

(1990) 12 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 324 of 1990

Dr. Luis Proto Barbosa

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 93 BOMLR 90

Hon'ble Judges : Sujata Manohar, J;E.S. Da'Silva, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sujata Manohar, J.—The petitioner has challenged in this writ petition an order of the third respondent dated December 14, 1990 disqualifying him from membership of the Legislative Assembly of the state of Goa. The petitioner was elected as a Member of the Goa Legislative Assembly on November 26, 1989 on the Congress (I) party ticket. He was elected as speaker of the Assembly on January 22, 1990. On March 24, 1990 the petitioner, while holding the office of speaker, resigned from the Congress (I) along with six other members of the said party. These persons formed a new political party which they designated as the Goan People's Party. The resignation of the petitioner was accepted by the Congress (I) party on March 25, 1990.

2. On March 28, 1990 the fourth respondent who is also a Member of the Goa Legislative Assembly, filed a petition for disqualification of the petitioner from the membership of the Legislative Assembly under the Tenth Schedule of the Constitution of India and the Rules framed thereunder by the speaker, Goa, Daman and Diu Legislative Assembly, known as the Members of Goa, Daman and Diu Legislative Assembly (Disqualification on ground of Defection) Rules, 1986.

3. In paragraph 6 of the Tenth Schedule to the Constitution of India, proviso to Sub-paragraph (1) states that where a question has arisen as to whether the

Chairman or the speaker of the House has become subject to disqualification, the question shall be referred for the decision of such Member of the House as the House may elect in this behalf, and his decision shall be final. Accordingly, on March 29, 1990 respondent No. 3 was elected by the members of the House to decide this petition. On April 10, 1990 he gave notice to the petitioner of the filing of this petition and directed him to submit his reply.

4. The petitioner thereafter resigned as the speaker of the Assembly on April 14, 1990. He filed his reply on April 30, 1990. A hearing was given to the petitioner by the respondent No. 3. Thereafter by his order dated December 14, 1990 which is an elaborate speaking order, the 3rd respondent has disqualified the petitioner from the membership of the Assembly.

5. The first contention which has been raised before us relates to the provisions of the Members of Goa, Daman and Diu Legislative Assembly (Disqualification on grounds of Defection) Rules, 1986. Under Rule 6(6) of these Rules every petition is required to be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings. In the present case the petition is so signed and verified. Rule 6(7) requires every annexure to the petition also to be signed by the petitioner and verified in the same manner as the petition. According to the petitioner this has not been done in the present case. Under Rule 7(2) of these Rules, if the petition does not comply with the requirements of Rule 6 the speaker shall dismiss the petition. According to the petitioner, in view of the fact that the annexures to the petition have not been signed by the petitioner and verified as per Sub-rule (7) of Rule 6, the petition is liable to be dismissed.

6. In support of his contention the petitioner has relied upon the copies of the annexures which have been furnished to him. The annexures consist of newspaper cuttings except for two documents, (i) a letter addressed by His Excellency the Governor to Shri Rane dated March 24, 1990 and (ii) a letter addressed by the petitioner and six other members to the President of the Goa Pradesh Congress-I Committee and dated March 24, 1990. There is no dispute about the veracity of these letters. The copies of the Annexures supplied to the petitioner are unsigned and unverified. Respondent No. 3 however, has stated in his Order that the annexures which are filed with the petition are signed by the petitioner as true copy of the original. Mr. Rebello, learned advocate for respondent No. 3 has pointed out that the original annexures are now not in his possession as the same were handed over to the speaker. The petitioner has merely relied upon the copies supplied to him in support of his contention. The only statement relating to the annexures to the petition is, therefore, the statement made in the order that the annexures to the petition are signed by the petitioner as true copies of the original. We have not been shown any reason for doubting this statement. It is true that the annexures do not appear to have been verified in the same manner as the petition. But in view of the fact that these have been signed by the petitioner as true copies of the original the provisions of

Rule 6 are substantially complied with. The non-verification in the prescribed form is a procedural irregularity which does not vitiate the order.

