

(1993) 02 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4428 of 1991

Mahtab Lal Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-02-1993

Acts Referred:

Citation : (1993) 02 PAT CK 0028

Final Decision : Dismissed

Judgement

N. Pandey, J.—In this application, the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, has been invoked for quashing a part of the impugned notification No. 686 dated 19th April, 1991, of the Bihar Vidhan Sabha Sachivalaya, containing the decision of the Speaker of the Bihar Legislative Assembly, whereby it has been held that the petitioner has incurred disqualification for being a Member of the Bihar Legislative Assembly under the provisions of Article 191(2) in terms of para-graph 2(I)(b) of the Tenth Schedule of the Constitution of India thereafter referred to as "Constitution") read with Rule 8(3) of the Bihar Vidhan Sabha (Disqualification of members on the ground of Defection) Rules, 1986 thereafter referred to as the "Rules") framed under paragraphs of the Tenth Schedule and the seat held by the petitioner has been declared vacant as per the provisions of Article 190(3)(a) of the Constitution.

2. Before entering into the controversies raised by the parties and consideration of the relevant provisions, it would be appropriate to have a brief survey of some of the facts.

FACTS

3. The petitioner, a Janta Dal Candidate, was elected as Member of the Bihar Legislative Assembly (in short "Assembly" in 1989 General Election. In October-November, 1990, on account of some difference in Janta Dal, the then Deputy Prime Minister Sri Devi Lal was removed from the post which led to a split in the Party and a large number of the Members of the Parliament joined the leadership

of Shri Chandra Shekhar and Sri Devi Lal. Ultimately, this led to defeat of Janta Dal Ministry headed by Shri V.P. Singh in the floor of the Parliament and a new Ministry headed by Shri Chandra Shekhar was formed. On account of the aforesaid, almost in every State some of the Members of the Assembly of the Janta Party expressed their allegiance to the group led by Shri Chandra Shekhar and Devi Lal.

4. Shri Laloo Prasad, the Chief Minister of Bihar being the leader of the House of the Bihar Legislative Assembly, sought a vote of no confidence for which a Special Session of the Assembly was convened on 22-11-1990. Sri Upendra Prasad Verma (respondent No. 3), being the Chief Whip of Janta Dal Legislative Party, issued a whip to the members of the Janta Dal giving intimation of the decision of the leader of the House with respect to the Session. It is stated, when the whip was issued, the petitioner was lying ill at Delhi and, therefore, he had no information about the Session of the party whip. However, in the night of 21-11-1990, through a telegraphic message, the petitioner received information about the whip but on account of illness he was not in a position to attend the Session on 22-11-1990. Accordingly, he sent a message by EMS Speedpost to the Speaker (Respondent No. 2) in the following terms :

"Sir,

I am to inform that I am unable to attend the Session on 22nd and 23rd November, 1990 as I am indisposed.

This is for your information."

5. Ultimately, on 21-12-1990, the Chief Whip submitted an affidavit report (Annexure B to the counter-affidavit) under the terms of Rule 3(6) of the Rules before the Speaker, requesting action against the petitioner as he had incurred disqualification.

6. On 20-2-1991, through a letter, respondent No. 2 informed the petitioner for his appearance and showing cause as to why it be not declared that he has incurred disqualification because he abstained from voting on the motion of no confidence on 22-11-1990 and seat held by him has fallen vacant. In compliance of the notice, the petitioner filed a show cause a copy of which is Annexure 4 of the writ application, stating therein that as he was ill at Delhi, he could not attend the Session. He expressed complete faith in the leadership of Laloo Prasad, leader of the Bihar State Assembly. He personally appeared before respondent No. 2 and submitted that he has not acted in any manner prejudicial to the interest of the party.

7. Two separate counter-affidavits, namely, one on behalf of respondents Nos. 2 and 4, that is, the Speaker and the Secretary of the Bihar Legislative Assembly, and the other on behalf of respondent No. 3, that is, the Chief Whip of the Janta Dal, have been filed. It is not necessary to set out the facts of the counter-affidavit separately as the plea of all respondents are common. It has been

stated that since the petitioner abstained from voting at the time of the Special Session in question, he has incurred disqualification. According to them, on 20-11-1990, notices to the petitioner both at his private as well as official residence at Patna were given. Such decision of the whip was also circulated through publication in the local daily published from Patna. It is alleged in spite of notice, the petitioner abstained from voting. Therefore, it has been rightly held that he incurred disqualification.

