

(2021) 07 DEL CK 0059

In the Delhi High Court

Case No : Civil Writ Petition No. 6352 Of 2021

Chirag Paswan & Anr

APPELLANT

Vs

Lok Sabha Secretary And Ors

RESPONDENT

Date of Decision : 09-07-2021

Acts Referred:

Lok Janshakti Party Constitution — Article 26

Members Of Lok Sabha (Disqualification On Ground Of Defection) Rules, 1985 — Rule 2(f), 3(1)

Citation : (2021) 07 DEL CK 0059

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : A.K. Bajpai, Udit Grover, Nitin Bajpai, Diwaker Kumar, Tushar Mehta, Chetan Sharma, Ajay Digpaul, Kamal R. Digpaul, Rajshekhar Rao, Mansi Sood, Areeb Amanullah

Final Decision : Dismissed

Judgement

CM APPL.20002-03/2021 (Exemptions)

1. Exemptions allowed, subject to all just exceptions and with the condition that the petitioner shall file the duly attested affidavit(s) within two weeks

of resumption of regular functioning of the Court.

2. The applications stand disposed of.

W.P.(C) 6352/2021 & CM APPL. 20001/2021 (stay)

3. The present petition seeks the following reliefs:

â??I. Issue Writ of Mandamus or any other appropriate writ/s directing/setting aside circular dt. 14/06/2021 particularly column no. 3 of

S.No.11 showing the name of the respondent no.3 as leader of petitioner no.2 in Lok Sabha and respondent no, 1 be further directed to

issue corrigendum by showing the name of the petitioner no.1 as leader of Petitioner no.2 in lok sabha.

II. To pass any other order or orders, relief/relief which may deem fit and proper in the facts & circumstances of the case and in the interest of justice.

III. To allow the cost of the writ petition.â??

4. The petitioner no.1 is the incumbent Member of Parliament (MP) for the Lok Sabha constituency of Jamui, Bihar and is also a member of petitioner

no.2, a political party named Lok Janshakti party, which was registered with the Election Commission of India on 31.01.2001 and allotted the symbol

of â??Bungalowâ?? in the year 2005.Â It is the petitionerâ??s case that he was unanimously appointed as the National President of petitioner no.2

for a period of 5 years w.e.f. 05.11.2019 in accordance with the constitution of the petitioner no.2 party, which fact was duly communicated to the

respondent no.2/the Election Commission of India on 09.11.2019. Other than petitioner no.1, the current and 17th Lok Sabha has five other MPs from

the petitioner no.2 political party â?" all of whom have been arrayed as respondent nos. 3 to 7 in the instant petition. The primary grievance of the

petitioners is in respect of the decision contained in the Circular dated 14.06.2021 issued by the respondentÂ no.2/Â LokÂ SabhaÂ SecretariatÂ

whichÂ announcedÂ thatÂ theÂ party Â position in the 17th Lok Sabha stood revised w.e.f. 13.06.2021 and that respondent no.3/Mr Pashupati

Kumar Paras, the incumbent MP from the Lok Sabha constituency of Hajipur, Bihar was substituted as the party leader of the petitioner no.2 party in

the 17th Lok Sabha, in place of petitioner no.1.

5. By way of this writ, the petitioners claim that the substitution of party leadership of petitioner no.2 party in the Lok Sabha was made by the

respondent no.1 on 14.06.2021 at the sole behest of five errant MPs of the petitioner no. 2 party, being respondent nos. 3 to 7, without directly

conferring with the petitioner no.2 at all. The petitioner no.1 also claims that the rebelling MPs were then removed from the petitioner no.2 party by its

National Executive w.e.f. 15.06.2021, and no longer represented the party in the Lok Sabha. The petitioner no.1 is aggrieved that his substitution as

the party Leader of the petitioner no.2 party in the 17th Lok Sabha was effected by the Honâ??ble Speaker without even formally confirming

whether such substitution had been carried out by the party.

