

(1986) 05 GAU CK 0015

In the Gauhati High Court

Case No : Civil Rule No. 490 of 1986

Shri W. Kulabidhu Singh

APPELLANT

Vs

The Speaker, Manipur Legislative Assembly, Shri Wangou
Singh and Others

RESPONDENT

Date of Decision : 15-05-1986

Acts Referred:

Constitution of India, 1950 — Article 122, 145, 190(3), 191(1), 191(2)

Citation : (1986) 2 GLR 91

Hon'ble Judges : S. Haque, J;K.N. Saikia, J

Bench : Division Bench

**Advocate : B.K. Das and B. Banerjee, for the Appellant; Y. Imo Singh, General
and N.N. Saikia, Government Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

Saikia, J.—In this petition under Article 226 of the Constitution of India the Petitioner, as the President of the Janata Party, Manipur seeks a Writ in the nature of Mandamus and/or Certiorari and/or Prohibition and/or quo warranto or any other appropriate Writ setting aside and/or cancelling the impugned order passed by the Speaker, Manipur Legislative Assembly and commanding the Speaker to hold an inquiry into the allegations made by the Petitioner in his representation to the Speaker dated 24.2.86 alleging defection of Respondents 2 to 5.

2. On 4.2.86 Shri A.K. Anthony, M.P., General Secretary of the Congress (I) party announced through the Radio and Press that Shri S. Tombi Singh, the then President of the State Unit of the Janata Party had written a letter to him expressing willingness of the State Unit to merge into Congress (I). On 5.2.86 the Petitioner, as the General Secretary of the party issued a press release pointing out that there was no resolution of the Janata Party, Manipur for merger and that there might be individual decisions of Shri S. Tombi Singh and of the four Janata M.L.As. On 14.2.86 the four M.L.As (Respondents 2, 3, 4 and 5) were

expelled from primary membership of the Janata Party with effect from 14.2.86 on the ground of "defection" and the expulsion was approved by the party high command. On 24.2.86 the Petitioner, as the President of the Janata Party, Manipur submitted to the Speaker, Manipur Legislative Assembly a "Memorandum of representation" on behalf of the Janata Party, Manipur stating, inter alia, that on Shri S. Tombi Singh's leaving the Janata Party of India on 4.2.86 the vacancy caused in the office of the President was duly filled in on 8.2.86; that there was no resolution of the Janata Party for merger and it might be individual decisions of Shri S. Tombi Singh and of the four Janata Party M.L.As; that if a fake or forged merger decision was produced by Shri S. Tombi Singh or any one else that had to be shown to the memorialist and he had to be given a hearing in an inquiry held under the Constitution (Fifty-Second Amendment) Act, 1985; and that the four Janata M.L.As might not be allowed "to cross the floor".

3. When the Manipur Legislative Assembly held its budget session from 10th to 17th March, 1986, the Hon"ble Speaker permitted the four Janata M.L.As to sit alongwith the Congress (I) M.L.As in the Treasury Bench thereby indicating that they had been admitted into the Congress (I) party. On 21.3.86 the Petitioner sent a letter to the Speaker reminding the latter of his representation dated 24.3.86, By a letter dated 22.3.86 Shri R.K. Birendra Singh, Secretary, Manipur Legislative Assembly informed the Petitioner that "the Hon"ble Speaker, Manipur Legislative Assembly will be pleased to see you in his office chamber at 11 A.M. on Monday, March 24, 1986". The Petitioner pursuant thereto called on the Speaker in his office chamber at 11 A.M. on 24.3.86 and the Speaker informed the Petitioner that his representation dated 24.2.86 could not be considered and allowed. The Secretary, Manipur Legislative Assembly through his letter dated March 25, 1986 (Annexure-V to the petition) informed; "With reference to your letter dated 21, 1986 on the subject indicated above, I am directed to say that the four former Janata Party Members of the Manipur Legislative Assembly, namely, (1) Shri M. Koireng Singh, (2) Shri W. Nimpamacha Singh, (3) Shri L. Tomba Singh and (4) Shri M. Nilchandra Singh were admitted by the Hon"ble Speaker, Manipur Legislative assembly to be members of the Congress (I) Legislature Party on receipt of communications from (a) the General Secretary, MPCC (1), (b) the Chief Minister and Leader of the House and (c) Shri M. Koireng Singh, M.L.A. to the effect that as a result of en masse admission of State Unit of the Janata Party, Manipur led by Shri Tombi Singh into the Congress (I) Party Manipur, all the former Janata Party M.L.As have become Members of the Congress (I) Legislature Party". Hence this petition.

