

(2011) 09 DEL CK 0454
In the Delhi High Court
Case No : Writ Petition (C) 6355 of 2011

Manohar Lal Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Constitution of India, 1950 — Article 107, 108, 109, 110, 111

Citation : (2011) 185 DLT 194

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Manohar Lal Sharma, for the Appellant; A.S. Chandhiok, A.S.G., Maneesha Dhir, Ritesh Kumar, K.P.S. Kohli and Mithu Jain, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—The Petitioner, a practising advocate, has invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking for appropriate direction to the Respondents to provide equal opportunity to the Petitioner and other citizens to file their representations and objections and participate in the discussion pertaining to the Lokpal Bill in the same manner and time as that has been allowed to the five member NGO and further to declare the entire process of the drafting committee and actions related to as it unconstitutional being violative of Article 14 of the Constitution of India. That apart, it has been prayed to declare the Respondents' action dated 4th August, 2011 as ultra vires the rules of the House and to further declare the action of the Respondents in introducing any of the Lokpal Bills, including government bill and private bills, as unconstitutional being violative of Article 117 of the Constitution and to direct the Respondents to disclose all true facts and details about the subject matter upon the Lokpal Bill i.e. annual extra cost to the country and other ancillary aspects.

2. It is submitted by Mr. Manohar Lal Sharma, who has appeared in person, that the Lokpal Bill, as is discernible, is basically a money bill and, therefore, the

presidential consent is necessary prior to the introduction of such a bill in the Parliament. It is his further submission that the procedure adopted by the Ministry of Parliamentary Affairs and Ministry of Law and Justice is absolutely contrary to the provisions of the Constitution and the rules framed under Article 118 of the Constitution, which pertain to bill originating in the House. It is urged by him that when a Bill postulates expenditure from the Consolidated Fund, a specified particular procedure has to be followed and every citizen has a right to know and the same cannot be smothered or scuttled. The Petitioner would contend that the Respondents are under obligation to furnish all requisite information and unless the same is done, the whole exercise shall fall foul of Article 14 of the Constitution of India. To bolster the said submission, he has commended us to the decision of the Constitution Bench in *Ramdas Athawale Vs. Union of India (UOI) and Others*, . Mr. Sharma has further canvassed that others also should have the opportunity to submit bills to the government for introducing before the Parliament.

3. Mr. A.S. Chandhiok, learned Additional Solicitor General, resisting the submissions put forth by Mr. Sharma, has contended that whether the Bill is a money bill or not is to be determined by the Speaker of the Lok Sabha under Article 110 of the Constitution. He would further submit that at the bill or pre Bill stage, the power of judicial review is not to be invoked in view of the Division Bench V decision dated 2nd May, 2011 of this Court in *W.P.(C) 2671/2011* titled *Hemant Baburao Patil v. Union of India and Ors.*

4. To appreciate the submissions raised at the Bar, it is appropriate to refer to Article 107 of the Constitution which relates to provisions as to introduction and passing of bills. It reads as follows:

107. Provisions as to introduction and passing of Bills. (1) Subject to the provisions of Articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of Article 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of Article 108, lapse on a dissolution of the House of the People.

5. Article 109 provides a special procedure in respect of Money Bills. Article 110

defines, which Bill shall be Money Bill. For the sake of completeness, we think it appropriate to reproduce Article 110. It reads as under:

110. Definition of "Money Bill. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely

- (a) the imposition, abolition, remission, alteration or Regulation of any tax;
 - (b) the Regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
 - (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund;
 - (d) the appropriation of moneys out of the Consolidated Fund of India;
 - (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
 - (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
 - (g) any matter incidental to any of the matters specified in Sub-clauses (a) to (f).
- (2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or Regulation of any tax by any local authority or body for local purposes.
- (3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under Article 109, and when it is presented to the President for assent under Article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill

6. We have referred to the said Article as the Petitioner has urged with vehemence that as the Bills now being circulated are Money Bills, the parliamentary procedure as per the Rule has to be followed. Per contra, Mr. Chandhiok would submit that in view of the language employed in sub-article (3) of Article 110, the verdict of the Speaker with regard to the status of the Bill is final.