6. Mr. Bajpai, learned counsel for the petitioner submits that even though the petitioner no.1 was the recognized National President of the petitioner

no.2 party and its Party Leader in the Lok Sabha, on 14.06.2021, the respondent no. 1 proceeded to act at the behest of five errant MPs of the

petitioner no. 2 party, and recognised one of them - respondent no. 3 - as the leader of the petitioner no. 2 in the Lok Sabha. He submits that the

actions of all the respondents were completely in the teeth of the Constitution of the petitioner no.2 party, specifically Article 26 thereof, which

empowers the Central Parliamentary Board of the petitioner party to decide the Party Leader in the Lok Sabha. For that matter, he submits that as

soon as the petitioners came to know of the activities of these five errant MPs/ respondent nos. 3 to 7, a meeting of the National Executive of the

petitioner no. 2 party was convened - which then deliberated on the matter and expelled the errant respondents from the party. Thus, the respondent

nos.3 to 7 could no longer be regarded as members of the party, let alone be allowed to assume party leadership in the Lok Sabha.

7. Mr. Bajpai then relies on Rules 2(f) and 3(1) of Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, to submit that the

Party Leader of petitioner no.2 in the Lok Sabha could only have been chosen by the members of petitioner no.2, and not by the respondent no.1 or

the five errant respondents, who were ultimately a minority in the party. He further submits that since the actions of the errant MPs, and their resulting

expulsion led to a reduction in the strength of the petitioner no.2, the respondent no. 1 ought to have waited for a formal communication to that effect

by the petitioner no.2 before making any alteration to the Party Position in the 17th Lok Sabha.

8. Mr. Bajpai finally submits that on 15.06.2021 itself, the date on which the National Executive of petitioner no.2 had met, the Vice President of the

petitioner no.2 party informed the Election Commission of India regarding the expulsion of respondent nos. 3 to 7 from the party, whereas the

petitioner no.1- in the capacity of the National President of the petitioner no.2 - sent communication of the same to the respondent no.8/the

Honâble Speaker of the Lok Sabha, urged him to reconsider the decision contained in the impugned circular and to reinstate him as the Party

Leader of petitioner no. 2 in the 17th Lok Sabha. He submits that notwithstanding the correspondences issued by the legitimate office bearers of petitioner no.2, the respondent nos. 1 and 8 have not acted upon the information till date and/or taken any corrective action, thereby compelling the petitioners to institute the present petition. He, therefore, prays that the impugned circular dated 14.06.2021, which announces the appointment of respondent no.3 as the Party Leader of petitioner no.2 in the 17th Lok Sabha w.e.f. 13.06.2021 be set aside and the petitioner no.1 be reinstated as the Party Leader.

9. On the other hand, Mr. Tushar Mehta, learned Solicitor General appearing for the respondent no. 9, and Mr. Rajshekhar Rao, learned Senior

Counsel appearing on behalf of respondent nos. 1 & 8 vehemently oppose the petition. They rely on paragraphs 1 (b) and (c) of the Tenth Schedule of

the Constitution of India to contend that the petitioners are conflating the terms 'legislature party' and 'original political party' and using

them interchangeably while making their contentions before this Court, which in itself makes the petition liable to be rejected. They further submit that,

in fact, the present petition is a barely disguised attempt of the petitioners to get their inter se disputes with respondent nos.3 to 7 resolved by this

Court. They contend that once it is an admitted position that five out of the six MPs of the petitioner no. 2 party had approached the respondent no. 1

with the request to substitute the Party Leader, coupled with the facts that the proposed Party Leader/respondent no. 3 was the Chief Whip of the

party and that the petitioner no.2 party and the six MPs had to be deemed as separate entities for the purpose of the House, under the Tenth Schedule

of the Constitution of India, no fault can be found in the actions of the respondent no.1. They finally submit that as per Constitutional provisions,

notwithstanding any purported expulsion of respondent nos. 3 to 7 from the original political party, the said respondents continue to be members of the

petitioner no.2 in the 17th Lok Sabha since they were elected on its ticket. They jointly pray that the present petition be dismissed with costs.

10. Having heard and given my thoughtful consideration to the submissions of the learned counsel for the parties, I find absolutely no merit in the

petition. To begin with, Mr. Bajpai has based his first contention on the internal constitution of the petitioner no.2 party, especially Article 26 thereof,

which reads as under:

Article 26 of the Lok Janshakti Party Constitution

1. To co-ordinate the activities of Lok Janshakti Party, in Parliament and in Assembly, the President shall constitute a parliamentary

board which shall have one Chairman of Parliamentary board (who shall not accept any other post at the national level in the party] and

25 members, in which the President of Lok Janshakti Party, Chief General Secretary and leader of Lok Janshakti party shall be included.