4. Mr. B.K. Das, the learned Counsel for the Petitioner, submits, inter alia, that the Petitioner being the President of the Manipur Unit of Janata Party, having referred the question as to whether the aforesaid four M.L.As had become subject to the disqualification under the Tenth Schedule of the Constitution, it was necessary and incumbent on the Speaker to hold an inquiry affording the Petitioner an opportunity of being heard; and without holding any such inquiry

the decision communicated by letter dated 25.3.86, is no decision at all on that question; and that the power conferred on the Speaker to make an inquiry in relation to matters referred in the Tenth Schedule of the Constitution (hereinafter referred to as "the Schedule") is not a legislative act, nor interpretation of the rules and procedure of the house, nor a ruling in respect of proceedings within the House and, as such, can have no immunity under Article 212 of the Constitution so as to take away the Constitutional remedy granted under Article 226 of the Constitution of India. Counsel relies on In the matter of: Under Article 143 of the Constitution of India, Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another,

5. Heard the learned Advocate General, Manipur, Mr. Y. Imo Singh, who demurs submitting that there was no complaint against the merger, either from the four M.L.As or from any one else; that the Speaker having decided that there was merger the decision is final and he cannot be directed by this Court to hold any inquiry; and that under Para 4 of the Schedule this Court has no jurisdiction in respect of the disqualification of the four M.L.As as the members of the Manipur Legislative Assembly, that jurisdiction being barred under Para 7 of the Schedule.

6. We may examine the law as to disqualification of the Members of the Legislative Assembly in so far as it is necessary for the purpose of this case, Under Article 191(2), as amended by the Constitution (Fifty-Second Amendment) Act, 1985, a person shall be disqualified for being a member of the Legislative Assembly of a State if he is so disqualified under the Tenth Schedule. Under Sub-para (1) of Para 2 of the Schedule, subject to the provisions of paragraphs 3, 4, and 5, a member of the Legislative Assembly belonging to any political party shall be disqualified for being a member of the Assembly-(a) if he has voluntarily given up his membership of such political party; or (b) if he votes or abstains from voting in such Assembly 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. For the purpose of this sub-para an elected member of an Assembly 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. Under para 3 of the Schedule, disqualification on ground of defection is not to apply in case of split. Under para 4 of the Schedule disqualification on the ground of defection is not to apply in case of merger. Under Sub-para (1) of para 4 a member of a Legislative Assembly shall not be disqualified under Sub-para (1) of para 2 where his original political party merges with another political party and he claims that he and any other members of his original political party-(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of Sub-para (1) of para 2

and to be his original political party for the purposes of this sub-paragraph. Under Sub-para (2) of Para 4, for the purposes of Sub-para (1) of this para, the merger of the original political party of a member of the Assembly shall be deemed to have taken place if, and only if, not less than two-third, of the legislature party concerned have agreed to such merger. "Legislature party", as defined in the Schedule, in relation to a member of the Legislative Assembly belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3, or as the case may be, paragraph 4, means the group consisting of all the members of that Legislative Assembly for the time being belonging to that political party in accordance with the said provisions. "Original political party" in relation to a member of the Legislative Assembly has been defined to mean the political party to which he belongs for the purposes of Sub-para (1) of para 2. Admittedly the four M.L.As, namely, Respondents 2 to 5, were set up as candidates by the Janata Party at the last general Assembly election. After they were elected and until merger, if any, the Janata Party would be their original political party. Admittedly the four Janata M.L.As formed a group in the Legislative Assembly and as such they formed a legislature party of their political party. Admittedly all the above four M.L.As claim to have merged into Congress (I) party and as a sequence thereto all the four have been expelled from the primary membership of the Janata Party for varying terms. The Petitioner, however, disputes that they could so merge.