7. In the case of Ramdas Athawale (*supra*), the controversy had travelled to the Apex Court as the Petitioner therein had filed a writ petition under Article 32 of

the Constitution challenging the validity of W.P.(C) 6355/2011 Page 5 of 11 the proceedings in the Lok Sabha commencing 29th January, 2004 on the ground that the President had not addressed both Houses of the Parliament as envisaged under Article 87 of the Constitution and, therefore, an appropriate writ or direction should be issued declaring that the session of the Lok Sabha called by the notice dated 20th January, 2004 is the first session in the year 2004 and the proceedings of the Lok Sabha pursuant to the notice dated 20th January, 2004 are unconstitutional, illegal, null and void. Be it noted, in the said case, it has been put forth that the "First Session " means, the session which is held first in point of time in a given year and accordingly, the session which commenced on 29th January, 2004 was the first session of the House of the year 2004. Their Lordships adverted to the facts in paragraph 3, which is as follows:

3. There is No. dispute before us that the fourteenth session of the Thirteenth Lok Sabha commenced on 2-12-2003 and was adjourned sine die on 23-12-2003. Thereafter on 20-1-2004, the Secretary General of the Lok Sabha, by way of a notice informed all the Members of the Thirteenth Lok Sabha, duly stating that under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, the Speaker has directed that the Lok Sabha which was adjourned sine die on 23-12-2003 will resume its sittings on 29-1-2004.

8.The Constitution Bench posed a question in paragraph 28, which is as follows:

28. The question that arises for consideration in this W.P.(C) 6355/2011 Page 6 of 11 writ petition is whether the decision of the Speaker directing resumption of sitting of the Lok Sabha which was adjourned sine die on 23-12-2003 is susceptible to judicial review in a proceeding under Article 32 of the Constitution of India?

9.Thereafter, their Lordships referred to Article 122 of the Constitution and proceeded to express thus:

30. A plain reading of Article 122 makes it abundantly clear that the validity of any proceeding in Parliament shall not be called in question on the ground of any irregularity of procedure. The prayer in the writ petition is to declare the proceedings in the Lok Sabha pursuant to the Notice dated 20-1-2004 issued under the directions of the Speaker as unconstitutional. The Petitioner is essentially raising a dispute as to the regularity and legality of the proceedings in the House of the People. The dispute raised essentially centres around the question as to whether the Speaker's direction to resume sittings of the Lok Sabha which was adjourned sine die on 23-12-2003 is proper?

31. The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate and to maintain order. The powers to regulate the procedure and conduct of business of the House of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported exercise of his

power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued Notice dated 20-1-2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned sine die on 23-12-2003. Whether the resumed sitting on 29-1-2004 was to be treated as the second part of the fourteenth session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India. 10. In the said decision, reference was made to the decision in *In the matter of: Under Article 143 of the Constitution of India*, and eventually, their Lordships opined thus:

38. Under Article 122(2), the decision of the Speaker in whom powers are vested to regulate the procedure and the conduct of business is final and binding on every Member of the House. The validity of the Speaker's decision adjourning the House sine die on 23-12-2003 and latter direction to resume its sittings cannot be inquired into on the ground of any irregularity of procedure. The business transacted and the validity of proceedings after the resumption of sittings of the House pursuant to the directions of the Speaker cannot be inquired into by the courts. 39. No. decision of the Speaker can be challenged by a Member of the House complaining of mere irregularity in procedure in the conduct of the business. Such decisions are not subject to the jurisdiction of any court and they are immune from challenge as understood and explained in *Keshav Singh* case and further explained in *Indira Nehru Gandhi v. Raj Narain* wherein it was observed that: (*Indira Nehru* case, SCC p. 46, para 70)

70... the house is not subject to the control of the courts in the administration of the internal proceeding of the haose

40. It is a right of each House of Parliament to be the sole judge of the lawfulness of its own proceedings. The courts cannot go into the lawfulness of the proceedings of the Houses of Parliament. The Constitution aims at maintaining a fine balance between the legislature, executive and judiciary. The object of the constitutional scheme is to ensure that each of the constitutional organs function within their respective assigned sphere. Precisely, that is the constitutional philosophy inbuilt into Article 122 of the Constitution of India.

