

(1982) 12 PAT CK 0025

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4103 of 1982

Karpoori Thakur

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 16-12-1982

Acts Referred:

Bihar Legislature (Leader of Opposition Salary and Allowances) Act, 1977 — Section 2
Constitution of India, 1950 — Article 194, 195, 212, 226

Citation : AIR 1983 Patna 86 : (1983) PLJR 152

Hon'ble Judges : Nagendra Prasad Singh, J; Anand Prasad Sinha, J

Bench : Division Bench

Advocate : K.D. Chatterjee, P.K. Joshi, R.C. Thakur and J.P. Karn, for the Appellant; R.B. Mahto, Addl. Adv General, Barendra Prasad and Ganga Prasad Bimal, Jr. Counsel to A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Prasad Singh, J.—The controversy in this writ application is as to whether the cancellation of recognition of the petitioner as the leader of opposition in the Bihar Legislative Assembly was valid and legal. It is an admitted position that earlier the Speaker of the said Assembly had recognised this petitioner as Leader of Opposition. The decision of the Speaker was communicated to the petitioner under letter dated 1-7-1980, a copy whereof is An-nexure-2 to the writ application. In that communication it was mentioned that as the petitioner was the leader of a party which had the strength of 42 in the Assembly which had the greatest numerical strength of a party in opposition, the Speaker was declaring the petitioner as the leader of opposition in the Assembly. It appears that later there was a split in the party of which the petitioner was the leader and the strength of the party of which the petitioner remained the leader was reduced to 31. The impugned communication dated 4-10-1982 was issued on behalf of the speaker saying that as the number of the members in the Assembly of the party of which the petitioner was the leader had been reduced from 42 to 31, the recognition of petitioner as leader of opposition was being

cancelled. A copy of the impugned communication is Annexure-1 to the writ application.

2. There is no dispute that the party of which the petitioner is the leader has still the largest numerical strength on the opposite side in the Assembly. According to the petitioner, till the party in opposition of which he is the leader commands the greatest numerical strength in the Assembly, the speaker has to continue to recognise him as the leader of the opposition.

3. The State of Bihar and the Speaker, Bihar legislative Assembly are the respondents to this writ application. The Speaker has not entered appearance, but counter-affidavit has been filed on behalf of the State of Bihar. Learned Additional Advocate General, who appeared for the State of Bihar, informed the Court that the Speaker has notice about the date of hearing of this writ application. This statement has been noted in the order dated 4-12-1982 of this court.

4. On behalf of the respondent-State the main objection has been raised regarding the maintainability of this writ application in view of Article 212 of the Constitution of India which bars any enquiry regarding the validity of any proceeding in the Legislature of State by court. While justifying the action of the Speaker on merit it has been stated on behalf of the State that for being designated as leader of opposition the person concerned should not only be the leader of a party which has the greatest numerical strength but the party in question must have one-tenth strength of the total members in the Assembly. So far as the Bihar Legislative Assembly is concerned; the total number of the members being 325, any party in opposition the leader of which is to be recognised as the leader of opposition must have at least 33 members.

5. In Parliamentary form of Government the importance of opposition has been long recognised. In England, where the Parliamentary form of Government was evolved, at a very early stage the necessity of an official opposition by the largest minority party which should be prepared in the event of resignation of the Government to assume office was recognised. With this object in view, the leader of such opposition party and some of his principal colleagues form a group popularly known as a "shadow cabinet", each member of which is given a particular activity. Realising the importance of the office of the leader of such opposition party, the leader of the opposition was allowed certain privileges and ultimately a statutory recognition was accorded. In India, because of so many separate parties in opposition, on many occasions there has arisen problem in recognising a leader of opposition in the Parliament as well as in the Assembly of the different States. However, the Parliament as well as the Bihar Legislature have by statutes granted certain statutory benefits like salary, official residence, to the leader of opposition in the House. The Bihar Legislature (Leaders of Opposition Salary and Allowances) Act, 1977 (hereinafter to be referred to as "the Act") governs the benefits to which the leaders of opposition in the Bihar Legislative Assembly and Bihar Legislative Council are entitled.