8. It has been further urged that at no point of time, the petitioner sent any letter or information before the Chief Minister or respondent No. 3, Chief Whip about his absence from attending the Special Session. It is stated that in absence of afore said, respondent No. 3 rightly decided not to condone the absence of the petitioner and to request the Speaker to record an order that the petitioner has incurred disqualification. It is stated that even according to the petitioner, he had received intimation in the night of 21st of October, 1990, at Delhi. Nothing has been brought on the record to suggest that the petitioner made any effort to reach Patna in order to participate in the Special Session. Apart from the aforesaid, his plea of illness is completely vague as no evidence in support of such plea was produced before respondent No. 2.

9. Now, in the facts and circumstances mentioned, I would like to notice relevant submissions advanced on behalf of the parties.

10. Mr. B.C. Ghosh, Senior Advocate, represented the case of the petitioner. He contended that the petitioner could not attend the Special Session as he was lying ill at Delhi. It cannot be said in this circumstance that he wilfully abstained from voting. There is no finding that the plea of the petitioner that he was absent from Patna and ill at Delhi is incorrect. It is further contended that admittedly the speaker was informed about the absence of the petitioner. By letter dated 18-12-1990, the Secretary informed the petitioner that the Speaker has accepted the intimation. Therefore, the presumption would be that absence of the petitioner was condoned.

It was next contended simply because a member is not present for voting in the Session, he cannot be disqualified under the provisions of paragraph 2(b) of the Tenth Schedule of the Constitution. In this connection, he has drawn our attention to Rule 1 Sub-rule (6) explanation of the Rules to indicate that abstention must be wilful.

11. Mr. Ghosh further contended that the decision of the respondents disqualifying the petitioner from membership of the Assembly is illegal, mala fide and discriminatory. From the impugned order it appears several other members of the legislative assembly were expelled from membership of the Janta Dal Party by the then President of the Party for their anti-party activities. But subsequently, their abstention has been condoned. At the same time the petitioner through his show cause and other materials, subsequently proved that he could not attend the Session on account of his illness and it was not wilful. He

also expressed full faith in the party and its leadership. But a different treatment has been given to him, holding that he has incurred disqualification.

12. Mr. Ghosh further contended that the impugned order is also violative of principles of natural justice as no opportunity was given to the petitioner to produce relevant materials in support of his claim of illness. Apart from the aforesaid, it was also urged that from mere perusal of the impugned order it is clear that respondent No. 2 has failed to arrive at a conclusion as to whether the petitioner's absence was wilful and deliberate.

13. On the other hand, Mr. Basu Deva Prasad, Senior Advocate, appearing for respondents Nos. 2 and 4 and Mr. Shakeel Ahmad Khan, learned counsel for respondent No. 3, contended that the petitioner having full notice of the Special Session willfully and deliberately abstained from taking part in the Special Session and, therefore, as per the provision of paragraph 2(b) of the Tenth Schedule of the Constitution read with Rules 3(6) and 8 of the Rules framed under paragraph 8 of the Tenth Schedule has automatically incurred disqualification.

14. It is urged as per Sub-rule (6) of Rule 3 of the Rules mentioned above, respondent No. 3 or the leader of the House, the Chief Minister has jurisdiction to condone such absence if an application is made within the time prescribed therein. Till this day, no such application was made by the petitioner before such authorities. Having noticed the events indicated above, as also finding that the petitioner in spite of having received notice, abstained from making part in the special session, the respondent No. 3 submitted affidavit report before the Speaker (respondent No. 2), a competent authority Paragraph 6 of the Tenth Schedule read with Rs. 7 and 8 of the Rules, to announce a decision that the petitioner had incurred disqualification. As no application for condonation of absence was submitted by the petitioner before respondent No. 3, or even before the leader of the House, the Speaker (respondent No. 2) had no option but to declare that the petitioner incurred disqualification under the relevant provisions.

15. It has been contended that the petitioner cannot derive any benefit of his intimation which he had given to the Speaker on 22-11-1990 because such intimation under the law has to be given to the Party Chief or the Chief Whip. It has been contended since absence of the petitioner has not been condoned by the Party Chief, these are not the matters which can be considered by this Court while exercising a power under Articles 226 and 227 of the Constitution. Question of violation of principles of natural justice or arbitrariness against the respondents cannot be alleged as admittedly nor application was made by the petitioner, either before the Chief Whip or the Party Chief for condonation of absence nor any intimation was given disclosing reasons for not being present in the Special Session. Therefore, it is urged in absence of aforementioned circumstances, the impugned decision of the Speaker cannot be challenged.