7. Mr. Das submits that in the absence of any resolution of the Manipur Unit of Janata Party for such merger the four M.L.As could not merge and their cases would be individual cases of defection and not a collective case of merger. The learned Advocate General, Manipur answers that the Speaker having taken it to be a case of merger on the basis of what has been stated in the letter dated 25.3.86 (Annexure-V to the petition) and disqualification on the ground of defection being not applicable in a case of merger, it is a matter connected with the disqualification of the four M.L.As and, as such, under Para 7 of the Schedule the jurisdiction of this Court is barred.

8. Generally speaking a political party is an un-incorporated, voluntary association of a number of persons, more or less numerous, sponsoring ideas of Government or maintaining certain political principles or ideologies or beliefs in public policies of the Government, having a political organisation. The Janata Party, as a political party, set up the four candidates and got them elected as members of the Manipur Legislative Assembly. Within the Assembly, however, the four M.L.As formed the Janata Legislature Party. There may be different eventualities in respect of merger of a party. If the political party decided to merge with another political party and the legislature party also abided by the decision and the members of the legislature party claimed to have become members of the political party into which their party merged, there would be no difficulty in holding the merger to have taken place under Sub-para (1) of para 4 of the Schedule. If the political party took a decision to merge but the legislature party or at least more than one-third of the M.L. As of the party did not agree to

such merger the political party cannot be deemed to have merged. Again, when the political party itself claims to have taken no decision for merger, but the legislature party or not less than two-thirds of its members agree to merge, will that be of any effect in so far as the legislature party or not less than two third of the members so deciding? In the instant case the then Janata Party President, Shri Salam Tombi Singh admittedly "propagated" the merger and wrote a letter and the General Secretary of the Congress (I) party, Mr. M.K. Anthony, M.P. made announcement of the merger. Under Sub-para (1) of para 4 of the Schedule, a member of the Legislative Assembly shall not be disqualified under Sub-para (1) of para 2 where his original political party merges with another political party of the Legislative Assembly and claims that he and any other members of his original political party have become members of such other political party, and from the time of such merger, such other political party shall, be deemed to be the political party to which he belongs for the purposes of Sub-para (1). However, under Sub-para (2) of para 4, the merger of the original political party of a member of a Legislative Assembly shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger. The question may, therefore, arise whether the legislature party members themselves can decide to merge with another party without there being a prior decision regarding the merger, taken by their original political-party. The expression "have agreed to such merger" implies that the merger is first to take place at the party level to which two-thirds of the members of the legislature party concerned are required to agree for merger being effective in so far as they are concerned. In the instant case the Janata party should have first decided the merger to which at least two-third of the members of the Janata Legislature party must also have agreed. Shri S. Tombi Singh as President wrote that the party decided and its 4 M.L.As also claimed to have become members of the Congress (1) party. Subsequent expulsion of Shri S. Tombi Singh and the four M.L.As from the Janata party left no doubt about the M.L.As having decided to merge. Would there be any difference if there was no formal valid resolution adopted by the appropriate body of the Party? Sub para (1) of para 4 of the Schedule speaks of merger of the original political party and Sub-para (2) speaks of "such merger". But such merger will be deemed to have taken place if and only if two-thirds of the members of the legislature party concerned have agreed to it. On the other hand, this para does not expressly provide for any direct nexus between the original political party and the Speaker. In so far as the Legislative Assembly is concerned, the corresponding legislature party represents the original political party and hence the requirement of agreement of two-thirds of the members.

9. The question whether when not less than two-thirds of the members of a legislature party have agreed to a merger, their original political party shall also be deemed to have so merged, may be pertinent. In the instant case if the merger is held to have taken place, the four M.L.As will not be visited with any disqualification; otherwise they may be so visited. But can this Court in writ side

proceed to decide that question. Is not that question connected with the disqualification of the four M.L.As? "Connected" according to Webster's New Twentieth Century Dictionary means joined together; fastened; related; affiliated; associated; having something to do (with). "Connect" according to Chambers Twentieth Century Dictionary means to tie or fasten together; to establish a relation between and "connected" means joined; linked; related. According to Black's Law Dictionary "Connected" means joined; united by junction; by an intervening substance or medicine, by dependence or relation, or by order in a series. Thus, a causal connection is also a category of connection and the cause and effect are causally connected. This question, therefore, is verily connected with the disqualification of the four M.L. As. Para 7 of the Schedule bars the jurisdiction of this Court to decide this question. We accordingly refrain from proceeding to decide the question.

