

(2015) 07 JH CK 0043

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2754 of 2015

Babu Lal Marandi

APPELLANT

Vs

The Speaker, Jharkhand Vidhan Sabha and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 324, 329
Representation of the People Act, 1951 — Section 100, 14, 15(2), 66

Citation : (2015) 07 JH CK 0043

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : R.N. Sahay, Senior Advocate and Yashvardhan, for the Appellant; Binod Poddar, Vinod Kumar Sahu and Aditya Raman, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by publication of party-wise list of members of 4th Jharkhand Vidhan Sabha issued on 24.06.2015 and challenging interim order dated 12.02.2015 passed by the respondent No. 1, issued by the Joint Secretary, Jharkhand Vidhan Sabha, the present writ petition has been filed. There are several other prayers made in the writ petition which would be dealt with at appropriate stage.

2. Briefly stated, the facts of the case are that, the petitioner namely, Babu Lal Marandi is Kendriya Adhyaksh of Jharkhand Vikas Morcha (Prajatantrik) which is a recognised political party by the Election Commission of India. In the Assembly Election for the 4th Jharkhand Vidhan Sabha held in the year, 2014, 8 candidates who had contested on the party symbol of Jharkhand Vikas Morcha (Prajatantrik) were declared elected. The Election Commission of India vide letter dated 24.12.2014 intimated the constitution of new Legislative Assembly for the State of Jharkhand. The name of 8 MLAs namely, (i) Randhir Kumar Singh, (ii) Pradip Yadav, (iii) Janki Prasad Yadav, (iv) Ganesh Ganjhu, (v) Amar Kumar Bauri, (vi) Navin Jaiswal, (vii) Prakash Ram and (viii) Alok Kumar Chaurasiya, find place in the list appended to communication dated 24.12.2014 as members of Jharkhand

Vikas Morcha (Prajatantrik) [JVM(P)]. It is stated that out of the aforesaid 8 MLAs of JVM(P), 6 of them defected from their original political party and joined Bhartiya Janta Party (BJP). The petitioner made a complaint on 10.02.2015 to the Speaker, Jharkhand Vidhan Sabha for taking action under Tenth Schedule of the Constitution of India. The Hon''ble Speaker-respondent No. 1 took cognizance of the matter and passed interim order dated 12.02.2015 which has been issued under the signature of the Joint Secretary, Jharkhand Vidhan Sabha. On 24.06.2015, a list of MLAs for the 4th Jharkhand Vidhan Sabha has been issued from the Jharkhand Vidhan Sabha Secretariat which contains name of 43 MLAs belonging to BJP and only 2 MLAs have been shown belonging to JVM(P). This appears to have instigated filing of the present writ petition.

3. Mr. R.N. Sahay, the learned Senior Counsel for the petitioner submits that order dated 12.02.2015 is apparently illegal as it has been passed in breach of the statutory provisions and it is contrary to the law laid down by the Hon''ble Supreme Court in Speaker Haryana Vidhan Sabha Vs. Kuldeep Bishnoi and Others, AIR 2013 SC 120 : (2013) 115 CLT 452 : (2012) 9 JT 590 : (2012) 4 RCR(Civil) 607 : (2012) 9 SCALE 568 . Referring to paragraph 44 in "Kuldeep Bishnoi" case, the learned Senior Counsel submits that, without taking a decision on the complaints dated 10.02.2015 and 11.02.2015 submitted by the petitioner seeking action against 6 defected MLAs under Tenth Schedule of the Constitution of India, vide order dated 12.02.2015, the Hon''ble Speaker could not have accorded approval for merger of JVM(P) into BJP. It is further contended that by approving the merger of JVM(P), the complaints dated 10.02.2015 and 11.02.2015 have been rendered infructuous. Referring to Article 324 of the Constitution of India, the learned Senior Counsel for the petitioner submits that the list of MLAs published vide letter dated 24.06.2015 is contrary to the list of MLAs constituting the 4th Jharkhand Vidhan Sabha issued by the Election Commission which is the only authority under the Constitution which can deal with preparation of electoral rolls.

4. Considering the issues involved in the writ petition, I am of the opinion that the present writ petition requires hearing.

5. Issue notice.

6. Mr. Binod Poddar, the learned Senior Counsel appears on behalf of respondent No. 1- the Speaker, Jharkhand Vidhan Sabha.

7. Issue notice to respondent No. 2 under registered cover with A/D as well as by ordinary process for which requisites etc. must be filed within one week.

8. Mr. Rajiv Ranjan, the learned Senior Counsel appears on behalf of respondent Nos. 3 to 8.

9. Mr. Binod Poddar, the learned Senior Counsel for the respondent No. 1 states that he would file an application within two weeks raising a preliminary objection as to maintainability of the writ petition. After such an application is filed, the

same may be placed under the heading "For Orders", after two weeks.