16. Before dealing with the respective contentions of the parties, it would be

advisable to set out relevant provisions of the Constitution as also different paragraphs of the Tenth Schedule and rules framed under Paragraph 8 of the Tenth Schedule of the Constitution by the Speaker. They are quoted below Constitution of India:

"190. Vacation of seats,-- (I) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

x x x x x x x x (3) If a member of a House of the Legislature of a State-

(a) becomes subject to any of the disqualifications mentioned in Clause (1) or Clause (2) of Article 191 or (b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in Sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation."

x x x x x x x x "191. Disqualification for membership.--(I) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State-

x x x x x x x x (2) A person shall be disqualified for being member of the Legislative Assembly or Legislative Council of a State if he is not disqualified under the Tenth Schedule."

TENTH SCHEDULE OF THE CONSTITUTION Paragraphs

"2 Disqualification on ground of defection"-- (1) Subject to the provisions of paragraphs 3, 4, and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House.-

x x x x x x x x (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.

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) a nominated member of a House shall, -

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Art. 188."

"6. Decision on question as to disqualification on ground of defection,-- (I) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to "such 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.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Art. 212".

Relevant Rules framed under para 8 of the Tenth Schedule by the Speaker, Bihar Legislative Assembly:

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17. Upon consideration of the submissions of the learned counsel for the parties as also on consideration of different materials placed on the record, and relevant legal provisions, now I would like to deal with the relevant questions, raised in this case.

18. The first question is whether the impugned notification so far as it relates to the petitioner is discriminatory and mala fide, as alleged by the learned counsel for the petitioner?

It has been urged that the decision of respondent No. 2 to declare the petitioner disqualified under the provisions of Article 191(2) of the Constitution of India and in terms of paragraph 2(1) of the Tenth Schedule of the Constitution read with Rule 8(3) of the Rules as also that he ceased to be the member of the House under Article 190(3)(a) of the Constitution has been taken at the instance of Shri Laloo Prasad, the Chief Minister of the State of Bihar. It is stated that a group of Janta Dal Legislature, including Shri Raghunath Jha and four other members of the Bihar Legislative Assembly were expelled from membership for their anti-party activities by the then President of Janta Dal Sri S.R. Bommas. Apart from the aforementioned, other ten members of the Bhartiya Janta Party (named in the impugned notification) who were physically by present in the House and defined their party whip, by not exercising their votes, but no order has been passed by respondent No. 2 for their expulsion and declaring their seats vacant. On the other hand, in case of the petitioner, altogether a different treatment has been given.

19. It would appear that the then President of Janta Dal through his letter dated 9-11-1990 on the recommendation of the Chief Minister of Bihar and Ram Sunder Das, President of Bihar Pradesh Janta Dal, had expelled such members from the party and they were declared "unattached". On 20-11-1990, out of the aforementioned members, with regard to two of them, namely, Sri Bashisht Narain Singh and Sri Sheodhar Paswan, order of expulsion was revoked. With respect to remaining members, respondent No. 2 held that Tenth Schedule of the Constitution does not recognise expulsion on account of anti party activity outside the House, therefore, he had no jurisdiction to disqualify such members.

20. With respect to the expulsion of 13 members of Bhartiya Janta Party, respondent No. 2, held that as on 22-11-1990, they were 13 in number and had sought permission to sit separately in the House, the permission was granted as their strength was 1/3rd of the total strength of the party members and, therefore, the provisions of defection rule was not applicable in their case.

21. Having noticed the facts stated above, I am of the view that the decision of respondent No. 2 cannot be held discriminatory. From a bare perusal of the facts stated above and the impugned order, it would be apparent that the case of

other members of the Assembly was altogether different. The case of the petitioner cannot be equated with those members. Therefore, the decision of respondent No. 2 in this regard cannot be violative of the provisions of Article 14 of the Constitution. Besides the aforesaid, no plausible reason has been indicated by the petitioner how the action of respondent No. 2 was ex facie arbitrary and discriminatory.

22. On the question of mala fide against the concerned respondents, although Mr. Ghosh has argued at length but in absence of specific pleading and evidence in support of such allegation, it is difficult for this Court to hold that the impugned action of respondent No. 2 was mala fide.

23. Next question emerges for consideration is whether appropriate opportunity was given to the petitioner to defend his case? If not whether it is violative of principles of natural justice.

This is not in dispute that the Chief Whip of the Party had issued a whip on 20-11-1990, requiring all its members to be present on 22nd and 23rd of November, 1990, in the Special Session of the Assembly and to cast their votes of confidence in the Government. Accordingly, all the members, including the petitioner, were informed at their home as well as official residence. In formations in this regard were also published through daily newspapers at Patna.

