

(1997) 05 P&H CK 0187
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4503 of 1994

Baljit Singh Bhullar and Another	Vs	APPELLANT
Hon. Speaker, Punjab Vidhan Sabha and Others		RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Constitution of India, 1950 — Article 212(1)
Representation of the People Act, 1951 — Section 28A

Citation : (1997) 117 PLR 367 : (1997) 4 RCR(Civil) 611

Hon'ble Judges : K. Sreedharan, C.J;T.H.B. Chalapathi, J;N.K. Sodhi, J

Bench : Full Bench

Advocate : M.S. Khaira, Nasib Singh Gill and K.S. Bakshi, for the Appellant; M.L. Sarin Alka Sarin, Jai Shree Thakur and Ashok Aggarwal, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—As an important question of law in regard to the interpretation of provisions contained in 10th Schedule of Constitution of India is involved, this writ petition is placed before Full Bench.

2. The first petitioner in the write petition is the Secretary of the District Unit of Faridkot of United Communist Party of India (hereinafter referred as UCPI) which is registered as a National Political Party. The 2nd petitioner is a former M.L.A. Elections to the Punjab State Legislative Assembly took place in February, 1992. The 2nd respondent Baldev Singh Balamgarh was set up as a candidate by the political party namely UCPI to contest the said election from Malout Assembly Constituency. He won the said election and became the lone member belonging to UCPI. On 15th July, 1993 the 2nd respondent submitted an application to the Speaker of the Legislative Assembly that UCPI had passed a resolution with its merger with Congress (I) and since he was the lone member of UCPI Legislature party in the Punjab Vidhan Sabha he was to be treated as a member of the Congress (I) Legislature party. He also furnished a fresh declaration about his

changed position in the Legislature party. On the same day the then Chief Minister also sent a communication to the Speaker of the Legislative Assembly that UCPI merged with Congress (I) and the lone member of UCPI namely the 2nd respondent was to be treated as a member of Congress (I) Legislature party. On 16th/17th July, 1993 the Deputy Speaker of the Legislative Assembly allowed the merger of UCPI with Congress (I) Legislature party as claimed by the 2nd respondent and declared that the 2nd respondent had become a member of the Indian National Congress (I) party. Accordingly to the petitioners the Speaker did not give any notice to the head office of UCPI who set up the 2nd respondent as its candidate to contest the election nor any verification was made from the State unit of UCPI and that the Speaker passed his order dated 16th/17th July, 1993 without affording an opportunity of hearing either to the petitioners or to the political party i.e. UCPI. The Secretary of Punjab State Committee of UCPI wrote to the Speaker of the Assembly that the political party UCPI never passed any resolution with regard to its merger with Congress (I) and that the 2nd respondent joined Congress (I) on his own and, therefore, the 2nd respondent incurred disqualification to continue as member of the Legislative Assembly because of his defection. The petitioners also submitted an application for supply of the copies of order dated 16th July, 1993 and a copy of the alleged resolution said to have been passed by the UCPI with regard to merger of Congress (I) and the copy of the letter of the Chief Minister for allowing the seat to the 2nd respondent along with the members of Congress (I) but the said documents were not supplied to the petitioners. On 10th January, 1994 the General Secretary of the central Committee of UCPI wrote a letter to the Speaker to disqualify the 2nd respondent from the membership of the house as there was violation of the anti defection law. A similar letter was also written by the Secretary of the Punjab State Unit of UCPI on 18th January, 1994. The petitioners received a copy of the order passed by the Speaker dated 10th January, 1994 stating that the order dated 16th July, 1993 passed by the Deputy Speaker joining the 2nd respondent in Congress (I) Legislature party was valid and lawful. The petitioner filed this writ petition challenging the said order of the Speaker/Deputy Speaker.

3. According to the learned counsel for the petitioners the 2nd respondent violated the provisions of the 10th Schedule of the Constitution of India and by joining the Congress (I) Legislature party he became disqualified to the member of Legislative Assembly. He contended that there was no merger of the original political party namely UCPI with the other political party namely Congress (I) either at the national level or at the State level and, therefore, the 2nd respondent being the lone member of the UCPI could not effect any merger of UCPI with Congress (I) and, therefore, the action of the Speaker/deputy Speaker in holding that there was a merger of UCPI with Congress (I) and, therefore, the 2nd respondent became a member of the Congress (I) Legislature party and that he did not incur disqualification, is illegal, invalid and violative of provisions of the 10th Schedule of the Constitution of India.