11. After so stating, their Lordships referred to another decision of the Constitution Bench in *Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others*, wherein it has been held that the validity of proceedings inside the legislature of the State cannot be called in question on the allegation that the procedure laid down by law had not been strictly followed.

12. After so stating, in paragraphs 42, 43, 46 and 47, it has been held thus:

42. In the present case, there is No. complaint of infringement of any guaranteed fundamental rights and therefore it may not be necessary to dilate on the question as to the parameters and extent of judicial review that may be available

in case of infringement of any guaranteed fundamental rights of a Member of the House. 43. One more aspect of the matter. The Petitioner in this writ petition under Article 32 of the Constitution has challenged the validity of proceedings in the Lok Sabha commencing from 29-1-2004 on the grounds stated hereinabove, which we have dealt with in the preceding paragraphs. The petition has become infructuous, since the Lok Sabha was dissolved and thereafter two elections have been held. The issue raised in the petition is purely a hypothetical question. There is no existing lis between the parties. It is settled practice that this Court does not decide matters which are only of academic interest on the facts of a particular case.

46. It is equally well settled that Article 32 of the Constitution guarantees the right to a constitutional remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement of a fundamental right arises, Article 32 does not apply. It is well settled that no petition under Article 32 is maintainable, unless it is shown that the Petitioner has some fundamental right. In *Northern Corpn. v. Union of India* this Court has made a pertinent observation that when a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 is attracted.

47. We have carefully scanned through the averments and allegations made in the writ petition and found that there is not even a whisper of any infringement of any fundamental right guaranteed by Part III of the Constitution. We reiterate the principle that whenever a person complains and claims that there is a violation of any provision of law or a constitutional provision, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 of the Constitution is attracted. It is not possible to accept that an allegation of breach of law or a constitutional provision is an action in breach of fundamental right. The writ petition deserves dismissal only on this ground.

13. On a perusal of the aforesaid decision, it is clear that when a fundamental right, as enshrined in Chapter III of the Constitution, is not affected, a writ petition under Article 32 is not to be entertained.

14. In the case at hand, as we understand, the grievance of the Petitioner is with regard to the manner and procedure of the introduction of the bill. This Court in the case of *Hemant Baburao Patil (supra)*, wherein the challenge was made with regard to the composition of the drafting committee, had held thus:

6. Having heard learned Counsel for the parties, it is manifest that members of the Committee do not hold public office and, hence, there cannot be any eligibility criteria. Therefore, the concept of quo warranto is not applicable. A drafting committee has been constituted which pertains to a pre-enactment stage. We have our grave doubt whether the same can be scrutinized while exercising the power of judicial review. The Constitution casts an obligation on the part of the Court while exercising power of judicial review to test the

legislation in the constitutional backdrop, but not at a stage when the drafting of a Bill is in process. It is a resolution passed by the Ministry of Law and Justice for drafting of a Bill. It can be treated as an internal matter of the Executive and exclusively in the domain of Executive. The suitability of the persons, we are disposed to think, cannot be a matter of judicial review, more so in a matter of the present nature

15. In our considered opinion, the present writ petition has been preferred without any legal foundation and the Petitioner has made an adroit endeavour to build a castle in Spain. Hence, we conclude and hold that the controversy cannot be made a subject matter of assail under Article 226 of the Constitution. Consequently, the writ petition, being bereft of substratum, stands dismissed without any order as to costs.