

(1997) 05 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6662 of 1992

Ram Bilas Sharma

APPELLANT

Vs

The Speaker, Haryana Vidhan Sabha and Another

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 117 PLR 318 : (1997) 4 RCR(Civil) 519

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

Bench : Full Bench

Advocate : Satya Pal Jain and Rajesh Gumber, for the Appellant; H.S. Hooda, A.G. and P.K. Muteneja, Addl. A.G. for Respondent No. 1 and J.K. Sibal and R.K. Handa, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—Invoking the jurisdiction of this Court under Article 226 of the Constitution of India the petitioner is seeking to have the order passed by the Speaker Haryana Vidhan Sabha on his application to disqualify the second respondent from being a member of the Haryana Vidhan Sabha on the ground of defection under paragraph 2 of the 10th Schedule of the Constitution of India, set aside by issuing a writ of Certiorari. Brief facts to resolve the controversy in this writ petition are as under:-

2. The petitioner and the second respondent contested the general elections to the Haryana Vidhan Sabha held in the May/June, 1991 from Mohindergarh and Shahabad Markanda Assembly Constituencies respectively on B.J.P. tickets. Thus both of them constituted the B.J.P, Legislature party in the Assembly. The second respondent was also elected as Secretary of the BJP Legislature group at a meeting of the party held on 17.7.1991, According to the petitioner the second respondent defected from BJP and Joined Congress (I) on 29.7.1991 and thereby incurred disqualification from being a member of the Legislature Assembly in view of the provisions contained in paragraph 2 of the 10th Schedule of the

Constitution of India. Therefore, the petitioner filed an application before the Speaker of Haryana Vidhan Sabha to declare the second respondent as disqualified for violation of anti-defection law. The Speaker gave notice of this application to the second respondent who claimed that there was a split in BJP Haryana State Unit and as a result of the split he along with some other workers of BJP formed a separate party called BJP (K) and he became a member of the Legislature party of BJP (K) which came into existence as a result of split in the Haryana unit of the original political party namely BJP. The split in BJP Haryana unit and forming of a separate party called as BJP (K) was intimated to the Speaker on 17.7.1997 who accepted the same. It is the further case of the second respondent that after the split he claimed the member of the Legislature party of the political party BJP (K). He further claimed that subsequently the political party BJP (K) merged with Congress (I) and, therefore, he became member of Congress (I) Legislature party and thus, he has not incurred any disqualification from being a member of the Legislative Assembly. After giving notice to the petitioner and the second respondent the Speaker passed the impugned order dated 10th April, 1992 dismissing the application filed by the petitioner to disqualifying the second respondent in terms of paragraph 2(1) (a) of the 10th Schedule. This order of the Speaker is under challenge in this writ petition.

3. It is an admitted case that the petitioner and the second respondent were elected to Haryana Vidhan Sabha having been set up by the original political party BJP. On 17.7.1991 the second respondent has written to the Speaker of the Legislative Assembly that as a result of the split in the Legislature party of the political party (BJP) Anr. Legislature party in the name BJP(K) has come into being. He further averred that on account of ideological differences he has decided to form new Legislature party in the name and style of BJP(K). The letter written by the second respondent to the Speaker was reproduced in the impugned order Annexure P.7. It is nowhere stated therein that there was any split in the original political party either at the national level or in the Haryana State unit of BJP. A reading of the letter clearly shows that because of the ideological differences he (second respondent) has decided to form a new legislature party in the name and style of BJP (K). In our view such a contention cannot be accepted in view of the clear provisions contained in paragraph 3 of the 10th Schedule to the Constitution of India.

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 and 4. According to paragraph 1(c) original political party in relation to a member of a House is the political party to which he belongs for the purpose of Sub paragraph 1 of paragraph 2. Paragraph 2 (a) makes a member of the House disqualified if he has voluntarily given up his membership of such political party. Paragraph 3 is in the nature of exception to paragraph 3. It 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"

Thus, in order to attract paragraph 3 there should be a split in the original political party and one-third members of the Legislature party of that political party constitutes the group representing the faction which splits away from the original political party, then only those members of that faction do not incur disqualification under sub-paragraph 1 of paragraph 2 of the 10th Schedule. In the case on hand it is not the claim of the second respondent that there was a split of his original political party either at the national level or at the state level. In the letter written by him to the Speaker on 17.7.1991 he only made a claim that due to ideological differences he wanted to form a separate Legislature party. The main and essential ingredient for attracting paragraph 3 namely split in the original political party has not been pleaded or claimed in his letter written by the second respondent to the Speaker. In the absence of a split in the original political party, no member of that political party can claim to form a separate Legislature party. A legislature party is not a separate entity. It is only a wing within the original political party. We are, therefore, of the opinion that the second respondent cannot claim that he formed a separate Legislature party and that he did not incur disqualification because he alone consists more than one-third of the Legislature party of the original political party BJP. We are, therefore, of the opinion that paragraph 3 of the 10th Schedule is not attracted to the case of the second respondent and, therefore, the second respondent has given up his membership of the original political party namely BJP which set him up as a candidate to contest the election to the Legislative Assembly. We are, therefore, of the opinion that the order of the Speaker dated 10th April, 1992 cannot be sustained and the second respondent incurred disqualification from being a member of the Assembly. We accordingly quash the order of the Speaker of the Haryana Legislative Assembly and declare the second respondent as disqualified for being a member of Haryana Legislative Assembly. The disqualification of the second respondent will come into effect from the date of the order of the Speaker i.e. 10th April, 1992.

5. The writ petition is accordingly allowed and the second respondent is declared disqualified to be a member of Haryana Vidhan Sabha with effect from 10th April, 1992 and the necessary consequences will follow. However, there will be no order as to costs.