

(2013) 01 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25527 of 2012

Konda Muralidhar Rao

APPELLANT

Vs

Dr. A. Chakrapani, Hon''ble Chairman, A.P. Legislative
Council, Legislative Secretariat, Saifabad, Hyderabad, and 3
Others

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Constitution of India, 1950 — Article 136, 191(2), 226, 227

Citation : AIR 2013 AP 65 : (2013) 2 ALD 764 : (2013) 2 ALT 310

Hon'ble Judges : Sri, J;G. Rohini, J;C. Praveen Kumar, J

Bench : Full Bench

Advocate : A.T.M. Ranga Ramanujam, Rep. and Sri A. Prabhakar Rao, for the Appellant; A. Sudershan Reddy, Advocate General for Respondents 1 to 3 and Sri P. Kesava Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This writ petition is filed seeking a Certiorari to call for the records relating to the order dated 30.07.2012 in Disqualification Petition No. 2 of 2012 on the file of the 2nd respondent and to quash the same being arbitrary and illegal. The writ petitioner was a member of the Indian National Congress Party and he was elected as a member of the A.P. Legislative Council from the Local Bodies Constituency of Warangal on 2.5.2007 for a period of six years. The 4th respondent herein who is also a member of the A.P. Legislative Council and Government Whip of Indian National Congress Party in A.P. Legislative Council filed a petition under para-2 (1) (a) of Tenth Schedule read with Article 191 (2) of the Constitution of India and Rule 6 of the Rules called the Members of A.P. Legislative Council (Disqualification on ground of Defection) Rules, 1986 (for short, "the Rules") seeking a declaration that the writ petitioner is disqualified for being a member of the Legislative Council of A.P. alleging inter alia that the writ petitioner who got elected as a member of Legislative Council of A.P. on the B-Form issued by the Indian National Congress had participated in various anti-

party activities and thus he had voluntarily given up his membership of Indian National Congress Party. In pursuance thereof, a show-cause notice together with a copy of the petition presented by the 4th respondent and the enclosed documents was served on the writ petitioner on 17.1.2012 calling upon him to explain the allegations. Having entered appearance through his counsel before the 2nd respondent, the writ petitioner filed a detailed counter denying the allegations made in the Disqualification Petition. After hearing both the parties, the 2nd respondent by the impugned order dated 30.07.2012 held that it was established that the writ petitioner had voluntarily given up his membership of the Indian National Congress and thus he was disqualified for being a member of the A.P. Legislative Council. Aggrieved by the said order, the present writ petition is filed.

2. The 4th respondent filed a counter-affidavit supporting the impugned order and raising an objection as to the very maintainability of the writ petition in view of the finality clause in para-6(1) of the Tenth Schedule to the Constitution of India.

3. We have heard Sri A.T.M. Ranga Ramanujam, the learned Senior Counsel representing Sri A. Prabhakar Rao, the learned counsel for the writ petitioner, Sri A. Sudershan Reddy, the learned Advocate General appearing for the respondents 1 to 3 and Sri P. Kesava Rao, the learned counsel appearing for the respondent No. 4.

4. The question relating to the jurisdiction under Article 226 of the Constitution of India to entertain a writ petition against the decision made under para-6(1) of the Tenth Schedule to the Constitution of India is no longer res integra. Having considered all the relevant aspects in detail, a Constitution Bench in *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, held that the concept of statutory finality embodied in para-6 of the Tenth Schedule does not detract from or abrogate judicial review under Articles 136, 226 & 227 of the Constitution of India insofar as infirmities based on violations of Constitutional mandates, mala fides, non-compliance with rules of natural justice and perversity are concerned. This view has been reiterated in various later decisions including the decision of another Constitution Bench in *Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others*,

5. Therefore, we have no doubt that the present writ petition is maintainable, however the grounds of challenge are limited to violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity. In the light of the ratio laid down in the above decisions, it is also clear that the irregularity, if any, in the procedure can be no ground to challenge the order made by the 2nd respondent under para-6 of the Tenth Schedule.

6. Coming to the merits of the case, the allegations made in the Disqualification Petition filed by the 4th respondent before the 2nd respondent praying for disqualification of the writ petitioner can be summed up as under:

(1) The writ petitioner while continuing as a member of the Indian National Congress Party joined hands with Mr. Y.S. Jaganmohan Reddy, who rebelled and resigned from the primary membership of the Indian National Congress Party and took active part in agitations lead by Mr. Y.S. Jaganmohan Reddy against the ruling Government.

(2) On 22.12.2010 the writ petitioner declared allegiance and solidarity towards the Lakshya Deeksha organised by Mr. Y.S. Jaganmohan Reddy and his group and also actively participated in the agitation contrary to the wish and decision of the Indian National Congress Party.