According to the petitioner, as he was lying ill at Delhi, information in this connection was received by him in the night of 21 -11 -1990 at Delhi and, therefore, he could not be present as per the whip. However, he sent an intimation on 22-11-1990 to the Speaker (respondent No. 2) about his inability, in attending the Special Session, which would be apparent from the letter of the Secretary of the House dated 18-12-1990 to the effect that the aforesaid intimation was received by the Speaker (respondent No. 2). It is stated that thereafter the petitioner continued participating in the meeting of the House and other activities. But as the petitioner was a close friend of Sri Yashwant Sinha, the then Finance Minister and the Chief Minister had a grudge agasnst him, a notice vide letter dated 11-2-1991, enclosing the letter dated 21-12-1990 and an affidavit of respondent No. 3, asking the petitioner to show cause within seven days from the receipt of the letter as to why he be not declared disqualified as he wilfully abstained from taking part in the Special Session. Although the petitioner in his show cause and at the time of personal hearing, tried to explain his position that his abstention was not wilful, rather he was unable to attend the Session on account of his illness but respondent No. 2 rejected the plea without any valid reason and passed the impugned order.

24. In the background of the facts stated above, question arises whether the petitioner had notice of the Chief Whip? If answered in affirmative, whether he was absent on account of illness or wilfully abstained from voting and incurred disqualification as per the provisions of paragraph 2(b) of the tenth Schedule of the Constitution?

25. From a bare reference to paragraph 2(I)(b) of the Tenth Schedule of the Constitution, it would appear that in order to declare a member disqualified at least four things must be present, namely:

- i) a direction of the political party of which such member belongs;
- ii) absence of such member should be without obtaining permission of such political party or authority;
- iii) Such member has voted or abstained from voting in the House contrary to the direction of the whip or political party or person or authority; and
- iv) Such voting or abstention has not been condoned by such political party or person or authority within fifteen days of such voting.

26. Mr. Ghosh contended that Rule 3(6) of the Rules requires a finding by authority concerned that such absence was wilful and deliberate. Since no such finding has been recorded against the petitioner, the order impugned is fit to be quashed. According to the other side as no application was made by the petitioner for condonation of his absence, he cannot derive any benefit under the provisions of Rule 3(6) of the Rules. Therefore, simply because the Speaker failed to record that abstention was wilful, the impugned order cannot be held illegal.

27. Although nothing has been brought on the record to show that notice issued to the petitioner at his Patna address was served but this cannot be ignored that the petitioner has himself in paragraph 14 of the writ application admitted that he got information in the night of 21st November, 1990 with respect to the whip. There is no pleading that the petitioner made any effort even to inform Mr. S.R. Bommai, the President of the Janta Dal, who was present at Delhi, or to give intimation to the Chief Minister or the Chief Whip on telephone or through Special Messenger about his illness. Apart from the aforesaid, nothing has been stated that illness of the petitioner was so serious that he was unable to reach Patna even by plane. It would be further relevant to notice that on the petitioner's own showing, he was residing with Sri Yashwant Sinha, a very powerful personality at that time. If the petitioner had intention to communicate about his illness to the concerned authority, it was not difficult.

28. It would be further relevant to notice that even the letter dated 22-11-1990 according to the respondent No. 2 was posted by the petitioner from Delhi on 24-11-1990 which was received by him on 26-11-1990. In this letter also, it was not disclosed as to what was the ailment. The petitioner was given an opportunity to file show cause as also of personal hearing by respondent No. 2 but at this occasion also nothing was disclosed by him. No medical certificate nor any other evidence in support of such claim was produced. Such lapse on the part of the petitioner creates doubt whether he was actually ill. In this view of the matter, the petitioner cannot blame that sufficient opportunity was not given to him. At the time of personal hearing also he did not disclose relevant facts.

29. Mr. Ahmad, while placing reliance over a decision of the Supreme Court in the case of Bharat Singh and Others Vs. State of Haryana and Others, , rightly submitted since the petitioner has failed to place evidence in support of his contention, by annexing document or documents with the writ application, this Court while exercising its power in a writ jurisdiction, should not consider such facts even pleaded. It would be appropriate to quote a relevant passage from the report hereunder at page 2186 :

"13. xx xx xx xx In our opinion, when a point which is ostensibly a point of law is required to be . substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading that is a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable.

30. Upon consideration of the principles laid down by the Supreme Court as also in absence of any material on the record contrary to that, it is difficult for this Court to record a different finding to what has been recorded by respondent No. 2 with respect to the absence of the petitioner.

