
(1992) 02 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 11 of 1992

Dr. Kashinath G. Jalmi and Another	APPELLANT
Vs	
The Speaker, Legislative Assembly of Goa and Others	RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 2 BomCR 113 : (1992) 94 BOMLR 874

Hon'ble Judges : M.L. Dudhat, J;E.S. Da Silva, J

Bench : Division Bench

Advocate : S.K. Kakodkar, S.A. and R.V. Kamat, for the Appellant; A. Dessai, M.S. Usgaoncar, B. Zaiwala, Senior Advs., A. Chinoy, M.J. Rajani, Ajay Khatlawala and V.P. Thali, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Dudhat, J.—Petitioners in this writ petition are the members of the Legislative Assembly of Goa. Respondent No. 1 is the speaker of the Legislative Assembly of Goa, Respondent No. 2 is the Deputy Speaker of the Legislative Assembly of Goa and respondent No. 3 is the Chief Minister of Goa. The petitioners have filed the present writ for quashing the order passed by the Deputy Speaker, respondent No. 2 dated 7th/8th March, 1991 whereby respondent No. 2 had reviewed and set aside the order of the earlier Speaker dated 15th February, 1991 disqualifying respondent No. 3 as a member of the Legislative Assembly of Goa.

2. At the admission stage it is contended by Mr. Kakodkar, learned Counsel appearing on behalf of the petitioners that the impugned order passed by the Deputy Speaker-respondent No. 2 dated 7th/8th March, 1991 is illegal, void and inoperative. According to the petitioners under Tenth Schedule to the Constitution there is no power given to the Speaker to review his own decision either express or implied and therefore the impugned order dated 7th/8th March, 1991 is without jurisdiction. Without prejudice to the aforesaid contentions the

learned Counsel Mr. Kakodkar, appearing on behalf of the petitioners has also attacked the aforesaid order on the ground that the Speaker referred to in para 6 of the Tenth Schedule to the Constitution does not include Deputy Speaker acting under Article 180(1) of the Constitution of India. Without prejudice to the aforesaid contentions lastly it was argued on behalf of the petitioners that the findings arrived at by the Deputy Speaker in the impugned order dated 7th/8th March, 1991 are perverse and therefore, illegal and void.

3. Mr. Kakodkar submitted that under para 6 of the Tenth Schedule to the Constitution the decision given by the Speaker on the point of disqualification of a member is final. In order to support his contention, the learned Counsel for the petitioners relied upon the decision in Hari Chand Aggarwal Vs. Batala Engineering Co. Ltd., wherein it has been laid down that the provisions giving jurisdiction must be construed strictly. By referring to the aforesaid authority it was contended on behalf of the petitioners that since para 6 of the Tenth Schedule to the Constitution refers to Speaker it is only Speaker who can give the decision in respect of complaints as regards disqualification of a member. He further contended that Tenth Schedule to the Constitution is self contained Code and therefore provisions under Article 180(1) of the Constitution will not be applicable in respect of provisions to disqualification on the ground of defection as mentioned in the Tenth Schedule to the Constitution. Mr. Kakodkar, the learned Counsel appearing on behalf of the petitioners also contended that the power of review is not inherent and must be conferred either specially by law or by necessary implication. To give stress on this proposition petitioners relied upon the ratio of the case decided by the Supreme Court in Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , and also in H.C. Suman and another Vs. Rehabilitation Ministry Employees Co-operative House Building Society Ltd. New Delhi and others, .

4. On the other hand, Mr. Ashok, Desai, learned Counsel appearing on behalf of respondent No. 3 submitted that Speaker being sole repository of the power with the control over the House has plenary power to review the order which was vitiated by the principles of natural justice. Speaker's power under the Tenth Schedule being plenary power of review which is inherent according to respondent No. 3 as per the ratio of the Supreme Court case in Shivdeo Singh and others v. State of Punjab and others, AIR 1963 S.C. 1909. He also relied on the commentary by M.N. Kaul and S.L. Shakhder on Practice and Procedure of Parliament, more particularly on the following para :---

"The Speaker has also certain inherent powers. As stated above, under his inherent powers the Speaker made observations, from time to time, regarding the presence of Ministers in the House and as a result thereof certain conventions have developed. Under his inherent powers, the Speaker may, in certain special cases, allow motions to be moved or withdrawn which are not covered by the rules of procedure, may order expunction of words from the proceedings of the House on any ground not provided for in the rule relating to

expunction, and may revise or correct a decision given by him earlier."