(3) The writ petitioner had also presided over several meetings of Mr. Y.S. Jaganmohan Reddy.

(4) On 11.01.2011 he had participated in Jal Deeksha organized by Mr. Y.S. Jaganmohan Reddy at New Delhi declaring open support to him.

(5) The writ petitioner had participated in the agitation organized by Mr. Y.S. Jaganmohan Reddy and his group from 18.02.2011 to 24.02.2011 at Hyderabad about the fees reimbursement and he had also affirmed his support to Y.S. Jaganmohan Reddy and the political party which was going to set up by him.

(6) The writ petitioner had participated in the celebrations on 11.3.2011 on the occasion of inauguration of YSR Congress Party at Idupulapaya which revealed that he had voluntarily abandoned his loyalty towards Indian National Congress Party.

(7) The writ petitioner started actively campaigning for YSR Congress Party after the nominations were filed by Y.S. Jaganmohan Reddy and his mother for the Parliamentary seat at Kadapa and Assembly Constituency at Pulivendula respectively.

(8) The writ petitioner was teaming up with the MLAs of Mr. Y.S. Jaganmohan Reddy openly outside and inside the premises of the A.P. Legislative Council and A.P. Legislative Assembly and was giving statements without there being any official stand in that regard taken by the Indian National Congress Party.

7. To substantiate the above said instances, the 4th respondent had filed before the 2nd respondent various newspaper reports, video clippings and etc. In pursuance thereof, a show-cause notice dated 17.01.2012 was served on the writ petitioner furnishing the copies of the petition and supporting documents filed by the 4th respondent and calling upon him to submit his explanation.

8. The writ petitioner filed his counter-affidavit on 21.02.2012 denying the allegations made in the Disqualification Petition. Though he admitted that he had participated in Lakshya Deeksha agitation and Jal Deeksha organized by Mr. Y.S. Jaganmohan Reddy, it was contended by him that his participation cannot be construed as an anti-party activity attracting any disqualification. With regard to his participation in the agitation with regard to fees reimbursement, it was

contended that his participation was only to show solidarity to the students for fees reimbursement and it cannot be taken as supporting the group of Mr. Y.S. Jaganmohan Reddy. So far as his visit to Idupulapaya is concerned, it was pleaded that he visited Idupulapaya only to pay homage to late Mr. Y.S. Rajasekhar Reddy.

9. Before the 2nd respondent, the 4th respondent got himself examined as P.W. 1 and he was also cross-examined by the writ petitioner's counsel. Altogether 37 documents marked as Exs. P-1 to P-37 were produced in evidence through P.W. 1. However the writ petitioner did not choose to lead evidence on his behalf. After hearing the arguments of both the sides, the 2nd respondent by the impugned order dated 30.07.2012 held that the plea in the Disqualification Petition that the writ petitioner had voluntarily given up his membership of Indian National Congress was established. Thus he was disqualified for being a member of the Legislative Council.

10. Pointing out that all the documents filed by the 4th respondent to substantiate the allegations in the Disqualification Petition were only copies of the news items published in various news papers and CDs in which the programmes allegedly participated by the writ petitioner supporting YSR Congress Party were recorded, it is contended by the learned Senior Counsel appearing for the writ petitioner that the 2nd respondent committed a grave error in relying upon the said paper clippings and CDs which did not even contain the source of the information relating to the alleged anti-party activities of the writ petitioner.

11. Relying upon Central Bank of India Ltd. Vs. Prakash Chand Jain, , Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, Quamarul Islam Vs. S.K. Kanta and others, and R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami and V.P. Temple and Another, the learned Senior Counsel further contended that the contents of the newspaper reports cannot be held to be proved unless the same are proved by the concerned person by examining himself before the Court. Thus, according to the learned Senior Counsel, Exs. P-2 to P-37 being inadmissible in evidence ought not to have been considered by the 2nd respondent. The learned Senior Counsel vehemently contended that since no other evidence was available on record to substantiate the allegations, the impugned order is vitiated for want of evidence and as such it is liable to be set aside on that ground alone.

12. It is also urged by the learned Senior Counsel that the action of the 2nd respondent in taking into consideration the subsequent events on the basis of the additional documents filed by the 4th respondent as Exs. P-24 to P-36 without there being any amendment to the complaint lodged by the 4th respondent is erroneous and amounts to violation of the principles of natural justice since the writ petitioner was deprived of an opportunity to contradict the contents of the said documents. In support of the said submission, the learned Senior Counsel relied upon Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, and Om Prakash

