
(2020) 12 JH CK 0114

In the Jharkhand High Court

Case No : Writ Petition(C) No. 3654, 3687 of 2020

Babulal Marandi And Ors

APPELLANT

Vs

Speaker And Ors

RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Specific Relief Act, 1963 — Section 16(c)

Citation : (2020) 12 JH CK 0114

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : R.N. Sahay, Yashvardhan, Kirtivardhan, Ritesh Singh, Surendra Gupta, Neeraj, R. Venkataramani, Indrajit Sinha, Kumar Harsh, Manoj Tandon, Dr. Ashok Kumar Singh, Akash Deep

Final Decision : Allowed

Judgement

The present writ petitions are taken up today through Video conferencing.

I.A No. 6200 of 2020 in W.P.(C) No. 3687 of 2020

The present interlocutory application has been filed on behalf of the petitioner with following prayers:

I. To hold and declare Sub Rule 1 of Rule-6 of the Jharkhand Vidhan Sabha Sadasya (Dal Parivartan ke Aadhar par Nirharta) Rules, 2006 (3rd

Edition, 2019) (vide Annexure-1) as ultra vires or read down the same (to the extent of its repugnance with the Tenth Schedule), whereby and

whereunder Hon'ble Speaker is empowered to acquire suo-moto jurisdiction in a purported defection matter incurred by a member of Legislative

Assembly under Tenth Schedule to the Constitution, which amounts to enlarging the content and amplitude of relevant constitutional provision, thereby

in complete violation of Sub Para-1 of Para-6 of the Tenth Schedule which

mandates that a question of disqualification shall be ""referred"" to the Speaker for decision and Sub Para-1 (d) of Para-8 which empowers the Speaker to make procedure for deciding any question ""referred"" to in Sub Para-1 of Para-6.

II. Further be pleased to quash and set-aside the Letter No. 731(O) dated 02.11.2020 {(vide Annexure-2 herein) (Annexure-13 to the main writ petition)} issued by the Hon'ble Speaker, Jharkhand Vidhan Sabha, Ranchi instituting Case No. 01/2020 under Tenth Schedule against the petitioner by taking suo-moto cognizance as the same is ultra vires.

III. Further be pleased to stay the operation of Letter No. 731(O) dated 02.11.2020 {(vide Annexure-2 herein) (Annexure-13 to the main writ petition)} issued by the Hon'ble Speaker, Jharkhand Vidhan Sabha, Ranchi instituting Case No. 01/2020 under Tenth Schedule against the petitioner by taking suo-moto cognizance during lis-pendens.

Mr. R.N. Sahay, the learned Senior Counsel for the petitioner, submits that since a separate interlocutory application being I.A. No. 6257 of 2020 has been filed by the petitioner seeking amendment in the set of reliefs mentioned in paragraph-1 as well as in the prayer portion of the present writ petition to the extent of declaring sub-rule (1) of Rule 6 of the Jharkhand Vidhan Sabha Sadasya (Dal Parivartan ke Aadhar par Nirharta) Rules, 2006 as ultra vires claiming that the same is repugnant to the Tenth Schedule of the Constitution of India, he does not press the present interlocutory application.

Mr. Manoj Tandon, the learned counsel for the respondent no. 1, submits that the petitioner while filing I.A. No. 6257 of 2020 has suppressed the material fact that he had earlier filed I.A. No. 6200 of 2020 for the same set of relief and hence, he has objection with regard to not pressing I.A. No. 6200 of 2020 by the learned Senior Counsel for the petitioner.

The learned Senior Counsel for the petitioner submits that the petitioner has nowhere mentioned the word ""amendment"" in I.A No. 6200 of 2020.

Thus, it cannot be said that there has been suppression on the part of the petitioner while filing I.A. No. 6257 of 2020. In fact, I.A. No. 6200 of 2020 and I.A. No. 6257 of 2020 were filed for two different purposes.

Having heard the learned counsel for the parties and keeping in view that I.A.