10. The next question is whether this Court can issue a Mandamus commanding the Speaker to hold an inquiry as regards disqualification of the four M.L.As. That disqualification will depend on whether the M.L. As defected to, or their party merged with Congress (1) party. Mr. Das submits that the question was raised and referred to the Speaker by the Petitioner. The provisions of Article 192 of the Constitution will not be applicable in view of the fact that after Fifty-Second amendment the disqualification under the Schedule is included in Clause (2) of Article 191 and not in Clause (1). The question arises as to who can refer such a question for the decision of the Speaker. The justification of accepting such a right to refer to be vested on the affected members of the Assembly cannot be denied. Equal justification may be there in accepting such a right on the part of the original political party. In *Brundaban Nayak Vs. Election Commission of India and Another*, which was a case under Article 192 it has been held that the person who has incurred any of the disqualifications specified by Article 191(1) cannot continue to be a member of the Legislative Assembly of a State, and the obligation to vacate his seat as a result of his subsequent disqualification having been imposed by the Constitution itself by Article 190(3)(a), any citizen can make a complaint to the Governor alleging that such member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191(1) and should, therefore, vacate his seat. Applicability of the same rule in respect of disqualification under Article 192(2) and the Schedule may be a pertinent question, at least in the absence of any rule prescribing the procedure for deciding any question referred to under Sub-para (1) of para 6 of the Schedule including the procedure for inquiry which may be held for the purpose of deciding such question.

11. In the instant case the Petitioner, as the successor President of the Janata Party submitted his representation. After the representation, the Petitioner has been informed that the four M.L. As were admitted by the Speaker to be members of Congress (1) and his decision was based on the communications from the General Secretary, MPCC(I) , the Chief Minister and Leader of the House; and Shri M. Koirang Singh, M.L.A. to the effect that as a result of en

masse admission of the State Unit of Janata Party, Manipur, led by Shri Tombi Singh into Congress (I) Party, Manipur all the Janata Party members have become members of the Congress (I) Legislature party. Mr. Das submits that this is not inquiry in the eye of law and the decision is a purported decision and that this Court should issue Mandamus to hold a proper inquiry. This submission, to our mind, is not tenable. Under Sub-para (2) of para 6 of the Schedule all proceedings under Sub-para (1) of that para in relation to any question as to disqualification of a member of the House under the 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 Article 212. Thus the process of taking a decision under Sub-para (1) shall be taken to be a part of the Assembly proceedings.

12. Under Article 212 of the Constitution Courts are not to inquire into proceedings of the Legislature. It provides:

212. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

It is clear from the above provision that Courts shall not inquire into the question of any proceedings in the State legislature on the ground of irregularity of procedure. The Speaker of the Assembly is envisaged as an officer or member under this provision. Immunity from judicial interference is confined to matters of irregularity of procedure. There may not be immunity for proceedings which are held without jurisdiction. In *Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others*, it has been ruled that the validity of the proceedings inside the legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 is a complete bar. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business, So also are protected the actions of the officers in regard to the functions stated and there can be no doubt that admitting members to a party or the like are such fractions of the Speaker as envisaged under Article 212. Mr. Das relies on *In Re* under Article 145, Constitution of India, In the matter of: Under Article 143 of the Constitution of India, wherein the question was that of powers, privileges, and immunities of a House of the legislature of a State and their members under Article 194(3) of the Constitution of India. In that context at para 62 of the majority judgment it has been held:

Similarly, Article 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Article 212(2)

confers immunity on the officers and members of the Legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the Legislative Chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law; though such scrutiny is prohibited if the complaint against the procedure is not more than this that the procedure was irregular.

In *The Bribery Commission v. Ranasinghe* (1964) 2 All E.R. 785, wherein the validity of a constitutional amendment Act of Ceylon was questioned on the ground that Speaker's certificate to the effect that it was passed by requisite majority was not there when the Bill was given royal assent, the Privy Council looked behind the statute to see whether there was compliance with regard to the requisite majority certificate of the Speaker and held the statute to be invalid. However, that was a constitutional requirement for validity of the statute itself. In the instant case the Petitioner's contention is that the inquiry held was defective as no opportunity was given to him. No violation of any constitutional provision in this regard has been pointed out. In *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, at para it been held that all that the Supreme Court can look into in appropriate cases is whether the procedure which amounts to legislation or, in the case of a constitutional amendment, which is prescribed by Article 368 of the Constitution, was gone through at all. There is no question of validity of any statute in the instant case. The Petitioner has not questioned the vires of the Fifty-Second Amendment.