13. At the outset, we would like to point out that strict rules of evidence are not applicable to the proceedings of the 2nd respondent which are summary in nature. Admittedly this is a case where the writ petitioner has not disputed the fact of his participation in Lakshya Deeksha, Jal Deeksha programmes organized by Mr. Y.S. Jaganmohan Reddy and his group who had resigned from the primary membership of Congress Party. The fact that he had participated in the agitation with regard to fees reimbursement organized by Mr. Y.S. Jaganmohan Reddy and his group and that he had also presided over several meetings of Mr. Y.S. Jaganmohan Reddy has also not been denied by the writ petitioner. Even the fact that the wife of the writ petitioner had contested the by-election from Parakala Assembly Constituency as a candidate of YSR Congress Party and that the writ petitioner had participated in the campaigning along with the honorary president of Y.S.R. Congress Party has not been denied by the writ petitioner. Thus, in fact there was no denial by the writ petitioner of the contents of the newspaper reports about his having participated in various programmes noticed above which were organized by Mr. Y.S. Jaganmohan Reddy and having shown allegiance to the YSR Congress Party formed by him.

14. In the absence of denial by the writ petitioner of the factum of his participation in the said programmes, the question of admissibility of the newspaper reports in evidence has virtually lost its relevance. The mere reference by the 2nd respondent to the said newspaper reports does not amount to relying upon the same for arriving at the conclusion that the writ petitioner has participated in various programmes organized by Mr. Y.S. Jaganmohan Reddy. Similarly having regard to the admitted fact that the writ petitioner himself had declined to come into the witness box and lead any evidence on his behalf manifests the fact that he had no evidence contra.

15. So far as the contention that the 2nd respondent ought not to have permitted the 4th respondent to produce the evidence with regard to the events that took place subsequent to the filing of the complaint particularly in the absence of any amendment to the complaint is concerned, we have observed that the documents so considered by the 2nd respondent are nothing but the newspaper reports covering the participation of the writ petitioner in election meetings and campaigning in favour of his wife who was contesting from Parakala Assembly Constituency as a candidate of YSR Congress Party. The writ petitioner could not refute the fact that he had participated in the said programmes. He did not even come forward to give evidence on his behalf or to cross-examine the witnesses of the complainants in respect of the additional material so produced with regard to the events that took place subsequent to filing of Disqualification Petition. Moreover at the time of marking of the said documents the writ petitioner failed to raise any objection as to the admissibility of any of the said documents. In spite of ample opportunity provided, he did not enter the witness-box to give evidence on oath. It is also relevant to note that it

was recorded in the impugned order that it was represented on behalf of the writ petitioner that he had no intention to lead evidence and that he would proceed with the arguments. In this context, it would be appropriate to notice the following observations made by the Apex Court in *Jagjit Singh Vs. State of Haryana and Others*, with regard to the applicability of the principles of natural justice to the proceedings under the Tenth Schedule.

Para-14. At the outset, we may mention that while considering the plea of violation of principles of natural justice, it is necessary to bear in mind that the proceedings under the Tenth Schedule are not comparable to either a trial in a court of law or departmental proceedings for disciplinary action against an employee. But the proceedings here are against an elected representative of the people and the judge holds the independent high office of a Speaker. The scope of judicial review in respect of proceedings before such Tribunal is limited. We may hasten to add that howsoever limited may be the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated. The yardstick to judge the grievance that reasonable opportunity has not been afforded would, however, be different. Further, if the view taken by the Tribunal is a reasonable one, the Court would decline to strike down an order on the ground that another view is more reasonable. The Tribunal can draw an inference from the conduct of a Member, of course, depending upon the facts of the case and totality of the circumstances.

16. It may also be mentioned that even in the counter-affidavit filed by the writ petitioner before the 2nd respondent, his participation in the aforesaid programmes was not denied but it was contended that he had neither given up his membership voluntarily nor the activities attributed to him amounted to voluntarily giving up the membership of Indian National Congress Party. According to the writ petitioner, his allegiance to the Indian National Congress Party is unquestionable as he never acted against the interest of the party nor voted or abstained from voting on any occasion in the Council contrary to any of the directions issued by the Indian National Congress Party and that he was striving for betterment of the party. Thus it is clear that ample opportunity was provided to the writ petitioner to rebut the allegations before passing the impugned order.

17. In spite of such opportunity as the writ petitioner had not denied his participation and association with the activities of YSR Congress party, it is contended by the learned counsel for the respondents that the 2nd respondent had rightly concluded that the writ petitioner had voluntarily given up his membership of the Indian National Congress Party.

18. However, the learned Senior Counsel for the writ petitioner while citing before us a recent decision of the Apex Court in *Balchandra L. Jarkiholi and Others Vs. B.S. Yeddyurappa and Others*, contended that the 2nd respondent was not justified in arriving at such a conclusion merely on the ground that the allegations must be deemed to have been proved in the absence of denial. It is

contended by the learned Senior Counsel that the 4th respondent was bound to prove the allegations with supporting evidence and the mere fact that the allegations were not denied by the writ petitioner did not amount to the same having been proved. Para-2 of the Tenth Schedule to the Constitution which provides for disqualification of member of the Legislative Assembly or Legislative Council of the State reads as under:

2. Disqualification on ground of defection:-(1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. Explanation: For the purposes of this sub-paragraph,-

(a) 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,

(b)...

