
(1997) 05 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10453 of 1993

Madan Mohan Mittal, MLA

APPELLANT

Vs

The Speaker, Punjab Vidhan Sabha and Others

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Constitution of India, 1950 — Article 212, 212(1)

Citation : (1997) 117 PLR 374

Hon'ble Judges : K. Sreedharan, C.J;T.H.B. Chalapathi, J;N.K. Sodhi, J

Bench : Full Bench

Advocate : S.P. Jain and Rajesh Gumber, for the Appellant; G.S. Dhillon, Addl. A.G. for the Respondent Nos. 1, 2 and 5, Ashok Aggarwal and Rajinder Goyal Advocate for the Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—Challenging the order passed by the Deputy Speaker, Punjab Legislative Assembly dated 6th July, 1993 whereby the Deputy Speaker declined to declare the respondents 3 and 4 as disqualified under paragraph 2 of the 10th Schedule of the Constitution of India, the petitioner filed this writ petition. The writ petition was referred to a full Bench to be heard along with Civil Writ Petition No. 6662 of 1992 by an order of the Division Bench dated 28.2.1994. As the facts are not similar we propose to deal with this matter separately.

2. General elections to Punjab Legislative Assembly were held in February, 1992. The respondents 3 and 4 were set up as candidates by Bhartiya Janata Party for the Assembly Constituencies Anandpur Sahib and Sirhind respectively. Both of them got elected to the Legislative Assembly. Four other members set up by the Bhartiya Janata Party also got elected to the Punjab Legislative Assembly. According to the petitioner who was a member of the Legislative Assembly and leader of the Bhartiya Janata Party Legislature party the then Chief Minister Beant Singh in order to win over as many MLAs as possible from the opposition

side compelled the respondents 3 and 4 to leave the Bhartiya Janata Party and join Congress (I) party. It is further averred that the 4th respondent was expelled from the primary membership of the Bhartiya Janata Party on 16th May, 1993 for anti party activities and the same was also intimated to the Speaker of Punjab State Legislative Assembly. The petitioner who was the leader of the original political party Bhartiya Janata Party informed the Speaker that there was no split in the party as claimed by respondents 3 and 4. The petitioner also sent a letter to the Speaker to declare the respondents 3 and 4 as disqualified from being members of the Legislative Assembly. Without giving an opportunity to lead evidence or personal hearing to the petitioner the Deputy Speaker passed the impugned order on 6th May, 1993 holding that there was a split in the party and the original party Bhartiya Janata Party having six seats and respondents 3 and 4 constitute one-third members of the Legislature party and, therefore, they are not disqualified in view of paragraph 3 of the 10th Schedule and their original political party would be Bhartiya Janata Party (Punjab). As already stated this order of the Deputy Speaker is under challenge in these proceedings.

3. A written statement was filed by the 3rd respondent. It is contended inter-alia therein that the emergence of Bhartiya Janata Party (Punjab) was a deliberate decision of those who did not agree with the policies of Bhartiya Janata Party towards the State of Punjab which remained disturbed for a number of years. Several supporters and workers of Bhartiya Janata Party were not happy with the policies of the petitioner and when the petitioner did not change his stand and policies of Bhartiya Janata Party were proving counter productive he and the 4th respondent met separately and split the Bhartiya Janata Party Legislature party and informed the Speaker accordingly. Thus, according to them there is a split in the Bhartiya Janata Party and as a result of the split he and the 4th respondent who constituted one-third of the members of the Legislature party formed a new party under the name Bhartiya Janata Party (Punjab) and the office bearers of the new party were also elected. It is further averred that the main grouse of the respondents 3 and 4 was that the Bhartiya Janata Party should not act in a manner which could strengthen the devising and communal forces in Punjab and they should stand by those who have been fighting against the terrorism to contain the terrorist movement. It is further averred that the Deputy Speaker of the Punjab Legislative Assembly has acted in accordance with the law and given proper opportunity to the petitioner as required by law and there are no grounds warranting interference with the same.

4. The 4th respondent filed a separate written statement taking similar pleas as taken by the 3rd respondent.

5. There is no dispute of the fact that respondents 3 and 4 got elected to Punjab State Legislative Assembly in the General Elections that took place in February, 1992 as candidates of Bhartiya Janata party which is a national political party. Four others were also elected to the State Legislative Assembly as candidates of Bhartiya Janata Party. Thus the total strength of the Bhartiya Janata Party in the