31. Apart from the aforesaid, a very crucial lapse on the part of the petitioner cannot be ignored. Admittedly no application as required under Rule 3(6) of the Rules was filed by the petitioner for condonation of his absence. In absence of such application the chief whip or any other person, legally authorised, had no obligation but to report the Speaker for action. Therefore, there was nothing wrong on the part of the Chief Whip to request the Speaker (respondent No. 2) to record an order of disqualification against the petitioner under paragraph 6 of the Tenth Schedule of the Constitution read with Rules 7 and 8 of the Rules.

32. Next question arises whether in absence of a decision of the leader of the House or the Chief Whip, either condoning abstention or rejecting under the provisions of Rule 3(6) of the Rules, the Speaker could exercise his jurisdiction and take a decision under the provisions of paragraph 6 of Tenth Schedule of the Constitution? According to Mr. Prasad, while recording a decision as per the provision of paragraph 6, the Speaker has no option but to record a finding in accordance with the report submitted under Rule 3(6) of the Rules by the authority concerned. Therefore, in the background of the facts of the present case, the Speaker had no alternative but to hold that the petitioner had incurred disqualification. In my view, there is no substance in such submission of Mr. Prasad. The power of the leader of the party or the Chief Whip to condone such

absence has been provided under the provisions of the Rules framed by the Speaker under his power conferred under paragraph 8 of the Tenth Schedule of the Constitution. The power of the Speaker (respondent No. 2 to declare disqualification has been conferred under the provisions of paragraph 6 of the Tenth Schedule. There is nothing direct or indirect under this provision that such decision of the Speaker in any way is dependent upon the command of the leader of the House or the Chief Whip. It shall be his independent decision and not under command or control of any other authority.

33. In this regard, Mr. Ghosh has also placed reliance over certain observations of the Supreme Court in the case of *Kihota Hollohon Vs. Zachilhu and Others*, He contended that the Speaker holds a pivotal position and is a guardian of right and privilege of the House and democracy. Therefore, it is wrong to say that simply because there was no order of the Chief Whip, condoning absence or rejecting the same, the Speaker cannot take any independent decision. It would be useful to quote some of the relevant findings in this regard from the aforesaid report:--

"97. In the present case, the power to decide disputed disqualification under paragraph 6(1) is pre-eminently of a judicial complexion."

XX XX XX XX "102. By these well-known and accepted tests of what constitute a Tribunal, the Speaker or the Chairman, acting under paragraph 6(1) of the Tenth Schedule is a Tribunal."

XX XX" XX XX "123. Accordingly, we hold that the vesting of adjudicatory functions in the Speakers/ Chairman would not by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speaker/ Chairman hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do to take far-reaching decisions in the functioning of Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such a constitutional functionaries should not be considered exceptionable."

33A. Mr. Ghosh lastly contended that in any view of the matter, in the notice of the Chief Whip, it was not mentioned that voting or abstaining from voting, contrary to the said direction would result in disqualification of such member. Therefore, in absence of those materials; respondent No. 2 was not justified in holding that the petitioner had incurred disqualification. According to him, the resultant action of such absence has to be mentioned in the whip, otherwise no member in case of such absence can be declared disqualified. In support of his contention, he has placed reliance over paragraph 128 of the judgment of the case of *Shri Kihoto Hollohan v. Shri Zachillhu* (supra). But there is no averment in the writ application or in the show cause filed before the Speaker (respondent No. 2), that since the petitioner had no knowledge of the consequences of not being present in the meeting, and, therefore he abstained from taking part in the special session. On the other hand, from the averments made in the writ

application and the show cause, it appears that the petitioner had full knowledge that his absence from the special session would lead to his disqualification. Therefore, in my view, the petitioner cannot derive any benefit on the basis of such submission.

34. However, before parting with the judgment, I would like to observe that cases of some other members of the Janta Dal, who were initially declared unattached, but on their request and showing faith in the leadership of the party, were considered and condonation were granted. From the averments made in the writ application and the show cause, which was filed before the Speaker (respondent No. 2) there is no doubt the petitioner has also expressed full faith in party and its leadership. It would also be relevant to notice that since the day of impugned notification, till this day, the petitioner has been kept out of the House as he was declared disqualified. In the circumstances thereof, it would be open to the petitioner to move the concerned authorities for condonation of absence. As the writ application is being dismissed, such dismissal will not stand in the way of the authorities to consider the grievance of the petitioner sympathetically, if such occasion arises.

35. In the result, subject to observations made above, this writ application is hereby dismissed but in the circumstances of the case, there shall be no order as to costs.

I.P. Singh, J.

36. I agree.