No. 6200 of 2020 was in fact filed by the petitioner seeking declaration that sub-rule (1) of Rule 6 of Rules, 2006 is ultra vires or to be read down the same to the extent of its repugnance with the Tenth Schedule of the Constitution of India, whereas in I.A. No. 6257 of 2020, the petitioner has in fact sought amendment in the set of reliefs mentioned in paragraph-1 as well as in the prayer portion of W.P.(C) No. 3687 of 2020 to the said extent, the objection raised by the learned counsel for the respondent no. 1 claiming that the petitioner has suppressed the fact of filing similar interlocutory application has no substance.

Since the learned Senior Counsel for the petitioner does not press I.A. No. 6200 of 2020, the same is dismissed as not pressed.

I.A No. 6257 of 2020 in W.P.(C) No. 3687 of 2020 The present interlocutory application has been filed seeking amendment in paragraph-1 as well as

in the prayer portion of the writ petition to the extent of challenging sub-rule 1 of Rule 6 of Rules, 2006 which empowers the Speaker to acquire suo-

moto jurisdiction in a purported defection matter incurred by a Member of Legislative Assembly under Tenth Schedule to the Constitution of India.

Further prayer has been made for quashing and setting-aside the letter no. 731(O) dated 02.11.2020 issued by the respondent no. 1 instituting Case

No. 01/2020 under Tenth Schedule against the petitioner by taking suo-moto cognizance.

Mr. Manoj Tandon, the learned counsel for the respondent no. 1, at the outset, submits that if the amendment as prayed for by the petitioner in the

present interlocutory application is allowed, the same would change the nature of the dispute as well as the jurisdiction of the court. In view of Rule 34

(2)(b) of the High Court of Jharkhand Rules, 2001, all writ petitions where vires or validity of an Act of Legislature or any subordinate legislation is

under challenge, the same is to be adjudicated by the learned Division Bench of this Court. It is further submitted that the present writ petition in its

original form itself is not maintainable as the respondent no. 1 has not taken any decision in pursuance of the impugned letters. It is also submitted that

I.A. No. 6257 of 2020 has been filed by the petitioner in a casual manner without even mentioning the provision of law under which the proposed

amendment has been sought and as such, the same may be dismissed.

I.A No. 6278 of 2020 in W.P.(C) No. 3654 of 2020 The present interlocutory

application has been filed seeking amendment in paragraph-1 as well as in the prayer portion of the writ petition to the extent of challenging sub-rule 1 of Rule 6 of Rules, 2006 claiming that the said provision is repugnant to the provisions of Tenth Schedule of the Constitution of India.

Mr. Manoj Tandon, the learned counsel appearing on behalf of the respondent nos. 1 and 3, submits that though he raises an objection with regard to the proposed amendment as prayed by the petitioner therein, he may also be allowed to file reply to I.A. 6278 of 2020.

Mr. R. Venkataramani, the learned Senior Counsel appearing on behalf of the petitioner in W.P.(C) No. 3654 of 2020, however, submits that since the common object of the petitioners of both the writ petitions is to seek declaration that sub-rule (1) of Rule 6 of Rules, 2006 may be declared ultra vires

to the Tenth Schedule of the Constitution of India and the respondent no. 1 and 3 has already filed reply to I.A. No. 6257 of 2020 in W.P.(C) No.

3687 of 2020, the said objection raised on behalf of the learned counsel for the respondent no. 1 and 3 is not proper and the same will delay the

adjudication of the present writ petitions. It is also submitted that the petitioners being the master of their cases cannot be estopped from seeking

amendment in the writ petitions, if otherwise the same does not change the nature of the writ petitions.

Heard the learned counsel for the parties and perused the materials available on record. Initially, both the writ petitions were preferred challenging the

action of the respondent no. 1, whereby the notice was issued by the respondent no. 1 to the petitioner-Babulal Marandi to appear before him and lead

evidence in the matter of defection. Subsequently, in both the writ petitions, interlocutory applications have been filed challenging the vires of sub-rule

1 of Rule 6 of Rules, 2006 contending that the same is repugnant to the Tenth Schedule of the Constitution of India.

Before coming to the merit of the case of the petitioners, I would like to go through some judgments of the Hon'ble Supreme Court, wherein the law

with respect to dealing with any application for amendment has been summarized.