The parliamentary board shall finally select the candidates for the election of parliament, state assemblies.

2. All decision of the Parliamentary Board shall be on unanimous basis. In case of difference of opinion, the decision of the majority shall

be agreed upon.

11. While the aforesaid Article 26 is clearly silent in respect of appointment of a Party Leader in the Parliament, far more significantly "the internal

constitution of the petitioner no.2 has absolutely no bearing on the practice and procedure of the Parliament of this country, which is governed by its

own set of rules and regulations. On that note, I come to the reliance placed by the petitioners on Rule 2(f) as also Rule 3(1) of the Members of Lok

Sabha (Disqualification on Ground of Defection) Rules, 1985, contained Appendix IV of the Rules of Procedure and Conduct of Business in Lok

Sabha, and find that even those provisions do not support their case in any manner. For the sake of convenience, it is deemed apposite to

reproduce the aforesaid Rules 2(f) and 3(1) which read as under:

Rule 2(f):

"Leader" in relation to a legislature party, means a member of the party chosen by it as its leader and includes any other member of

the party authorized by the party to act, in the absence of the leader as, or discharge the functions of, the leader of the party for the

purposes of these rules.

Rule 3(1):

"The leader of each legislature party (other than legislature party consisting of only one member) shall, within thirty days after the first

sitting of the House, or, where such legislature party is formed after the first

sitting, within thirty days after its formation, or in either case

within such further period as the Speaker may for sufficient cause allow, furnish the following to the Speaker, namely:

(a) a statement (in writing) containing the names of the members of such legislature party together with other particulars regarding such

members as in Form I and the names of designations of the members of such party who have been authorized by it for communicating with

Speaker for purposes of these rules. (emphasis supplied)

12. To fully appreciate the aforesaid provisions, one must take note of the Legislature's specific decision to employ the term "legislature

party" at the time of drafting, which is explained and differentiated from another term, i.e., "original political party", in paragraphs 1(b) and

(c) of the Tenth Schedule of the Constitution of India. Paragraph 1 of the Tenth Schedule reads as under:

TENTH SCHEDULE

[Articles 102(2) and 191(2)]

PROVISIONS AS TO DISQUALIFICATION ON GROUND

OF DEFECTION

1. Interpretation-. In this Schedule, unless the context otherwise requires-

(a) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(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 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;

(d) "paragraph" means a paragraph of this Schedule. (emphasis supplied)

(emphasis supplied)

13. A perusal of this interpretation clause shows that there is a clear distinction drawn between the terms "legislature party" and "original

political partyâ??, which can be best understood on an application thereof to the facts of this case. Until 15.06.2021 and prior to their internal conflict,

the petitioner no.2 was the â??original political partyâ?? under paragraph 1(c) of the Tenth Schedule for the petitioner no.1 as well as the respondent

nos. 3 to 7. However, for the purpose of the 17th Lok Sabha, the petitioner no.1 and the respondent nos. 3 to 7, being the only six MPs elected from

petitioner no.2 to the Lok Sabha, formed a separate subset within the original political party and are regarded as a â??legislature partyâ?? in the

House under paragraph 1(b) of the Tenth Schedule.

14. With this in mind, when I revert to Rules 2(f) and 3(1) of Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 and apply

the Constitutionally conferred definition of the term â??legislature partyâ?? contained in the Tenth Schedule, I find absolutely no discrepancy in the

decision of the respondent no.1 or the impugned circular. The petitionersâ?? case is built on the contention that the majority of the members of the

original political party/petitioner no. 2, or its â??Parliamentary Boardâ?? under Article 26 of its internal constitution, did not authorise the appointment

of respondent no. 3 as the party leader in the 17th Lok Sabha, but that ground holds no relevance since the party leadership has been chosen by the

â??legislature partyâ?? and not the â??original political partyâ?? under the Members of Lok Sabha (Disqualification on Ground of Defection) Rules,