4. It is on the other hand contended by the learned counsel for the 2nd

respondent that the political party and Legislature party are quite different entities for the purpose of 10th Schedule and even though there was no merger of a political party with another political party at the national level the same merger could be brought out within the Legislature party and the 2nd respondent being the lone representative of the UCPI Legislature party can effect a merger with another Legislature party within the Legislative Assembly as envisaged under sub paragraph 2 of paragraph 4 of the 10th Schedule.

5. To appreciate the rival contentions raised before us it is useful to refer to certain relevant provisions of 10th schedule which was added by the Constitution (52nd Amendment) Act, 1985. The statement of objects and reasons to the Constitution (52nd Amendment) Bill, 1985 reads thus :

"The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundation of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance."

Thus the 10th Schedule was added in the Constitution to provide disqualification of a member of the Legislature to curb the ill effects of defections.

6. Para 1(b) defines "Legislature party" and para 1(c) defines "Original political party" as under :-

"(b) "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions; (c) "original political party", in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2."

Paragraph 2 provides for disqualification on the ground of defection. According to it a member of a House belonging to any political party shall be disqualified from being a member of the House if he has voluntarily given up his membership of such political party or if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs. Paragraph 3 and 4 are in the nature of exceptions to paragraph 2. Paragraph 3 saves the member of a Legislature party from incurring disqualification if there was a split in his original party while paragraph 4 saves a member from being disqualified if his original political party merges with another political party. For the purpose of the present discussion and to appreciate the rival contentions raised before us it is useful to extract paragraph 4 in extent so

"4(1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another. political party

and he claims that he and any other members of his original political party -

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph the merger of the original political party of a member of House shall be deemed to have taken place if and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger."

According to the learned counsel for the petitioners unless there is a merger of the original political party namely UCPI with another political party (in this case Congress I) paragraph 4 does not have the member who claims that there was a merger and on the ground of the alleged merger joins another political party. It is the contention of the learned counsel for the petitioners there must be a merger of both the political parties at the national level outside the Legislature and in such an event only a member of the Legislature party who has been set up by a political party can claim that he has not incurred disqualification under paragraph 2 of the 10th Schedule. If there is a merger of two political parties at the national level or at the State level there cannot be any dispute and there will not be any disqualification incurred by the members of the political parties in the said Legislature. What is important for our consideration is sub paragraph 2 of paragraph 4. According to the same for the purpose of sub paragraph 1 of paragraph 4 the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-third members of the Legislature party concerned have agreed to such merger.

7. A situation may arise where there may be a merger of two political parties at the national level but at the State level if two-thirds of the members of the Legislature party of the political party do not agree for such a merger then it cannot be taken as a merger because of the provision contained in sub paragraph 2 of paragraph 4 as it requires that two-thirds of the members of the Legislative party must agree to such merger. Thus, it is clear while incorporating sub paragraph 2, the Parliament intended that Legislature party has to be treated separately from the political party for the purpose of seeing whether there is a merger of the political party. This aspect has to be decided keeping in view of the fact that 10th Schedule was added in the Constitution of India with an intention to prevent an elected member of Parliament or State Legislature from crossing the floor in the House and to prevent political defection for extraneous considerations other than an honest dissent. If two-thirds members of a Legislature party of a political party agree to merge with another political party

then it should be taken that there was a merger for the purpose of paragraph 4. The intention of the parliament was clear in this regard by the words used in sub paragraph 2 of paragraph 4 in its wisdom. In sub paragraph 2 of paragraph 4 the words used are the merger of the original political party of a member of the House "shall be deemed to have taken place." The words "shall be deemed to have taken place" creates a legal fiction by incorporating a deeming provision. A deeming clause is intended only to provide to presume a non existing fact to be existing. In Ex. Parte Walton 17 Ch. D. 756 Lord James held as under:-

"When a statute enacts that something should be "deemed" to have been done, which if fact and truth, was not done the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to"

In St. Aubyn and Ors. v. Attorney General 1952 AC 15 it has been observed by Lord Radcliffe as follows:-

"The word deemed is used a great deal in modern legislation sometimes it is used to impose for the purpose of a statute an artificial construction of a word or phrase that would not prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain sometimes it is used a comprehensive description that includes what is obvious, what is uncertain and what is in the ordinary sense, impossible."

