

(2014) 02 DEL CK 0243
In the Delhi High Court
Case No : Writ Petition (C) 1154 of 2014

Vinod Kumar Binny

APPELLANT

Vs

Speaker, Delhi Legislative Assembly and Another

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Constitution of India, 1950 — Article 212 226 32

Citation : (2014) 02 DEL CK 0243

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : V.K. Malik, Mr. Rahul Raj Malik, Mr. Neeraj Saxena and Party in Person, for the Appellant; Zubeda Begum Standing Counsel, GNCTD and Ms. Sana Ansari, for R-1, for the Respondent

Judgement

Manmohan, J.

CM Appl. 2419/2014

1. Exemption allowed, subject to just exceptions.

WP(C) 1154/2014

1. Present writ petition has been filed challenging the letter dated 11th February, 2014 issued by the office of respondent No. 1 wherein following the judgment of the Supreme Court in G. Viswanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras and another, it was clarified that the petitioner, even after expulsion, continues to belong to the political party which set him up as a candidate for the election. Issue notice. Ms. Zubeda Begum, learned Standing Counsel accepts notice for respondent No. 1.

2. Notice shall now be issued to respondent No. 2 only, by all modes including dasti, returnable for 24th March, 2014 before Court.

CM Appl. 2418/2014

3. Though the present application has been filed seeking restraint against respondent no. 2 to issue any whip or direction to the petitioner, Mr. Malik, learned counsel for petitioner states that he is only seeking stay of the impugned letter dated 11th February, 2014 as well as a direction to the effect that G. Viswanathan (supra) case shall not apply to the petitioner pending disposal of the present petition. The impugned letter dated 11th February, 2014 reads as under:-

Respected Sir,

With reference to your letter dated 03.02.2014 on the subject cited above, I am to enclose the copy of the judgment of Hon''ble Supreme Court in the case of G. Viswanathan Vs. The Hon''ble Speaker, Tamil Nadu Legislative Assembly, Madras and another, As per judgment:-

1) Even if the political party, by which a person was set up as a candidate for election and was elected as a member of a House, expels such member from the party, he will continue to belong to that political party.

2) Only when he joins another party he will be treated to have voluntarily given up his membership of the party by which he was set up as a candidate for election.

3) There is no "unattached" category of members of the House under the provisions of the Constitution.

In view of the above you continue to belong to Aam Aadmi Party, even after expulsion by the said Party as MLA.

Thanking you

Yours faithfully

Sd/-

(P.N. Mishra)

Secretary

4. Mr. Malik submits that the judgment of G. Vishwanathan (supra) has been stayed by the Supreme Court in the case of Amar Singh Vs. Union of India (UOI), and the matter has been referred to a Larger Bench. The relevant portion of the said judgment is reproduced hereinbelow:-

16. We are also convinced that the decision in G. Viswanathan's case (supra) merits another look as far as the Members of the House who are expelled from their parties on whose banner they had been elected to the House, are concerned, as they would be left completely vulnerable to the whims and fancies of the leaders of their parties. We, therefore, issue Rule in the two writ petitions and request the Hon''ble the Chief Justice of India to refer the matter to a larger Bench on the following questions:

f 1. What is the status in either House of Parliament or the State Legislatures of a Member who is expelled from the party which set him/her up as a candidate for election?

2. Will the provisions of the Tenth Schedule to the Constitution apply to such Member?

3. Was the view taken in *G. Viswanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras* and another, with regard to the status of Members in either House of Parliament who had not voluntarily resigned from their party but had been expelled therefrom, in harmony with the provisions of the Tenth Schedule to the Constitution?

4. In view of the fact that the Members of the two Houses of Parliament, who are expelled from the membership of the parties which had set them up as candidates in the election, are not referred to in the Tenth Schedule to the Constitution, was the decision in *G. Viswanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras* and another, that they must be deemed to continue to belong to such party in view of Explanation (a) to Para 2(1) of the Tenth Schedule, a correct interpretation of the said provisions, having regard to the parliamentary debates on the Bill which became the Tenth Schedule?

5. Can Explanation (a) to Para 2(1) of the Tenth Schedule to the Constitution be extended to include Members of the two Houses of Parliament who are expelled from their parties?

6. When a Member of either House of Parliament is expelled by the party which had set him up as a candidate for election and he either joins another political party or forms his own party, can it be said that he had voluntarily given up his membership of the party in view of the legal fiction created by Explanation (a) to Para 2(1) of the Tenth Schedule?

7. What is the status of an "unattached" Member in either House of Parliament or in the State Legislatures?

17. Pending the reference, the decision in *G. Viswanathan*" case (*supra*) shall not be applied to the two writ petitioners, Shri Amar Singh and Ms Jaya Pradha.

(emphasis supplied)

5. Ms. Zubeda Begum, learned counsel for respondent No. 1 contends that the present writ petition is premature as the Assembly is in suspended animation and no disqualification petition has been filed against the petitioner as of date. She further submits that the jurisdiction of the Courts is barred under Article 212 as well as paras 6(2) and 7 of the Tenth Schedule of the Constitution. She lastly submits that the scope and width of Article 32 is far wider than Article 226 of the Constitution.

6. This Court is *prima facie* of the opinion that the bar in paras 6(2) and 7 of the Tenth Schedule of the Constitution is not attracted to the present case as no

disqualification proceeding has been initiated till date against the petitioner.

7. Further, the bar of Article 212 of the Constitution is also prima facie not attracted as this Court is not enquiring into any proceeding of the State Legislature. In fact, this Court is only examining the legality and validity of the letter dated 11th February, 2014 issued by the office of respondent No. 1.

8. It is settled law that the jurisdiction of the High Courts under Article 226 is far wider than the one exercised by the Apex Court in Article 32. The Supreme Court in *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, has held as under:-

31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

(emphasis supplied)

9. Further, as the Apex Court is seized of the question of law involved in the present case and has stayed the operation of judgment in *G. Vishwanathan (Supra)* case qua Mr. Amar Singh and Ms. Jaya Prada, this Court is of the opinion that petitioner's right should not be curtailed.

10. In fact, this Court is of the opinion that the petitioner is entitled to parity with the order in *Amar Singh's* case (*Supra*).

11. Consequently, the impugned letter dated 11th February, 2014 issued by the office of respondent No. 1 is stayed till the next date of hearing and till then the decision in *G. Vishwanathan (supra)* case shall not be applicable to the petitioner. Order dasti under signature of Court Master.