

(1992) 11 KAR CK 0056
In the Karnataka High Court
Case No : W.A. No. 1989 of 1992

A.K. Subbaiah

APPELLANT

Vs

Karnataka Legislature Secretariat

RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Citation : (1993) ILR (Kar) 1137 : (1993) 1 KarLJ 638

Hon'ble Judges : K.A. Swami, Acting C.J.; N.D.V. Bhat, J

Bench : Division Bench

Advocate : S.P. Shankar, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Swami, J.—This Writ Appeal is preferred against the order dated 28.8.1992 passed in Writ Petition No. 25617 of 1992. The learned Single Judge has dismissed the Writ Petition.

2. In the Writ Petition, the petitioner sought for quashing the Notification dated 18th August 1992 bearing No.48 issued by the Secretary to Legislative Assembly, produced as Annexure-C stating that Sri R.V.Deshpande - respondent No. 3 has been recognised as the Leader of the Opposition in the Karnataka Legislative Assembly from 18th August 1992.

3. The petitioner is a Member of the Legislative Council. He has filed the Petition as a Public Interest Petition. The learned Single Judge has dismissed the Petition on the ground that whether the total number of members of Janata Dal is 23 and whether the 3rd respondent could be recognised as the Leader of the Opposition or not, are the matters falling in the Jurisdiction and domain of the Speaker of the Assembly; that this Court cannot hold an enquiry as to whether the 3rd respondent has duly been elected by the party and whether there is necessary strength in the Janata Dal in the Assembly so as to recognise the 3rd respondent as the Leader.

4. It is contended by Sri Shankar, learned Counsel appearing for the appellant that as per the Rules and the convention of the House it is only that party in the Opposition which has got 1/10th of the effective strength of the House alone is entitled to have one of its Members recognised as a Leader of the Opposition; that as the Janata Dal does not have the 1/10th membership in the Legislative Assembly the decision of the Speaker recognising Sri R.V.Deshpande - respondent No. 3 as the Leader of the Opposition on the basis of the letter given by Sri J.H. Patel, President of the Janata Dal is opposed to the Rules governing the proceedings of the House and the convention of the House.

5. No Rule is produced before us. Therefore, the question of referring to the Rule and finding out whether the Rule has been violated does not arise. If there is a convention of the House, it is for the House to adhere to it or not. Whatever it may be, the question as to who should be recognised as the Leader of the Opposition is a question which squarely lies within the jurisdiction of the Speaker and it is for him and him alone to decide. The decision is neither judicial nor quasi-judicial. Therefore, it is not possible to hold that there is any scope for interference by this Court.

6. However, it is contended by the learned Counsel for the appellant that it is not an administrative order nor a product of the Assembly Proceedings, therefore, jurisdiction of this Court is not taken away, as such it is open for Judicial Review. It is not possible to accept this submission also. The decision as to who should be recognised as a Leader of the Opposition squarely lies within the province of the Speaker of the House, because the person who is recognised as the Leader of the Opposition has to function as the Leader of the Opposition in that House only. Therefore, it is not possible to hold that it does not pertain to the functions and proceedings of the House. In this view of the matter, it is not necessary to go into the question as to whether it is or is not an administrative order. In the view we take, we do not consider it necessary to refer to the two Decisions of the Supreme Court relied upon by the learned Counsel for the appellant in Special Reference No. 1 of 1964 In the matter of: Under Article 143 of the Constitution of India, and Shri Kihota Hollohon Vs. Mr. Zachilhu and others,

The Appeal is accordingly dismissed.