Respondent No. 3 further relied upon P.N. Eswara Iyer v. The Registrar, Supreme Court of India, , more particularly para 5 to reiterate the proposition that since the Speaker under the Tenth Schedule to the Constitution is repository of the tremendous power and since there is no appeal the power of review of the earlier order of the Speaker is inherent.

5. In this writ petition since we are deciding this writ petition on preliminary objection taken by respondent No. 3, we are not deciding the issue as to whether the Speaker or Deputy Speaker has got power to review the earlier decision given under the Tenth Schedule to the Constitution of India.

6. Mr. Ashok Desai has raised a preliminary objection to this petition. According to him this writ petition is liable to be dismissed on the ground of laches, waiver and estoppel, more particularly keeping in view the conduct of the petitioners. It was contended on behalf of the petitioners that the impugned order passed by the Deputy Speaker is dated 7th/8th March, 1991 and this writ petition is filed by the petitioners on 8th January, 1992. According to him this delay if condoned will cause irreparable prejudice to the respondents by the negligence on the part of the petitioners to come to the Court at the earliest opportunity, more particularly when this delay on the part of the petitioners appears to be deliberate. It was also contended on behalf of respondent No. 3 that delay in the present case is such that any intercession by admission would cause confusion, inconvenience and affect not only respondent but several other third parties. According to the learned Counsel appearing on behalf of the third respondent in the matters affecting any representative body it is of utmost importance that the challenge must be prompt and forthwith, more particularly when the rules framed under the Tenth Schedule to the Constitution show that everything must be done as expeditiously as possible.

7. As against this Mr. Kakodkar, learned Counsel appearing on behalf of the petitioners, contended that delay under writ jurisdiction is of no consequence. It was also contended on behalf of the petitioners that there was no duty whatsoever on the part of the petitioners to disclose before this Court in the earlier matters that the petitioners are going to challenge the impugned order dated 7th/8th March, 1991. Petitioners also denied that by condoning this delay any third party is likely to be effected.

8. In order to understand these rival contentions it is desirable to go through the chronology of the events.

9. In the Assembly of Goa there are 40 elected members. Their composition is as under:---

Of the said 40 members, 18 belonged to the Maharashtrawadi Gomantak Party and 20 to the Political Party known as the Congress (I). The remaining 2 members, namely Dr. Carmo R.A.J. Pegado and Shri Anant Narcinva Naik are

independent. The petitioner No. 2 is the leader of the Maharashtrawadi Gomantak Legislative Party.

10. Respondent No. 3, present Chief Minister, originally belonged to "M.G.P." (Maharashtrawadi Gomantak Party). It appears that on 24th December, 1990 respondent No. 3 and 7 M.L.A.S. including Shri Chopdekar and Shri Bandekar (who are respondents No. 3 and 4 in other companion writ petitions, being Writ Petition No. 8 of 92) formed splinter group known as "M.G.P. (Ravi Naik Group)". On 25th January, 1991 present respondent No. 3 became the Chief Minister. On this sole date i.e. on 25-1-1991 Dr. Kashinath Jhalmi petitioner No. 1 filed a petition for disqualification of respondent No. 3 before Speaker Shri Surendra Sirsat. On 29-1-1991 speaker issued a notice to respondent No. 3 calling upon him to forward his comments on the disqualification petition filed by petitioner No. 1 within seven days. Since respondent No. 3 was in hospital petitioner prayed for one month's time. On 6th February, 1991 Speaker granted time only upto 11th February 1991. It is the case of respondent No. 3 that in fact on earlier occasions in respect of other members Speaker had given long time while deliberately in his particular case very short time was given. Further it is contended on behalf of respondent No. 3 that Speaker ought not to have acted hastily more particularly when vote of no confidence was pending against him.

11. On 13th February, 1991 Assembly was summoned to enable respondent No. 3 to seek vote of confidence. On the same day petitioner No. 1 filed petition for disqualification of four MLAs. On 15-2-1991 Speaker Surendra Sirsat disqualified respondent No. 3 on the ground that he failed to establish 1/3rd of original M.G.P. members belonged to his group; that Shri Chopdekar and Shri Bandekar (respondents No. 3 and 4 in Writ Petition No. 8 of 1992) were no longer MLAs as they could not be counted for the purpose of split.

12. At this juncture it is pertinent to note that against the order of disqualification passed by the Speaker dated 13-12-1990 respondent No. 3 and 4 in Writ Petition No. 8 of 1992 had filed Writ Petition No. 321 of 90 and obtained stay of the order passed by the Speaker. In the said order passed by the Speaker it was also mentioned relying on the judgment of Rabi Ray, Speaker of Lok Sabha announced on 11-1-1991 that High Court's order of granting stay has no effect.