6. Learned Additional Advocate General appearing on behalf of the respondent State took a preliminary objection regarding the maintainability of this writ application saying that the petitioner has questioned a proceeding of the Legislature of the State, validity whereof cannot be enquired into by this Court in view of Article 212 of the Constitution. In this connection, he also placed reliance on the case of *Bradlaugh v. Gossett* (1884) 12 QBD 271 where it was pointed out that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings. It was emphasised that what is said or done within the walls cannot be enquired into in a court of law. In that case the House of Commons had forbidden one of its members from taking his seat in the House which was being challenged. While upholding the right of the Parliament reference was made to Blackstone's saying, "The whole of the law and custom of Parliament has its origin from this one maxim, that whatever matter arises concerning either House of Parliament (it?) ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere."

7. The Constitution of India while defining "State" in Article 12 of the Constitution has included not only the Government but also the Parliament of India and Legislature of each of the States. From time to time controversy has arisen as to whether the Legislature while exercising its functions under the Constitution is subject to judicial scrutiny by courts. On behalf of the Legislature always it has been asserted that it has inherent right to conduct its affairs without interference from any outside body; it is the sole Judge of its own procedure being sovereign in its own sphere. However, now in view of series of judgments of the Supreme Court it is almost established that Legislature in India is not a sovereign body uncontrolled and with unlimited powers in the same sense as the British Parliament is the functions of such Legislatures in India are hedged in by limitations of a written, constitution which distributes power between Legislature; Executive and Judiciary and in many respects their actions can be matter of judicial scrutiny. In re. Article 143, Constitution of India and Delhi Laws Act (1912) etc. AIR 1951 SC 332 it was observed as follows:--

".....the principal point of distinction between the British Parliament and the Indian Parliament remains and that is that the Indian Parliament is the creature of the Constitution of India and its powers, rights, privileges and obligations have to be found in the relevant Articles of the Constitution of India. It is not a sovereign body, uncontrolled with unlimited powers."

However, even the Indian Constitution indicates the sphere which is beyond the scrutiny by the courts. Article 212 of the Constitution is one such limitation on the power of the court. Article 212 of the Constitution is as follows.-

"(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are

vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers,"

8. On a plain reading of aforesaid Article 212 of the Constitution it will appear that framers of the Constitution have barred an enquiry in respect of any proceeding in the Legislature on the ground of any alleged irregularity of procedure. If the procedure followed is unconstitutional or illegal than the jurisdiction of the court to examine the validity of a proceeding based on such procedure has not been ousted. This aspect of the matter has been examined by the Supreme Court in the well known reference under Article 143 of the Constitution of India and the opinion is reported in In the matter of: Under Article 143 of the Constitution of India, ; where while considering the scope of Article 212 it was pointed as follows (at p. 768):

"Article 212 (1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the Legislative Chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from any illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular."

9. On behalf of the petitioner it was submitted that in view of the fact that the recognition or de-recognition of a leader of opposition in the Assembly is governed by a statute, meaning thereby the aforesaid Act, if the Speaker takes a decision on that question in contravention of the said Act such decision is bound to be illegal, and there is no question of applicability of bar under Article 212 of the Constitution. Assuming this argument to be correct, the question which has to be examined is as to whether the right of the petitioner to be recognised as a leader of the opposition flows from the said Act. The object mentioned in the said Act is "To determinate the salary and allowances to the Leader of the Opposition in the Bihar Legislature". Section 2 defines "Leader of Opposition" as follows:--

"In this Act, "Leader of the Opposition" in relation to either House of the Legislature means a member of the Bihar Legislative Assembly or the Bihar Legislative Council, as the case may be, who is for the time being, the leader in that House of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Speaker of the Bihar Legislative Assembly or the Chairman of the Bihar Legislative Council, as the case may be."

"Explanation -- Where there are two or more parties in opposition to the Government, in the Legislative Assembly or the Legislative Council, having the same numerical strength, the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, shall, having regard to the status of the parties, recognise any one of the leaders of such parties as the

Leader of the Opposition for the purposes of this section and such recognition shall be final and conclusive."