7. The second submission made before us relates to the jurisdiction of respondent No. 3 to decide the petition. It is submitted that at the time when the petition was decided, the petitioner was no longer the speaker of the assembly. Hence the respondent No. 3 had no jurisdiction to decide the petition. Under paragraph 6 of the Tenth Schedule to the Constitution, the question of disqualification of a member of the Assembly has to be decided by the speaker. The proviso to paragraph 6 states that when it is a question of the disqualification of the speaker of the House, it has to be decided by a member of the House elected in this behalf by the House. Whether the proviso applies or not will depend upon whether the speaker is sought to be disqualified or not. The relevant date for this purpose is the date when the action complained of occurs. If it is the action of the speaker, the proviso is attracted. In the present case the conduct of the petitioner which gave rise to the petition for disqualification was his conduct as the speaker. The disqualification petition was also filed at a time when the petitioner was the speaker. On the date when respondent No. 3 was elected by the House to decide the disqualification petition, the petitioner was the speaker. On such election, respondent No. 3 became invested with the jurisdiction to decide the petition. It was only thereafter that the petitioner resigned as speaker. We do not see anything in paragraph 6 which will divest a duly elected member, invested with the jurisdiction to hear such a dispute of his jurisdiction at a later date if the speaker ceases to be the speaker. Both on the date of the impugned conduct and on the date of respondent No. 3's election to decide the question of disqualification the petitioner was the speaker. His subsequent resignation as speaker does not divest respondent No. 3 of jurisdiction validly conferred on him.

8. Mr. Usgaonkar, learned Advocate for the petitioner relied upon a decision the case of *Musamia Imam Haider Bax Razvi Vs. Rabari Govindbhai Ratnabhai and Others*, . In that case, under the relevant Act, Mamlatdar was given the exclusive jurisdiction to decide whether a person was a tenant on the appointed day. The Supreme Court held that he had no jurisdiction to decide whether a person was a tenant at some time in the past prior to the appointed day. The jurisdiction of the Civil Court to decide this question was not ousted. We fail to see how this case helps the petitioner. In the absence of any specific provision, substantive jurisdiction of respondent no.3 to decide the dispute is not taken away by the petitioner subsequently resigning from speakership during the pendency of the inquiry.

9. The last contention which has been urged before us relates to the interpretation of paragraph 5 of the Tenth Schedule. Under paragraph 5, "Notwithstanding anything contained in this Schedule, a person who has been elected to the Office of the speaker...shall not be disqualified under this schedule-

(a) if he, by reason of his election to such office, voluntarily gives up the

membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party:

10. Mr. Usgaoncar, learned advocate for the petitioner has submitted with some force before us that under paragraph 5 a speaker, by reason of his election to the office of speaker, may voluntarily give up the membership of the political party to which he belongs without incurring any disqualification under paragraph 2, so long as he does not rejoin that political party during his term as speaker or becomes a member of another political party during his term as speaker. He has contended that in the present case, since the petitioner did not resign from membership of his political party on the ground that he had become the speaker, the provisions of paragraph 5 do not come into operation. Respondent No. 3, however, has interpreted paragraph 5 to mean that during the time that a person holds the office of a speaker he cannot become a member of another political party. The provisions of paragraph 3 of Tenth Schedule which deal with the case of a split in the party, do not apply to provisions of paragraph 5. We are not sitting in appeal over the decision of respondent No. 3. We, therefore, do not propose to go into the question whether the interpretation put on paragraph 5 by respondent No. 3 is correct or incorrect. What we have to consider is whether the view taken by respondent No. 3 is a possible view or whether it is wholly unreasonable or perverse. If it is latter, we can intervene. Otherwise the authority to decide this question is conferred on the respondent No. 3 under paragraph 6. In our view, it cannot be said in the present case that the interpretation put on paragraph 5 is unreasonable or perverse.

11. It was submitted by Mr. Usgaoncar that there is non-application of mind on the part of respondent No. 3 in construing paragraph 5 of the Tenth Schedule because he has not taken into account the rights of the petitioner as a Member of the Assembly and the provisions of paragraph 2 and 3 as applicable to him as such a Member. In the impugned order however, issues Nos. 2, 3 and 4 which are framed in paragraph 38 directly deal with this question. These issues are as follows:

(ii) whether while continuing to be in the office of speaker he can voluntarily give up the membership of his political party for any cause other than election to the office of speaker and still remains without incurring any disqualification under the schedule.

(iii) Whether speaker after giving up the membership of his political party can join a newly formed party or form his own new political party.

(iv) Whether the speaker can be treated as ordinary member of House for the purpose of para. 3 of the schedule.

12. They have been answered against the petitioner. It cannot therefore be said that the order suffers from non-application of mind on the part of respondent No. 3.

13. This is also not a case where a fair hearing has not been given or where any principles of natural justice have been violated. In the premises we do not see any reason for entertaining a petition under Article 226 of the Constitution.

14. The petition is therefore dismissed. No order as to costs in the circumstances of the case.

15. Mr. Usgaoncar applies for leave to appeal to the Supreme Court. In our view no substantial questions of law of any public importance arise as far as this writ petition is concerned. Leave refused.