13. Being aggrieved by the aforesaid order dated 15th February, 1991 respondent No. 3 filed Writ Petition No. 48 of 1991 before the High Court of Bombay on the ground that the order is passed in violation of principles of natural justice, without giving proper opportunity, mala fide, without taking into consideration the orders passed by the High Court and without taking into consideration the relevant documents. The said writ petition was admitted on 18-2-1991, wherein the High Court passed the following order :---

"Rule returnable within four weeks. Interim stay of the impugned order of the respondent No. 4 dated 15-2-91. Shri Bhobe, Adv. G.P. takes notice for the respondent No. 4. Shri Rebello, Adv. takes notice for respondent No. 5. Advocate

General takes notice for respondent No. 2 and respondent No. 3 Shri Khandeparkar, Adv. takes notice for respondent No. 1. Notice to Attorney General".

On 18-2-1991 vote of confidence was passed on Chief Minister. On 27-2-1991 respondent No. 2 was elected as Deputy Speaker. Earlier Speaker Surendra Sirsat was removed from his office on 4th March, 1991 and from 4th March, 1991 respondent No. 2 was discharging the duty as Speaker in absence of Speaker.

14. On 4th March, 1991 present respondent No. 3 made an application to review the order of the Speaker passed on 15-2-1991. On the same day respondents No. 3 and 4 in Writ Petition No. 8 of 1992 also made an application to review the order of disqualification passed by the earlier Speaker dated 13-12-1990. On 7th/8th March, 1991 respondent No. 2 acting as Speaker reviewed the order in the matter of review application of respondents No. 3 and 4 in Writ Petition No. 8 of 1992 and set aside the order passed by the earlier Speaker dated 13-12-1990.

15. Thereafter on 22nd April, 1991 Writ Petition No. 48 of 1991 filed by respondent No. against the order of the Speaker dated 15-2-1991 came up for hearing. Since on 8th March, 1991 the order dated 15-2-1991 was set aside the following order was passed :---

"Heard Shri Pereira for petitioner. He stated that the petitioner has been re-qualified by the order passed by the Dy. Speaker in his capacity as Speaker. The petition is dismissed as not pressed in the circumstances, as obtaining now".

In the said Writ Petition No. 48 of 1991 present petitioner No. 1 was respondent No. 5. Thereafter on 7-1-1992 Mr. Ramakant Khalap, leader of the Opposition in Assembly filed Writ Petition No. 8 of 1992 against the order dated 7th/8th March, 1991 passed by the Deputy Speaker in review petition whereby Deputy Speaker set aside the order of disqualification passed by the earlier Speaker dated 13-12-1990. On 8th January, 1992 the present petition was filed against the order dated 7th/8th March, 1991 passed by the Deputy Speaker reviewing the order of disqualification passed by the Speaker.

16. After going through the aforesaid facts it is clear that the order of disqualifying the present respondent No. 3 passed by the speaker, was passed on the petition filed by present petitioner No. 1. Against the said order of the Speaker dated 15-2-1991 respondent No. 3 filed Writ Petition No. 48 of 1991. In the said writ petition, petitioner No. 1 was served and was represented by an Advocate. In, the said writ petition respondent was also interested in upholding of the said order dated 15-2-1991 passed by the Speaker as the same order was passed by the Speaker on his petition. In the said writ petition after hearing of the parties this High Court passed an interim order staying operation of the Speaker's order dated 15-2-1991. Thereafter on 7th/8th March, 1991 the earlier order passed by the Speaker disqualifying respondent No. 3 was set aside. In fact since petitioners No. 1 and 2 being member and leader respectively of the

Opposition were interested in setting aside the order passed by the Deputy Speaker dated 7th/8th March, 1991 reviewing the earlier order they could have immediately moved the High Court challenging the vires of the said Act. In the petition the petitioners at para 8 have stated as under :---

"(a) The petitioners state that the question whether the Speaker's decision under the Tenth Schedule to the Constitution of India was amenable to judicial review was under consideration of the Hon'ble Supreme Court since last year and has been finally answered in favour of judicial review in *Kihota Hollonon v. Mr. Zachilhu*, pronounced on November 12, 1991. The summary Supreme Court's judgment was available to the petitioners in the third week of December, 1991.

(b) In the foregoing circumstances, it is submitted that there is no delay in filing this petition. In any event, it is respectfully submitted that this Hon'ble Court should be pleased to condone the delay, if any".