8. In D.S. Thimmappa Vs. Siddaramakka, , it has been held as follows:

" The scope of the legal fiction enacted in the explanation (a) to paragraph 2(1) of the Tenth Schedule assumes importance in this context. By the decision of this Court it is fairly well settled that a deeming provision is an admission of the non-existence of the fact deemed. The Legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not even exist. It means that the Courts must assume that such a State of affairs exist as real, and should imagine as real the consequences and incidents which inevitably flow there from, and give effect to the same."

"The deeming provision may be intended to enlarge the meaning of a particular word or to include matters which otherwise may or may fall within the main provision. The law laid down in this regard in East End Dwellings Co. Ltd. case (1952) AC 109 : (1951) 2 All ER 587, has been followed by this Court in a number of cases, beginning from The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others, and ending with a recent decision of a three Judge Bench in M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, . N.P. Singh J, speaking for the Bench, stated the law thus at page 329 (of SCC): (at p. 784 of AIR SCW):

"The effect of a deeming clause is well known, legislature can introduce a statutory fiction and Courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of

what was said by Lord Asquith in the case of *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 AC 109, that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it-one must not permit his "imagination to boggle" when it comes to the inevitably corollaries of that State of affairs."

Thus sub paragraph 2 creates a fiction in law that though there is no merger as such in the original political party either at the national level or at the State level such a merger is deemed to have taken place if two-thirds members of the Legislature party if that political party agree that there is a merger. Thus under sub paragraph 2 of paragraph 4 it is the members of the Legislature party to decide whether there should -be or should not be a merger of their political party with another political party.

9. A comparative study of paragraph 3 and 4 of 10th Schedule makes the above position abundantly clear. Paragraph 3 deals with a split in the original political party to which the member belongs. It reads as follows:-

"Where a member of a House makes a claim that he and any of the members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party :-

(a) he shall not be disqualified under sub-paragraph 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 such party or by any person or authority authorized by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or absentation; and (b) from the time of such split, such faction shall be deemed to be political party to which he belongs for the purposes of sub-paragraph (1) and paragraph 2 and to be his original party."

10. Thus a split referred to in the above paragraph relates to a split in the original party. What happens in the Legislature party is only an outcome of the split outside the Legislature, but such a split will be recognized by the Speaker if such groups splitting away from the; original party consists of not less than one-third members of the Legislature party. Thus for the purpose of paragraph 3, two things are required, one is split in the political party and one-third members of the Legislature party consists of the group splitting the original political party. There is no provision like sub-paragraph (2) of paragraph 4 incorporated in paragraph 3 of the 10th Schedule. As per paragraph 4(1) if there is a merger of

the original political party with the other political party, then it can be taken as merger, but for the purpose of recognizing that merger by the Speaker, such measure is dependent on any action by the members of the Legislature party of that political party concerned while in the case of split, developments take place entirely outside the House. It is pertinent to note that paragraph 4(2) reads that the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the Legislature party concerned have agreed to such merger. The words used therein are not that "no merger" of a political party with any other party can be deemed to have taken place unless at least two third members of the Legislature party concerned if agreed or ratified such a merger taken outside the House. It does not contemplate any merger outside the House. The deeming provision as discussed above and contained in sub paragraph (2) of paragraph 4 clearly is indicative of the fact that the merger contemplated in paragraph 4 is a merger of the political party consisting of the members of the Legislature with Another. political party. If by majority of two-third members of that Legislative members belonging to that particular political party agree, then it shall be taken that political party has merged with another. political party. Such a situation is also recognized by the apex Court in *Kihota Hollohon v. Achihu* AIR 1993 S.C. 413 wherein it has been observed by the Supreme Court as follows:-

"The underlying premise in declaring an individual act of defection as forbidden is that lure of office or money could be presumed to have prevailed. Legislature has made this presumption on its own perception and assessment of the extent standards of political proprieties and morality. "At the same time legislature envisaged the need to provide for such "floor-crossing" on course of conduct commended itself to a member of elected representatives might, in itself, lend credence and reassurance to a presumption of bonafides. The presumptive impropriety of motives progressively weakens according as the members sharing the action and there is nothing capricious and arbitrary in this legislative perception of the distinction between defection and split.