The other sections make specific provisions regarding salary, field allowance, residence, travelling allowance, advance for purchase of motor car and grant of conveyance allowance to the leader of opposition. According to the petitioner, as he is still the leader of a party which has the greatest numerical strength in the Assembly, the Speaker could not have de-recognised his status as such and thus deprived Mm of the benefits granted to him under the statute.

10. On behalf of the respondent it has been urged that in India it has been established by a convention that before a Leader of Opposition of a party is recognised as the Leader of Opposition the party concerned must have one-tenth of the numerical strength of the House in question, and it is not enough that he is the leader of the party which has the greatest numerical strength. In support of this, reference was made to Practice and Procedure of Parliament by M. N. Kaul and S. L. Shakdher, Chapter XIV of the said book deals with recognition of political parties in Parliament. It points out that one of the conditions for recognition of a political party in Parliament has been that the said party should be able to command a strength which is one-tenth of the total membership. Several precedents of the decisions in the Lok Sabha have been given in the said Chapter. During different sessions when none of the parties in opposition had one-tenth of the total membership of the Lok Sabha there was no leader of opposition. According to the learned Additional Advocate General, the impugned decision of the Speaker is based on this well settled practice.

11. In view of the definition u/s 2 of the Act, for a person to be leader of opposition two conditions should be fulfilled, i. e., (i) he should be leader of a party having the greatest numerical strength, and (ii) he should be recognised as such by the Speaker. What is the scope of the power of Speaker while recognising a person as the leader of opposition? Has he only to satisfy himself about the fact that such person is the leader of a party in opposition which has the greatest numerical strength in the Assembly or while exercising that power he can also examine that the party which has greatest numerical strength is not a political party capable of furnishing a leader of the opposition in view of the precedents of the Lok Sabha and other Legislatures of the State, as the party concerned has strength less than one-tenth of the total membership of the Assembly? In the Act there is no indication as to what other factors have to be taken into consideration by the Speaker for purpose of recognition. In fact, none of the sections of the Act in terms Imposes any duty on the Speaker to recognise any Leader of Opposition. I have already referred to the different provisions of the Act. Its sole object is to make provisions for payment of salary, allowances and certain other benefits to leader of opposition. With that object in view, the Act gives the definition of leader of opposition. There is no provision in the Act which enjoins the Speaker to recognise the leader of a party having the greatest numerical strength, to be the leader of opposition. The power of recognition of

any such leader by the Speaker is not to be exercised under this Act. If the Speaker recognises any person who is the leader of a party in opposition having greatest numerical strength as the leader of opposition, he is doing so on the basis of the practice prevailing and, therefore, has to follow the other requirements of such practice and convention.

12. Learned counsel appearing for the petitioner fairly conceded that there is no specific provision under the Act which enjoins the Speaker to recognise any person as the leader of opposition during a session of the Assembly nor any procedure for such recognition has been prescribed under the Act. According to the learned counsel, although Section 2 is labelled as definition, it should be read as a substantive provision of the Act which while defining the expression "Leader of Opposition" also casts a statutory duty On the Speaker to recognise the leader of the party having greatest numerical strength in the House, as the leader of opposition. It is difficult to accept this contention. Section 2 which defines "leader of opposition" cannot be construed to mean that it enjoins Speaker to recognise any such person in the Assembly as the leader of opposition. In my view, whenever the Speaker recognises any person as a leader of opposition he does so on the basis of precedent or practice of the Legislature in question, keeping in view at the same time, the definition in the Act, If the basis of recognition is not the Act in question but the practice prevailing then he has to follow the practice of recognising the leader of an opposition party which has not only the greatest numerical strength as required by the definition in the Act, but has also one-tenth of the total membership of the House. In that event, it is difficult to hold that the impugned decision is illegal or unconstitutional. Accordingly, this writ application is dismissed, but, in the circumstances, there will be no order as to costs.

Anand Prasad Sinha, J.

13. I agree.