According to us the above explanation given by the petitioners is just an eye-wash. Petitioners knew full well that when the Speaker passed the order of disqualification dated 13-12-1990 against respondents No. 3 and 4 in writ petition No. 8 of 1992 the High Court passed an interim order dated 14-12-1990 and granted stay of the Speaker's order. Further when present respondent No. 3 was disqualified by the order of the Speaker dated 15-2-1991 respondent No. 3 filed writ petition No. 48 of 91 and obtained interim order dated 18-2-91. Much subsequent to this the Speakers order which is subject matter of challenge in the present writ petition dated 7th/8th March, 1991 is passed. Therefore, in any event petitioners knew full well that relying on a Full Bench decision of the Punjab High Court in *Parkash Singh Badal and Others Vs. Union of India and Others*, , this High Court had granted interim relief against the order of the Speaker. Taking the aforesaid facts into consideration the explanation given by the petitioners in the present writ petition as to why they have not challenged the order dated 7th/8th March, 1991 passed by the Deputy Speaker till 8th January, 1992 is not trustworthy and cannot be accepted.

17. After the said decision of the Deputy Speaker granting review dated 7th/8th March, 1991 the writ petition filed by respondent No. 3 being writ petition No. 48 of 91 came up for hearing on 22nd April, 1991. At that time about 45 days had passed after the order of the Deputy Speaker which is subject matter of challenge in this petition. Therefore, when the aforesaid writ petition No. 48 of 91 came up before the Bench on 22nd April, 1991 the disqualification ordered by earlier Speaker by his order dated 15-2-1991 was set aside on 7th/8th March, 1991 and about 45 days time lapsed thereafter. Petitioner No. 1's Advocate was also present on 22nd April, 1991 when Writ Petition No. 48 of 91 came up for hearing. Respondent No. 3's Advocate has mentioned that in view of the fact that the earlier order of the Speaker challenged in this writ petition is set aside by the Deputy Speaker in review the writ petition does not survive. Petitioner No. 1's Advocate does not make any submission on behalf of petitioner No. 1. All this

resulted in passing the following order:---

"Heard Shri Pereira for petitioner. He states that the petitioner has been re-qualified by the order passed by the Dy. Speaker in his capacity as Speaker. The petition is dismissed as not pressed in the circumstances as obtaining now".

With result by the aforesaid order petition in Writ Petition No. 48 of 91 along with interim order dated 18-2-1991 staying Speaker's order dated 15-2-1991 also became ineffective because of the dismissal in the above circumstances. Further even thereafter petitioners have filed the present writ petition on 8th January, 1992 and therefore the time lapsed between the impugned order dated 7/8th March, 1991 passed by the Deputy Speaker reviewing the earlier order of the Speaker and filing of the writ petition thereafter on 8th January, 1992 is about ten months which is enormous.

18. As against this explanation given by the petitioners as pointed out above is not trustworthy and therefore it is on this ground alone the petition is liable to be dismissed.

19. Mr. Ashok Dessai, learned Counsel appearing on behalf of the respondent No. 3, relied upon the ratio decided in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , as under:---

"The Court will not inquire into belated and state claims or take note of evidence of neglect of one's own rights for a long time. The party claiming Fundamental Rights must move the Court before other rights of innocent parties emerge by reason of delay on the part of the person moving the Court".

By applying the aforesaid observations as made by the Supreme Court the petitioners being negligent in filing the aforesaid writ petition after ten months are not entitled to get any relief from the Writ Court and therefore, on the count of delay of ten months on the part of the petitioners without any explanation by itself is sufficient to dismiss this petition.

20. It was also argued on behalf of respondent No. 3 that irreparable prejudices will be caused to the respondent by negligence on the part of the petitioners to come to the Court at the earliest opportunity and therefore for not coming within reasonable time Court will be justified in holding that delay is deliberate. Further according to petitioners in any event on totality of the facts delay causes grave prejudice to respondent No. 3. To stress this proposition respondent No. 3 has relied in the decision of Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, . In the aforesaid case more particularly in para 11, the Supreme Court observed as follows:---

"It is well established that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, similar to though not identical with, the exercise of discretion in the Court of Chancery".