1985. After their induction into the 17th Lok Sabha, the six MPs from the petitioner no.2 comprised an independent group of persons and were a

â??legislature partyâ??, out of whom five chose to elect respondent no.3 as the party leader. Given that the party leader under Rules 2(f) and 3(1)

are to be chosen by a clear majority of the Legislature Party, it appears that this condition stood fulfilled when respondent nos. 3 to 7, five out of the

six members of the said legislature party, had arrived upon a consensus. Therefore, it cannot be said that there has been any violation of Rules 2(f)

and 3(1) of Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985. Rather, I am inclined to agree with the learned counsel for

the respondents that the grievance raised in this petition has arisen out of a complete misinterpretation of the Constitutional provisions relating to the

terms â??original political partyâ?? and â??legislature partyâ??, which are separate and distinct from each other.

15. The remaining contention of the petitioners is that the decision to substitute the party leader of the petitioner no.2 was taken without duly intimating the petitioner no.2. Against the background of everything discussed thus far, it is evident that the appointment itself of respondent no.3 as the party leader was in consonance with parliamentary procedure. A very important point to be noted here is that the respondent no.3, whose appointment is under dispute, was earlier serving as the Chief Whip of the petitioner no.2 in the 17th Lok Sabha. In the document relied upon by the petitioner itself in Annexure-22, which is a press release issued by the Government of India in regard to the 13th All India Whips Conference, the crucial role of Whips has been described in the following manner:

“In the parliamentary form of government, Whips of various political parties are the vital links of the internal organization of parties inside the legislation. The efficient and smooth functioning of parliament and state legislation depends, to a considerable extent upon the office of the Whip, the Whips can be rightly said to be the manager of the parties within the legislature.”

16. The respondent no.3, having been vested with such an important function, served as the trusted link between petitioner no.2 party and the House in the 17th Lok Sabha. Prima facie, there is no reason as to why the respondent no. 1 should now be questioned on its decision to substitute respondent no.3 as the Party Leader in the House given that the same came at the request of the Chief Whip of the legislature party himself and, significantly, was carried out in adherence to the relevant Rules of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985. Not to mention, the purported expulsion of the five MPs came to pass only after the change in the party leadership for petitioner no.2 in the 17th Lok Sabha had already been announced. Therefore, at the time of issuing the impugned circular, it cannot be gainsaid that the respondent no. 1 had acted bonafidely and after carefully assessing the source of the request “comprising of five out of the six MPs of the petitioner no.2 party” and adhering to the established procedure.

17. It does, however, become manifest that this petition is an attempt on the petitioners’ part to cast aspersions on the continued membership of respondent nos. 3 to 7 at the 17th Lok Sabha as representatives of the petitioner

no.2 party and have the same decided by this Court. For this reason, the petitioners have sought to repeatedly assert that the respondent nos. 3 to 7 were errant members who were expelled by the party and could no longer be shortlisted for party leadership. However, the fact remains that the expulsion in question, whereupon the petitioners have based their prayer to reverse the impugned circular dated 14.06.2021, is a matter of internal dispute of the petitioner no.2 party and only concerns its members. It neither has a bearing on the House, nor upon this Court which, in its writ jurisdiction, has a very limited scope of interference in the decisions taken by a parallel branch of the government.

18. In 1996, in *G. Viswanathan v. T.N. Legislative Assembly* (1996) 2 SCC 353, the Apex Court had interpreted the role played by the Tenth

Schedule of the Constitution of India in the political party-elected member nexus, especially in the context of internal party disputes, and had held as

under:

“11. It appears that since the explanation to para 2(1) of the Tenth Schedule provides that an elected member of a House shall be

deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a

candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party,

for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the

election. He will continue to belong to that political party even if he is treated as “unattached”. The further question is when does a

person “voluntarily give up” his membership of such political party, as provided in para 2(1)(a)? The act of voluntarily giving up the

membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party

which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the

membership of the political party which had set him up as a candidate for election as such member.

