
(1995) 03 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No's. 3562 and 3563 of 1995

A. Azhagu Thirunavukkarasu and Another APPELLANT

Vs

The Honourable Speaker, Tamil Nadu Legislative Assembly RESPONDENT
and Another

Date of Decision : 10-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 1 CTC 217 : (1995) 1 LW 346 : (1995) WritLR 201

Hon'ble Judges : Shivraj Patil, J

Bench : Single Bench

Advocate : S. Govind Swaminathan, for the Appellant;

Final Decision : Dismissed

Judgement

Shivraj Patil, J.—In both these writ petitions the petitioners have sought for identical reliefs, seeking direction to call for the records of the

respondents culminated in D.O. Letter Nos. 3896/95-1 TNLAS (B- I) and 3897/95-1 TNLAS (B-I) respectively dated 6.3.1995 issued by the

second respondent on the direction of the first respondent and quashing the same, and to pass such further orders as deemed fit and proper.

2. Heard Shri. S. Govind Swaminathan, learned senior counsel for the petitioners. Both these writ petitions are disposed of by this common order

as the questions raised are identical.

3. The learned senior counsel made several submissions on the merits of the various contentions raised in the writ petitions. I do not propose to

deal with them or to express one way or the other, in the view I propose to take, particularly so when on the same question the competent

authority has to take a decision.

4. It is not disputed that what is called in question is only notice, the contents of which are similar, read thus:-

I am directed by the Hon. Speaker to forward a copy of the petition together with its annexures presented to the Hon. Speaker by Thiru. A.

Subburathinam, a Member of the Tamil Nadu Legislative Assembly under Rule 6 of the Members of the Tamil Nadu Legislative assembly (Dis-qualification on Ground of Defection) Rules, 1986.

2. I am directed by the Hon. Speaker to inform that since the petition given by Thiru. A. Subburathinam complies with the requirements of Rule 6,

copy of the petition along with the enclosures are forwarded to you for your comments within seven days from the date of receipt of the letter as

per Rule 7(3)(b) of the above Rule.

3. I am further directed to enclose a copy of the above Rules for your perusal.

4. The receipt of this letter may kindly be acknowledged.

In regard to the petitioner in W.P. No. 3562 of 1995 the petition is given by A. Subburathinam and in regard to the petitioner in W.P.No. 3563 of

1995 the petition is given by Tmt. K. Mariya Mul Asia.

5. As can be seen from paragraph 2 of the said letter, the petitioners are given opportunity for giving their comments within seven days from the

date of receipt of the letter as per Rule 7 (3)(b) of the Members of the Tamil Nadu Legislative Assembly (Disqualification of ground of Defection)

Rules, 1986. It is open to the petitioners to give their comments in response to the impugned letters/notice. It is thereafter the competent authority

has to proceed to pass appropriate orders on merits and in accordance with law. In this view I find it unnecessary to entertain these writ petitions

at this stage. Further having regard to the constitutional scheme in the 10th schedule, judicial review should not cover any stage prior to the making

of decision by the Speaker, in the light of the Judgment of the Supreme Court in the case of Shri Kihota Hollohon Vs. Mr. Zachilhu and others, . In

the last sub-paragraph of paragraph 42 of the said Supreme Court Judgment it is held thus:-

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a

decision by the Speakers/Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no

quia time actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions

which may have grave, immediate and irreversible repercussions and consequences.

6. The learned senior counsel contended that no useful purpose will be served even if the petitioners are to offer comments on the impugned letters

issued to them in view of the averments made attributing mala-fides to the respondent No. 1, and in this situation the writ petition may be

entertained. I am not inclined to accept this submission of the learned senior counsel as well in view of the law laid down by the Supreme Court

that judicial review should not cover a stage prior to the making of a decision by the Speaker. Added to this, in the penultimate sub paragraph of

paragraph 41 of the Judgment of the Supreme Court aforementioned it is stated thus:-

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, non-compliance with rules

of natural justice and perversity.

From the paragraphs of the Judgment extracted above, it is clear that an order passed by the Speaker is amenable for judicial review under

Articles 226 and 227 of the Constitution of India on the grounds of jurisdictional errors i.e., infirmities based on violation of constitutional mandate,

mala-fides, non-compliance with the rules of natural justice and perversity. Thus the petitioners can question the order if the speaker on the ground

of mala-fide as well if it becomes necessary and if so desired at that stage.

7. Having regard to the law declared by the Apex Court, I do not think it is appropriate to entertain these writ petitions. The learned senior counsel

for the petitioners submitted that on similar questions this Court has already entertained two writ petitions by the same petitioners in

W.P.Nos.5349 of 1994 and 5496 of 1994. When specifically asked, the learned senior counsel fairly submitted that as on the date when the

earlier writ petitions were filed the petitioners were only un-attached members

having been expelled from the party and did not join any other political party, but as on today they have joined some other political party. Be that as it may, in the light of the judgment of the Supreme Court aforementioned, I am not inclined to entertain these writ petitions.

8. In view of what is stated above, I reject these writ petitions at the stage of admission, leaving it open to the petitioners to file or give their comments in response to the impugned letters and urge all the contentions that are available to them. The rejections of these writ petitions at the stage of admission does not prejudice their case in any way before the competent authority.