answered by this Court

by the aforesaid judgment and, therefore, we see no merit in the petition and dismiss the same.

6. So, prima facie, this writ Petitioner had the right to cause the split in the party as the MLA since a House was constituted, this action on the part

of the writ Petitioner must be deemed to be non-legislative function. The learned Advocate General, Manipur places reliance in the Parliamentary

Procedure (Law Privileges Practice and Precedents) by Subash C. Kashyap and he draws our attention to the fact that this procedure is being

followed even in the Parliament. He also draws our attention to Parliamentary Practice by Erskine May, Nineteenth Edition at Page 232 may

pointed out that the functions of office after dissolution and during prorogation. Of course, this procedure is being followed in England because of

the provisions made in the Statute.

7. In Shri Kihota Hollohon Vs. Mr. Zachilhu and others, in para 39 the Supreme Court has pointed out as follows:

There is, therefore, no immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power

under paragraph 6(1) of the Tenth Schedule.

So, this case is an authority for the proposition that this Court can scrutinise the matter. So. the contention which was raised by Mr N.M. Lahiri,

learned Counsel for Respondent No. 2 that the learned Single Judge had no jurisdiction in the matter cannot be accepted. No doubt, the learned

Advocate General. Meghalaya is correct in saying that the jurisdiction of this Court is limited. This Court is questioning a Constitutional Authority

and in doing so the Court always should adopt a cautious and prudent approach inasmuch as grant of a slay should not be by way of normal

course, but it must be granted in the rare case only to uphold the cause of justice because after all the aim of the writ Court is to uphold the cause

of justice.

8.Mr B.K. Das, learned Counsel for Appellant places reliance on Mayawati Vs. Markandeya Chand and Others, This is with regard to power of

judicial review and urged that it is limited. In that particular case, the Supreme Court found that the Speaker found on the basis of the record that

the Appellant instructed the members of the BSP to indulge in violence and disrupt the proceedings in the Assembly and it was in that background

that the matter was decided.

9.Mr A.K. Bhattacharyya, learned Counsel for Respondent No. 3 relies on K.A. Mathialagan Vs. P. Srinivasan and Others, That was with regard

to the motion for removal of the Speaker and that case does not help the Respondent No. 3. The next case relied on by Mr Bhattacharyya learned

Counsel is Union of India Vs. Era Educational Trust and Another, This is with regard to the principles to be borne in mind as and when injunction

is granted and it was further pointed out that the principles laid down under Order 39 CPC shall apply in the case of grant of stay by the Writ

Court in a proceeding under Article 226 of the Constitution of India with regard that aspect of the matter already we held that prima facie balance

of convenience is in favour of the writ Petitioner and it is the writ Petitioner who is suffering irreparable loss and injury. In view of that matter, we

do not find any infirmity in the order passed by the learned Single Judge and this writ appeal shall stand dismissed at the admission stage itself.

10. Before we part with the record, we again make it clear that the observations made in rejecting this writ appeal shall not affect and or influence

in any way at the time of hearing of the writ application.