Legislative Assembly was six. On 16th May, 1993 the petitioner has written a letter to the Speaker that the 4th respondent was expelled from the primary membership of Bhartiya Janata Party due to anti party activities. This expulsion of 4th respondent from the party will not have any effect on the status of the 4th respondent as a member of the legislative party of the political party namely Bhartiya Janata Party in view of the decision of the Supreme Court in G. Vishvanathan v. Speaker, Tamilnadu Assembly, AIR 1996 Supreme Court 1060 and he was to be treated as belonging to the original political party namely Bhartiya Janata Party who set him up as candidate in the General Elections that took place in February, 1992. On 15th May, 1993 respondents 3 and 4 wrote a letter to the Speaker stating that there had been a split in the Bhartiya Janata party due to fundamental differences on political and ideological issues with the leadership of Bhartiya Janata Party in relation to the State of Punjab and as such there had been a split in the party and a new party known as Bhartiya Janata Party (Punjab) has been formed and they decided to constitute a separate group in the Punjab Vidhan Sabha known as Bhartiya Janata Party (Punjab) Legislature group. The Speaker by the impugned order recognised the split as claimed by the respondents 3 and 4 and held that they did not incur disqualification in view of the provisions contained in paragraph 3 of the 10th Schedule.

6. The then Speaker framed the following issues for consideration and decision :-

- 1) Whether the split had taken place in the original political party of Bhartiya Janata Party in terms of paragraph 3 of the 10th Schedule of the Constitution of India.
- 2) Whether the expulsion of Dr. Harbans Lal as intimated by Sh. Madan Mohan Mittal vide his application dated 16th May, 1993 and delivered in the Speaker's office on 17th May, 1993 was valid and had any legal effect on the claim made by Dr. Ramesh Dutt Sharma and Dr. Harbans Lal in regard to the split in the Bhartiya Janata Party.

But before taking any decision the then Speaker Sh. Harcharan Singh Ajnala passed away on 9th June, 1993. Therefore, the deputy Speaker was performing the duties of office of Speaker as provided in Clause (1) of Article 180 of the Constitution of India. In the writ petition a ground was taken that the Deputy Speaker who was officiating as Speaker due to the death of Speaker had no jurisdiction to decide the matter falling under the 10th Schedule of the Constitution of India and, therefore, the impugned order is liable to be quashed being without jurisdiction. Article 180 of the Constitution of India read as follows :-

"(1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose."

Therefore, for all purposes and intents the Deputy Speaker discharges all the

functions of the Speaker whenever there is a vacancy in the office of the Speaker. Paragraph 6 of the 10th Schedule provides that if any question arises as to whether a member of a House has become subject of disqualification, the question shall be referred for decision of the Speaker. When the Deputy Speaker is discharging the functions of the Speaker for all purposes and intents he can also decide the question of disqualification on the ground of defection as provided in the 10 Schedule. The doctrine of necessity also applies in such a case. Admittedly there was no Speaker and the Deputy Speaker was discharging the functions of the Speaker. Therefore, necessarily the Deputy Speaker has to decide the disqualification as the office of Speaker was vacant due to the death of the then Speaker. It is observed by Macardie J. in *Prager v. Blatspiel* (1924)1 K.B. 566 as follows :

"The object of the common law is to solve difficulties and adjust relation in social and commercial life. It must meet, so far as it can, sets of fact abnormal as well as usual. It must grow with the development of the nation, It must act and deal with changing or novel circumstances. Unless it can do that it fails in its function and declines in its dignity and value. An expanding society demands an expanding common law."

A reference was also made to the Treatise Story on Agency 9th edition;

"where he says : although the powers of agents which, ordinarily, limited to particular acts; yet extraordinary emergencies may arise, in which a person who is an agent, may, from the very necessities of the case, be justified in assuming extraordinary powers, and.....he acts, fairly done, under such circumstances, will be binding upon his principal."

Thus, when the office of the Speaker is vacant and when the Deputy Speaker is discharging the functions of the Speaker, by necessary implication the deputy Speaker can also discharge the duty of the Speaker under paragraph 6 of the 10th Schedule of the Constitution of India.

7. It is now to be seen whether there is any split in the Bhartiya Janata Party as claimed by respondents 3 and 4. Paragraph 1(b) defines legislature party as a group consisting of the members of the House for the time being belonging to that political party in accordance with the provisions of paragraph 2, 3 or paragraph 4. Paragraph 1(c) defines original political party as follows :-

"Original political party in relation to a member of a House means the political party to which he belongs for the purpose of sub paragraph 1 of paragraph 2."

Paragraph 2 reads as follows :-

"Subject to the provisions of paragraph 3, 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 authorised 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."

Paragraph 3 reads as follows :-

"Where a member of a House makes a claim that he and any other members of his Legislature party constitute the group representing a faction which has arisen as a result of the split in his original political party and such group consists of not less than one-third of the members of such Legislature party :-

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2."