As could be seen from Para-2 (1) (a) of the Tenth Schedule, one of the grounds upon which a member of a House belonging to any political party shall be disqualified for being a member of the House is that he has voluntarily given up his membership of such political party. The meaning of "voluntarily given up his membership" has been explained in Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, as under:

The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

19. In G. Viswanathan Vs. The Hon''ble Speaker, Tamil Nadu Legislative Assembly, Madras and another, the question as to when does a person "voluntarily give up" his membership of such political party as provided in para-2 (1) (a) was explained as under:

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

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.

20. We have already noticed that even in JAGJIT SINGH'S case (9 supra) similar view was expressed holding that an inference can be drawn from the conduct of a member.

21. In the instant case, the writ petitioner had admittedly been elected to the A.P. Legislative Council on the ticket of the Indian National Congress. It is no doubt true that he had neither tendered his resignation from the membership of the party nor joined YSR Congress Party. However he had not only participated in various programmes organized by Mr. Y.S. Jaganmohan Reddy, who by that time had already resigned from primary membership of Indian National Congress but he was also present on the occasion of formation of YSR Congress Party at its plenary session at Pulivendula along with other leaders of YSR Congress Party. Moreover his wife had contested the by-election to Parakala Assembly Constituency as a candidate of YSR Congress Party against the official candidate of Indian National Congress and the writ petitioner had canvassed in support of his wife and he had also participated in the election campaigning along with the leaders of YSR Congress Party and sought support for YSR Congress Party candidate. The above conduct of the writ petitioner would undoubtedly go to show that he had indulged in anti-party activities by expressing his allegiance to a rival political party.

22. Therefore, an inference was rightly drawn by the 2nd respondent that the writ petitioner had voluntarily given up his membership of the Indian National Congress Party. In the facts and circumstances of the case, it appears to us that the conduct of the writ petitioner has very much established that he has voluntarily given up his membership to the Indian National Congress Party. We are also of the opinion that a finding under para-2 (1) (a) of the Tenth Schedule need not be on the own saying of the member concerned, but an inference can always be drawn from his conduct. Hence, the action of the 2nd respondent in drawing such inference on the basis of the conduct of the writ petitioner cannot be found fault with in the light of the law laid down in RAVI S. NAIK'S case (11 supra) and Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others,

23. As we could see, this is not a case where an adverse inference was drawn against the writ petitioner merely on the ground that the allegations in the Disqualification Petition were not denied by the writ petitioner. On the other hand, the finding recorded by the 2nd respondent is on the basis of the conduct of the writ petitioner as reflected from the series of events which the petitioner himself could not dispute. Hence the decision in Bal Chandra L Jarkiholi & Ors. v. B.S. Yedurappa & Ors. (10 supra) cited by the learned Senior Counsel for the writ petitioner has no application to the present case. Therefore, the conclusion of the 2nd respondent in the impugned order made in exercise of powers under para-6 (1) of the Tenth Schedule to the Constitution of India did not suffer from any of

the infirmities so as to warrant interference by this Court under Article 226 of the Constitution of India. As already expressed above, the grounds of challenge to an order made under para-6 (1) are very limited and none of the grounds enumerated by the Constitution Bench in KIHOTO HOLLOHAN'S case (1 supra) is made out in the present writ petition. Though a vague allegation of bias is made against the 2nd respondent on the ground that he too belongs to the Indian National Congress Party and thus he is influenced by the 4th respondent and it is sought to be contended by the learned Senior Counsel for the writ petitioner that in the absence of any counter by the 2nd respondent, the said allegation must be deemed to have been admitted, we are unable to agree.

24. The Constitution itself empowered the 2nd respondent to decide on questions as to disqualification of the members of the House on the ground of defection and the impugned order came to be passed admittedly in exercise of the said power. Merely because the 2nd respondent and the 4th respondent happened to belong to the same political party, no bias can be attributed to the 2nd respondent who is holding the independent high office of the Chairman of the Council. At any rate, in the absence of any specific plea or material to substantiate the allegation of bias, we are not inclined to accept the vague allegation made in the writ petition.

25. In the totality of the facts and circumstances of the case, we are of the opinion that the 2nd respondent has rightly passed the impugned order taking into consideration the conduct of the writ petitioner about which there was no denial by the writ petitioner.

26. For the aforesaid reasons, we are convinced that the impugned order did not suffer from any illegality warranting interference by us.

27. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the miscellaneous petitions if any pending in the writ petition shall stand closed.