12. We are of the view that labelling of a member as “unattached” finds no place nor has any recognition in the Tenth Schedule. It

appears to us that the classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House, (1) one

who has been elected on his being set up by a political party as a candidate for election as such member; (2) one who has been elected as a

member otherwise than as a candidate set up by any political party " usually referred to as an "independent" candidate in an

election; and (3) one who has been nominated. The categories mentioned are exhaustive. In our view, it is impermissible to invent a new

category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. If a person belonging to a political

party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either

because of his expulsion from the party or otherwise, he voluntarily gives up his membership of the political party and incurs the

disqualification. Being treated as "unattached" is a matter of mere convenience outside the Tenth Schedule and does not alter the fact

to be assumed under the explanation to para 2(1). Such an arrangement and labelling has no legal bearing so far as the Tenth Schedule is

concerned. If the contention urged on behalf of the appellant is accepted it will defeat the very purpose for which the Tenth Schedule came

to be introduced and would fail to suppress the mischief, namely, breach of faith of the electorate. We are, therefore, of the opinion that the

deeming fiction must be given full effect for otherwise the expelled member would escape the rigour of the law which was intended to curb

the evil of defections which has polluted our democratic polity.

13. Mr Shanti Bhushan laid stress on para 1(b) of the Tenth Schedule and contended that the legislative party in relation to a member of a

House belonging to any political party means the group consisting of all the members of that House for the time being belonging to that

political party, and so understood, the appellants who were thrown out or expelled from the party, did not belong to that political party nor

will they be bound by any whip given by that party, and so, they are unattached members who did not belong to any political party, and in

such a situation the deeming provision in sub-para (a) of the explanation to para 2(1) will not apply. We are afraid it is nothing but begging

the question. Para 1(b) cannot be read in isolation. It should be read along with paras 2, 3 and 4. Para 1(b) in referring to the legislature

party in relation to a member of a House belonging to any political party, refers to the provisions of paras 2, 3 and 4, as the case may be, to

mean the group consisting of all members of that House for the time being belonging to that political party in accordance with the said

provisions, namely, paras 2, 3 and 4, as the case may be. Para 2(1) read with the explanation clearly points out that an elected member shall

continue to belong to that political party by which he was set up as a candidate for election as such member. This is so notwithstanding that

he was thrown out or expelled from that party. That is a matter between the member and his party and has nothing to do so far as deeming

clause in the Tenth Schedule is concerned. The action of a political party qua its member has no significance and cannot impinge on the

fiction of law under the Tenth Schedule. We reject the plea solely based on clause 1(b) of the Tenth Schedule.â?? (emphasis supplied)

19. Therefore, as rightly contended by Mr. Rao during the course of his arguments, this Court is bound to give effect to the deeming fiction of the

Tenth Schedule of the Constitution of India and, notwithstanding the conflict currently existing between the members of the petitioner no.2 party, the

petitioner no.1 and respondent nos. 3 to 7 shall continue to be regarded, for the purpose of the 17th Lok Sabha, as representatives of the petitioner no.

2 and members of the same legislature party. In any event, it is well settled that the power to regulate the internal affairs of the House is the

prerogative of the Honâ??ble Speaker who shall exercise this power as he finds fit. In the absence of any prima facie procedural irregularities in the

appointment of respondent no.3 as the party leader of the petitioner no.2 in the Lok Sabha, I find absolutely no reason to exercise my writ jurisdiction

to interfere with the decision of the respondent no. 1.

20. Before I conclude, I may take note of the fact that upon the insistence of Mr. Bajpai that the representations submitted by petitioner no.1 and the

other office bearers of petitioner no.2 against the impugned circular dated 14.06.2021 ought to be decided by respondent no. 1 by way of a reasoned

order, the matter had been passed over to enable Mr. Rao to obtain instructions on this aspect. After pass over, Mr. Rao submitted that the issue

already stands considered by the respondent no. 1 in the light of the existing legal position, and it has decided that the grievance of the petitioners is an indirect ploy to legitimise their decision to expel respondent nos. 3 to 7 on 15.06.2021. For this reason, the respondent no. 1 did not deem it necessary to pass any further orders as regards the petitionersâ?? representation.

21. In these circumstances, and for reasons set out hereinabove, I find no merit in the petitionerâ??s case. The present petition, along with the pending application, stands dismissed with no order as to costs.