In this particular case it is an admitted position that the order of the Speaker disqualifying respondent No. 3 was challenged by the petitioners in the High Court in Writ Petition No. 48 of 1991. In the said writ petition on 18-2-1991 interim stay of the Speaker's order was also issued by the High Court. On 22nd April, 1991 when the said writ petition came up for hearing, by his order dated 7th/8th March, 1991 the Deputy Speaker already reviewed the earlier order and about 45 days lapsed from the date of the said review till 22-4-1991 when the writ came up for final hearing. Since the order challenged was set aside, the writ petition could not survive and therefore the said writ petition was dismissed by recording that in view of the order of the Deputy Speaker petition not pressed. Now if the High Court allows the petitioners to challenge the order of the Deputy Speaker dated 7th/8th March, 1991 after ten months, irreparable loss would be caused to respondent No. 3. It is not possible for respondent No. 3 to challenge the earlier order of the Speaker disqualifying him dated 15-2-1991 and therefore this is a case whereby because of the delay on the part of the petitioners irreparable loss will be caused to respondent No. 3. Further the explanation given in the writ petition about the cause of delay as pointed out earlier is not trustworthy and therefore this is a case where we can safely say that there was deliberate delay on the part of the petitioners to file the present writ petition after a lapse of ten months. According to our opinion, facts and circumstances in this writ petition definitely come within the ambit of the aforesaid observations made by the Supreme Court in Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, . It was further argued on the part of respondent No. 3 that if such a delay of ten months in the facts and circumstances of this particular writ petition is condoned it will cause confusion, public inconvenience and it will affect not only respondent No. 3 but also third parties. For this proposition respondent No. 3 relied on the observations made in State of M.P. and Others Vs. Nandlal Jaiswal and Others, , relevant at page 272:---

"Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an

important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction".

In the present case there is time lapse of ten months between the impugned order and filing of the writ petition. As pointed earlier explanation given for the cause of delay is not trustworthy, that means delay in this case is virtually unexplained. Further respondent No. 3 being the Chief Minister must have passed several orders during the course of ten months. By this right of third parties might have intervened and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay it may have effect of inflicting not only hardship and inconvenience but also injustice to third parties. This writ petition according to our opinion is virtually filed to invoke High Court's jurisdiction with unexplained delay with creation of third parties rights in the meanwhile and therefore we are of the opinion that this is not a fit case to exercise our jurisdiction in the present case.

21. Lastly it was argued on behalf of respondent No. 3 that in the matter of representation in representative body it is of utmost importance that the challenge must be prompt and forthwith. Further the rules framed in the Extraordinary Gazette dated 17th July, 1986 in exercise of powers conferred by paragraph 8 of the Tenth Schedule to the Constitution of India, read with section 14A of the Government of Union Territories Act, 1963, in the Rules at every stage time is specified. This, according to respondent No. 3 only shows that Legislature intends to see that matters under Tenth Schedule are disposed of as expeditiously as possible. Mr. Kakodkar, the learned Counsel appearing on behalf of the petitioners submits that though in the said rules time is prescribed at every stage, however for giving the final decision by the Speaker no time limit is prescribed. However, according to our opinion, Speaker's post is very high and responsible post and therefore Legislature must have not fixed the time. Further whenever the time is not prescribed the matters are to be dealt with by applying the doctrine of reasonableness.

22. The learned Counsel Mr. Ashok Dessai for respondent No. 3 has relied upon the decision in Ashok Kumar Mishra and Others Vs. Collector, Raipur and Others, as under:---

"It is well-settled that the power of the High Court under Article 226 of the Constitution to issue an appropriate writ is discretionary and if the High Court finds that there is no satisfactory explanation for the inordinate delay, it may reject the petition if it finds that the issue of writ will lead to public inconvenience and interference with rights of others. This rule applies also to a case in which the validity of an execution to a local authority is challenged. The question whether in a given case the delay involved is such that it disentitles a person to relief under Article 226 is a matter within the discretion of the High Court which as in all matters of discretion has to exercise it judiciously and reasonably having regard to the surrounding circumstances."

It is true that the aforesaid observations made by the Supreme Court were made in the matter of elections to the local authority and not in respect of proceedings in the Assembly. However, in respect of matters affecting representations in representative body under Schedule 10 to the Constitution of India according to our opinion it is of utmost importance that challenge to any impugned order must be prompt and forthwith. In the present proceedings promptness to challenge the order of the Deputy Speaker is conspicuously lacking. On the contrary facts and circumstances in the present case compel us to arrive to a conclusion that delay of ten months in approaching the High Court is deliberate and is therefore unexplained.

23. After taking into consideration the above mentioned facts and the submissions we are of the opinion that by not challenging the order of the Deputy Speaker dated 7th/8th March, 1991 within reasonable time and by taking the role of silent spectator at the time of order of dismissal dated 22-4-1991 in Writ Petition No. 48 of 1991 the petitioners by their conduct are estopped from challenging the impugned order of the Deputy Speaker dated 7th/8th March, 1991.

24. In the light of the aforesaid circumstances we dismiss this writ petition at admission stage on the preliminary ground as raised by respondent No. 3.