8. A reading of these provisions clearly indicate that importance was given to the House of the Legislative Assembly of the State. The original political party in relation to a member of the House is the political party to which he belongs. Thus, it is clear that the Parliament intended to treat the State unit of a political party as a separate entity for the purpose of determining whether there is any disqualification of a member of the House of that State Legislature. It is further made clear that in the case of split one-third members of the State Legislature belonging to that political party must form a group to make the split effective within the State Legislature. Likewise for the purpose or merger within the meaning of paragraph 4, two-thirds of the members of the State Legislature party must have agreed to such merger. Thus, while deciding the disqualification of the member of the State Legislature the events that have taken place at the national level have no concern to decide whether there is a split or merger. To elucidate this point one may take the case of split of a national political party at the national level but in a particular State the members of that political party do not want to split and they want to continue the State unit intact. In such an event the split or events that have taken place at the national level of the political party will have no effect on the State unit of that political party and the political party at the State level continues to be in the original form. Likewise there may not be a split at the national level but at the State level there may be a split in the State unit of that political party and one-third of the members of the State Legislature constitute the group representing the faction as a result of the split in the State unit of the political party. Then the split comes into existence even though there is no split as such at the national level. The scheme of 10th Schedule is to be looked from the point of view of State units of political parties when the question of disqualification arises within the State Legislative Assembly. Thus, according to us if there is a split of a political party at the State level and one-third members of the Legislature party of that political party at the State level consists of the group representing that faction which splits away from the original political party then the split comes into existence and is effective

9. It is the case of the respondents 3 and 4 that there was a split in the State unit of the Bhartiya Janata Party due to ideological differences with the national leaders of Bhartiya Janata party and the split was in the interest of State of Punjab as at that time the State of Punjab was faced with terrorist activities and to combat the terrorism in the State the members of the State unit of Bhartiya Janata Party wanted to form a separate group to strengthen the hands of the forces fighting against terrorism. In such a situation it cannot be said that State unit has no independence to split from the national party and form its own political party at the State level. The evidence produced before the Deputy Speaker by respondents 3 and 4 clinchingly shows that there was a meeting of some members of Bhartiya Janata Party held at Anandpur Sahib on 14th May, 1993 wherein it was decided to split from the national political party namely Bhartiya Janata party and form another party under the name of Bhartiya Janata Party (Punjab). Respondents 3 and 4 admittedly constitute one-third of the total strength of the Bhartiya Janata Party which was having six members in the Legislative Assembly at that time. Thus, paragraph 3 of the 10th schedule is attracted and the split is complete. The deputy Speaker in his order gave effect to the said split and held that provisions of paragraph 3 of the 10th Schedule have been attracted. After carefully going through the impugned order of the Deputy Speaker dated 6th July, 1993 we do not find anything illegal in the said order.

10. The learned counsel for the petitioner contended that no opportunity was given to the petitioner by the Deputy Speaker to present his case. But the record shows that the Speaker give an opportunity to the petitioner who was President of the Bhartiya Janata party and also the leader of the said party in the State legislature to offer his comments with regard to the split claimed by respondents 3 and 4. To the said notice the petitioner gave his reply on 26th May, 1993. The respondent 3 and 4 also submitted their statements to the Speaker. After considering the entire material placed before him the deputy Speaker passed the impugned order. Therefore, it cannot be said that no opportunity was given to the petitioner. Further if there are any procedural irregularities they are protected by virtue of provisions of sub paragraph 2 of paragraph 6 of the 10th Schedule which provides that the proceedings regarding disqualification of a member of the House shall be deemed to be proceedings in the Legislature of the State within the meaning of Article 212. Under Clause (1) of Article 212 the validity of any proceedings in the Legislature of the State shall not be called in question on the ground of any alleged irregularity of procedure. A reading of the paragraphs of the 10th Schedule clearly shows that it is a self contained code. Paragraph 8 of the 10th Schedule empowers the Speaker to make rules providing for the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

11. The procedural laws like CPC and the Evidence Act are not applicable to the proceedings before the Speaker as the Speaker is not acting as a "Court". Nor

the proceedings before the Speaker can be described as Judicial proceedings though the power to decide the disputed disqualification is preeminently of a Judicial complexion. Therefore, in the absence of rules framed under paragraph 8 of the 10th Schedule, it is open to the Speaker, to adopt such procedure as he deems fit, proper, expedient and just in the circumstances of any particular case. The proceedings before the Speaker are protected from being questioned or challenged on the ground of alleged irregularity of procedure under sub paragraph (2) of paragraph 6 of 10th Schedule read with Article 212(1) of the Constitution of India, as observed by the Apex Court in *Kihota Hollohon v. Achihu* AIR 1993 S.C. 413, these provisions attract an immunity from mere irregularities of procedures.

12. In view of our foregoing discussions, we are of the opinion that the orders of the Deputy Speaker are in accordance with the provisions of 10th Schedule and do not call for any interference by this Court in exercise of the power of judicial review by this Court under Article 226 of the Constitution of India.

13. The writ petition, therefore, fails and is accordingly dismissed. There will be no order as to costs.