11. Viewed as above, the 2nd respondent being the lone member of UCPI decided to merge with Congress I party in the State Legislature his case squarely falls within the scope and ambit of sub paragraph 2 of paragraph 4. We are, therefore, of the opinion that the 2nd respondent was saved from being disqualified under paragraph 2 of 10th Schedule in view of the provisions contained in sub paragraph 2 of paragraph 4.

12. The learned counsel for the petitioner argued that u/s 28A of the Representation of People Act, 1951; a political party has to be registered for the purpose of that Act and after registration as a political party any change in its claim, head office, office bearers, members or any other material shall be communicated to the Election Commission. Basing on the provisions contained in the Representation of People Act, the learned counsel argued that the merger of a political party with another political party should be intimated to the Election

Commission, As no intimation, as envisaged u/s 28-A of the Act has been given, the Speaker cannot recognize any such merger. But it is to be borne in mind that Section 28-A applies only for the purpose of implementation of the provisions of the said Act. It has no bearing whatsoever in construing or interpreting the provisions of the Constitution of India. It is further pertinent to note that 10th schedule was added to the Constitution in the year 1985 while Section 28-A introduced only in the year 1989. Therefore, provisions of Section 28-A can not be pressed into service for interpreting the provisions of 10th Schedule.

13. The learned counsel further argued that no notice was given by the Speaker to the President/Secretary of UCPI either at the national level or at the State level, therefore, the order of the Speaker recognizing merger of the UCPI with Congress (I) in the State Legislative vitiates on the ground of violation of the principles of natural justice. We are unable to agree with this contention as there is nothing in 10th Schedule which obligates the Speaker to give notice to the original political party or to any person who is not a member of the Legislative Assembly. Paragraph 6 provides that the question as to whether a member of the House has become subject to disqualification shall be referred for the decision to the Speaker and his decision shall be final. Sub paragraph 2 of paragraph 6 provides that the proceedings regarding disqualification of a member of the House shall be deemed to be proceedings in the Legislature of the State within the meaning of Article 212. Under clause (i) of Article 212, the validity of any proceedings in the Legislative of the State shall not be called in question on the ground of any alleged irregularity of procedure.

14. Article 192 provides that the Governor of the State is to decide the question as to whether a member of a House of the Legislature is disqualified on the grounds mentioned in clause (1) of Article 191. Clause (2) of Article 191 provides disqualification for being a member of the Legislature on the ground of defection under the 10th Schedule. As already seen the power to take a decision as to whether the member is disqualified under 10th Schedule is given to the Speaker of the House. A reading of the paragraphs of the 10th Schedule clearly shows that it is a self contained code. The paragraph 8 of the 10th Schedule empowers the Speaker to make rules providing for the procedure for deciding any question referred in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

15. The procedural laws like CPC and the Evidence Act are not applicable to the proceedings before the Speaker as the Speaker is not acting as a "Court". Nor the proceedings before the Speaker can be described as Judicial proceedings though the power to decide the disputed disqualification is preeminently of Judicial complexion. Therefore, in the absence of rules framed under paragraph 8 of the 10th Schedule, it is open to the Speaker to adopt such procedure as . he deems fit, proper, expedient and just in the circumstances of any particular case. The proceedings before the Speaker are protected from being questioned or challenged on the ground of alleged irregularity of procedure under sub

paragraph (2) of paragraph 6 to 10th Schedule read with Article 212(1) of the Constitution of India. As observed by the Apex Court in *Kihota Hollohon v. Achihi* (supra) these provisions attract an immunity from mere irregularities of procedures. In the instant case, the Speaker has to interpret sub-paragraph 2 of paragraph 4 and, therefore, it does not involve any determination of a disputed fact. In fact there is no controversy on the facts which are necessary for deciding the question as to whether the 2nd respondent incurred disqualification under paragraph 2 of the 10th Schedule.

16. In view of what is stated above, we are of the opinion that the orders of the Speaker/Deputy Speaker are in accordance with the provisions of 10th Schedule and did not call for any interference by this Court in exercise of the power of judicial review of this Court under Article 226 of the Constitution of India.

17. The result is, the writ petition fails and is accordingly dismissed. However, there will be no order as to costs.