13. Mr. Das next submits that the right of a political-party has for the first time been recognised by the Constitution of India by introducing the "Tenth Schedule" and the interest of the Petitioner's party is vitally affected and the provisions of Paras 6 and 7 of the Schedule should be interpreted keeping the rights of political parties in mind. It is true that the Election Symbols (Reservation and Allotment) Order, 1968 accepts the idea of a "political party" which it defines to mean an association or body of individual citizens of India registered with the Commission under the proviso to sub-para (2) of that paragraph. It also classifies political parties into recognised and unrecognised and also into National and State parties in the matter of allotment of symbols. Organisation of political parties has been involving gradually in different countries. O. Hood Phillips in his *Constitutional and Administrative Law* (Sixth ed. at p. 28) discussing about representative government writes:

It is implied in what has been said of the British Constitution that the legislature "represents" the people in a general way, Responsible government involves representative government, though the converse is not necessarily true. A

general election now a days is in effect the election of a prime minister, the leader of a political party with a certain programme. Political parties are a development since 1688. They rest almost entirely on convention or merely political fact, though their existence was assumed by the Ministers of the Crown Act 1937, which defined the Leader of the Opposition and granted him a salary.

Cherman Pritchett in *The American Constitution* (3rd Edn, at p. 30) writes:

The process of constitutional adaptation is one which goes on at many levels and in many contexts. There are adaptations which develop on an entirely unplanned basis in the form of usages or customs or methods of procedure or institutions. Perhaps the most striking example in American history is the prompt development after 1789 of a party system, for which the framers had not planned and which in fact they had taken some pains to try to prevent.

While in Dicey's "The Law of the Constitution" we do not find any discussion of the party system, Ivor Jennings in his *Cabinet Government* (3rd Edn. at pp. 14.19) writes: "The appeal of the respective parties to the electorate and the choice of the electorate determine the party composition of the House of Commons". Again "Party warfare is thus essential to the working of the democratic system. Yet it will not function if it is carried to extremes". "Moreover, the electors do not vote for a candidate but for a party. An unusually feeble candidate may lose some votes; a particularly able candidate may secure some votes on his personality. But the ablest candidate cannot win a seat which is, from the party point of view, "hopeless"; nor can the feeblest candidate lose a seat which is "safe". There is a core of voters who would think it treachery to vote against "the party". "From the point of the ruling party he writes:

The Government's control over its majority is substantial. To vote against the Government is to vote against the party. To rebel against the Government is to leave the party. To leave the party is to lose party support at the next election; and, since the average elector votes for the party label, this means, probably, that the member will not be re-elected. Membership of the House and accession to office alike depend on party service and party support. Self-interest dictates support even when reason suggests opposition. Moreover, to vote against the Government is to vote with the enemy. To assist in defeating the Government is to risk the coming into office ex hypothesis of the Opposition-a result which is, worse than keeping the Government in office.

14. We are also aware of the statement of objects and reasons of the Constitution (Fifty-Second Amendment) Act, 1985. The evil of political defection has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. The Act is meant for outlawing defection and a question as to whether the member of the Legislative Assembly has been disqualified or not an inquiry is to be conducted by the Speaker. The effects of defection will be equally applicable to members of all parties wherefrom members defect. However, to our

mind, that question cannot be gone into in this case. Para 7 of the Schedule starts with a non-obstante clause. It says: "Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a house under this Schedule." This Court is being moved to exercise its jurisdiction under Article 226 of the Constitution; and if the whole of the Constitution is non-obstante, then this Court shall have no jurisdiction whatsoever to deal with the matter. The observations in paragraphs 9, 10 and 12 in *Girdhari Lal and Sons v. Sri Ballbir Nath Mathur* (1986) 2 SCC 239: 1986 (1) SVLR (C) 173, will, therefore, be of no avail. The instant case is not one of interpretation of any provision of the Constitution, but one of exercising writ jurisdiction de hors the Constitution itself, which this Court cannot do.

15. This petition is therefore, not maintainable and it is rejected at the threshold. No costs.