In the case of ""Raj Kumar Vs. Dipender Kaur Sethi "" reported in (2005) 9 SCC 304, the Hon'ble Supreme Court held as under:-

8. The learned counsel for the appellant have reiterated the contentions which

were urged before the High Court. The learned counsel also placed on record a judgment of this Court in *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar* which also pertains to a suit for specific performance in which the averments required under Section 16(c) of the Specific Relief Act, 1963, had been inadvertently omitted while drafting the plaint. The application was made for amending the plaint to bring this averment on record. This Court pointed out that, thereby no fresh cause of action was introduced and, hence, there was no question of causing any injustice to the respondents on that account. Reiterating the principle laid down in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* it was held by this Court that all amendments ought to be allowed which satisfy the two conditions: (a) not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. It was further observed: (SCR pp. 603-04) "[A]mendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim.

The Hon'ble Supreme Court in the case of *"Pankaja & Anr. Vs. Yelappa (dead) by Irs. & Ors."* reported in (2004) 6 SCC 415 has held that if allowing an amendment really sub-serve the ultimate cause of justice and avoid further litigation, the same should be allowed. It has further been held that there cannot be any straightjacket formula for allowing or disallowing an amendment of pleading, rather each case depends on the factual background of that case. It is well settled that in order to consider whether the amendments are to be allowed or not, the veracity or correctness of the grounds is not to be adjudicated at the time of consideration of the application for proposed amendment. What is to be considered is whether the proposed amendment is necessary for adjudication of the disputes between the parties or not.

In the case of ""Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors."" reported in (2006) 4 SCC 38, 5the Hon'ble Supreme Court has held as

under:-

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an

amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be

refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain

opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to

shorten the litigation, to preserve and safeguard the rights of both parties and to sub- serve the ends of justice. It is settled by a catena of decisions of

this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in

the larger interest of doing full and complete justice to the parties before the court.

On bare perusal of Order VI Rule 17 CPC, it appears that the same empowers the court to allow the parties to amend the pleading at any stage of the

proceeding, if the same is necessary for the purpose of determining the real questions in controversy between the parties provided that if the

amendment is sought after commencement of the trial, the same will not be allowed unless the court comes to a conclusion that in spite of due

diligence, the party could not have raised the matter before the commencement of trial.

Thus, if from the nature of the amendment sought to be made, it appears to the court that the proposed amendment will not cause injustice to the other

side and the same is necessary for determining the real questions in controversy between the parties, the same has to be allowed. The amendment is

allowed in order to shorten the litigation as also to preserve and safeguard the rights of both parties and to sub-serve the ends of justice.

I am of the considered view that if any action is taken, the same must be supported by a valid legislation and if such action is challenged by the

aggrieved person, then he has the right to challenge the legislation as well whereby the power is claimed to have been derived. Any deprivation of the

same would certainly cause injustice to the aggrieved person. The said exercise would also not cause injustice to the other side, rather would facilitate

in resolving the dispute more so when the said challenge is made at an early stage of the proceeding.

In the case in hand, the petitioners are seeking amendment by filing interlocutory applications at a very early stage before filing of counter affidavit by the respondents and as such, if the proposed amendment is allowed, the respondents will have every opportunity to counter the claim of the petitioners and thus, the interest of the respondents will not suffer.

Since the petitioners have filed their respective writ petitions challenging the issuance of notice and now have sought to challenge the vires of rule

from which the power has been derived by the respondent no. 1, both the prayers are connected to each other. I am, therefore, of the view that the

proposed amendment is necessary for the real determination of the claim of the petitioners.

In view of the reasons as aforesaid, I.A No. 6257 of 2020 filed in W.P.C No. 3687 of 2020 and I.A No. 6278 filed in W.P.C No. 3654 of 2020 are allowed.

The learned Senior Counsel appearing for the petitioners in both the writ petitions undertake to file amended writ petitions incorporating the respective amendments by tomorrow (16.12.2020).

W.P.(C) No. 3687 of 2020 with W.P.(C) No. 3654 of 2020 Since in both the writ petitions, vires of sub-rule (1) of Rule 6 of Rules, 2006 is under

challenge, the adjudication over the same is to be made by the learned Division Bench of this Court in view of Rule 34 (2)(b) of the High Court of

Jharkhand Rules, 2001.

The Registry is directed to place both the writ petitions before Hon'ble the Chief Justice for placing the matter before the appropriate Division Bench.