10. Respondents are permitted to file counter-affidavit within four weeks.

11. Rejoinder, if any, may be filed within next two weeks.

12. The learned Senior Counsel for the petitioner urges that operation of notification dated 24.06.2015 as well as the interim order dated 12.02.2015 may be stayed. The learned Senior Counsel reiterates his submission and submits that free and fair election must take precedence over urgency to hold election. Referring to paragraph No. 450 in *Kuldip Nayar Vs. Union of India (UOI) and Others*, AIR 2006 SC 3127 : (2006) 8 JT 1 : (2006) 8 SCALE 257 : (2006) 7 SCC 1 : (2006) 5 SCR 1 Supp : (2006) AIRSCW 4394 : (2006) 7 Supreme 44 the learned Senior Counsel for the petitioner submits that in view of the provision in Constitution of Jharkhand Vikas Morcha (Prajatantrik) the said political party cannot be assumed to have merged into BJP and the MLAs who fought election on the party symbol of JVM(P) have remained MLAs of JVM(P) and therefore, a direction may be issued to those MLAs to show their votes to the authorised agent of JVM(P). The learned counsel appearing for the respondents opposed the prayer for interim injunction.

13. In so far as, the prayer seeking stay of operation of the party-wise list of members of 4th Jharkhand Vidhan Sabha issued on 24.06.2015 is concerned, the same cannot be granted in view of order dated 12.02.2015. As long as order dated 12.02.2015 remains on record, the six allegedly defected MLAs would continue to act as MLAs belonging to BJP. The reliance on the decision in "*Speaker, Haryana Vidhan Sabha Vs. Kuldeep Bishnoi*", cannot be a ground for grant of interim injunction at this stage. Any order of interim injunction staying the operation of list of members of 4th Jharkhand Vidhan Sabha issued on 24.06.2015 or staying the operation of interim order dated 12.02.2015 would have wide repercussions on the forth-coming election for the Council of States. Since 1952, it has been authoritatively laid down that once election process has started the court should not ordinarily interfere with the said process by way of granting injunction. The contention that the respondent No. 1 has no authority to pass an order on the merger of a political party with another and the effect of interim order dated 12.02.2015 is that, the complaints submitted by the petitioner have been rendered infructuous, is a contention on the merits of the matter. It would certainly require an adjudication on facts also and therefore, merely because prima-facie it may appear that order dated 12.02.2015 is erroneous, operation of the said order cannot be stayed. Any interference at this stage with order dated 12.02.2015 would not only create serious legal complications, it would result in postponement of the election for the Council of States scheduled to be held on 02.07.2015. The petitioner would not be rendered remedy-less if the interim injunction is not granted in his favour. The law provides sufficient remedy in such a situation. Section 100 of the Representation of the People Act, 1951 has been held all encompassing for grievances relating to election.

14. The expression "election" has been held to mean each and every action taken by the competent authority after publication of the election notification. The election notification for election of a member for Council of States from the State of Jharkhand was issued on 15.06.2015 and the writ petition was filed on 27.06.2015. In Election Commission of India Through Secretary Vs. Ashok Kumar and Others, AIR 2000 SC 2979 : (2000) 9 JT 529 : (2000) 6 SCALE 182 : (2000) 8 SCC 216 : (2000) 3 SCR 34 Supp : (2001) 1 UJ 1 : (2000) AIRSCW 3274 : (2000) 6 Supreme 76 , the Hon"ble Supreme Court has held thus;

14. The term "election" as occurring in Article 329 has been held to mean and include the entire process from the issue of the notification under Section 14 of the Representation of the People Act, 1951 to the declaration of the result under Section 66 of the Act.

15. The issue whether after the notification for election the High Court in exercise of powers under Article 226 of the Constitution of India can grant injunction or not has been dealt in the Constitution Bench judgment in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, AIR 1952 SC 64 : (1952) 1 SCR 218 , in these words:

"9. The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and an other after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act....."

16. The issue was debated again in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 , wherein the Hon"ble Supreme Court observed that non-obstante clause in Article 329 pushes out Article 226 where the dispute takes the form of calling in question an election except, in special situations pointed out but, left unexplored in "N.P. Ponnuswami" case. The factual background and the problem presented in the present writ petition, in my opinion, do not warrant urgent and immediate intervention of this Court. In Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, (1985) 2 SCALE 384 : (1985) 4 SCC 689 : (1985) 1 SCR 493 Supp : (1986) 1 UJ 104 , the instruction of the Election Commission to the Chief Electoral Officer for revision of electoral rolls de-novo and the direction that no notification under Section 15(2) of the Representation of the People Act, 1951 be issued until the rolls were duly revised, were challenged before the High Court. Commenting upon the interference by the High Court, the Hon"ble Supreme Court observed as under,

"26.....though the High Court was justified in entertaining the writ petition and

issuing a rule therein since, the writ petition apparently contained a challenge to several provisions of election laws, it was not justified in passing any order which would have the effect of postponing the elections which were then imminent....."

17. In the result, I find and hold that the petitioner has failed to establish a prima-facie case for issuing interim injunction in his favour. As noticed above, the petitioner would not suffer irreparable loss if, operation of party-wise list for 4th Jharkhand Vidhan Sabha dated 24.06.2014 and interim order dated 12.02.2015 are not stayed. The balance of convenience also does not lie in favour of the petitioner. The petitioner who happens to be the first Chief Minister of the newly created State of Jharkhand was aware of the consequences of order dated 12.02.2015 still, he chose not to approach this Court, in time. The writ petition was filed on 27.06.2015 and the matter was mentioned on 29.06.2015. It was argued at length on 30.06.2015 and at the instance of the learned Senior Counsel for the petitioner, it was adjourned for today. Considering the aforesaid facts and totality of circumstances, I am of the opinion that no interim injunction can be granted in favour of the petitioner.

18. Post the matter as indicated above.