

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) No. 13873 of 2009

SUBRAMANIAN SWAMY Petitioner
Through: Petitioner in person.

versus

ELECTION COMMISSION OF INDIA
& ANR. Respondents
Through: Mr. R.R. Chopra and Mr. S.K.
Mendiratta, Advocates for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of the local newspapers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

ORDER
16.12.2009

1. In this petition, styled as public interest litigation, Dr. Subramanian Swamy questions an order dated 16th May 2009 made by the President of India under Article 103(1) of the Constitution of India holding that Smt. Sonia Gandhi has not incurred any disqualification under Article 102 (1)(d) of the Constitution of India.

2. The said order came to be passed consequent upon a reference made by the President of India on 25th June 2007 to the Election

Commission of India ('ECI') seeking its opinion under Article 103 (2) of the Constitution of India on the question whether Smt. Sonia Gandhi, a Member of Parliament ('MP') had, by accepting the title of 'Grand Officer of the Order of Leopold' from the Government of Belgium on 11th November 2006, incurred such disqualification. This reference was made on the basis of a petition submitted by Shri P. Rajan of Kerala.

3. The ECI by a 2:1 majority formed the opinion that Smt. Sonia Gandhi could not be said to have incurred a disqualification as alleged by Shri Rajan and accordingly the reference was returned to the President of India. The majority opinion was of Shri Navin B. Chawla, Election Commissioner (as he then was) and Dr. S.Y. Quraishi, Election Commissioner. The minority opinion was of Shri N. Gopalaswami, Chief Election Commissioner. He opined that the reference should be returned to the President of India with the observation that "the enquiry as contemplated under the Constitution could not be made in this case."

4. Dr. Swamy urges that the ECI did not follow the procedure that ought to have been followed in conducting an enquiry into the question referred to it. Relying on the opinion of Shri Gopalaswami, he contends that the citation that might have accompanied the conferment on Smt. Gandhi of the honour of 'Grand Officer of the

Order of Leopold' by the Government of Belgium ought to have been called for in order to determine whether the honour conferred was a 'decoration' or a 'title'. Dr. Swamy relies on the judgment of the Full Bench of the Madras High Court in *K.S. Haja Shareff v. His Excellency, the Governor of Tamil Nadu AIR 1985 Mad 55* and submits that the majority view ought not to have accepted the clarification given by Belgium Government that the said honour was only a decoration and not a title. According to him, the Ministry of External Affairs ('MEA') of the Government of India as well as the Government of Belgium were interested parties whose views on the matter were unreliable. Dr. Swamy claims that during a recent visit to Belgium he was "informed by an Official of the Government of Belgium that the Order was indeed a Title and not a mere Decoration." And, if it was a title, then Shri Rajan's petition was required to be enquired into by the ECI again to determine if the disqualification in terms of Article 102(1)(d) stood attracted.

5. We are unable to accept the submissions of Dr. Swamy. In his minority opinion, Shri Gopalaswami noted in paras 7 and 8 as under:

"7. The Ministry of External Affairs by a subsequent letter dated 13th March, 2008, in continuation of their earlier letter communicated a clarification they obtained from the Belgian Government regarding the "Grand Officer in the

order of King Leopold”. The main points clarified are reproduced below:-

“persons who have been conferred this rank may, if they so wish, become a member of the Societe de Ordre de Leopold, which is a private charity society. Mrs. Gandhi has not expressed the wish to become a member of this society and she is not a member.”

“The honorary decoration of Grand Officer de l’Ordre de Leopold is a honour, and not at all a title of nobility. It represents exclusively a sign of distinction and respect towards the concerned person, and towards the country of which she is an eminent citizen. To accept it does not involve any kind of obligation towards Belgium, neither any allegiance, not even a symbolic one. Several Heads of State and other distinguished foreigners visiting Belgium have received the same distinction”.

8. The Ministry of External Affairs also enclosed a copy of the *note verbale* dated 12th March, 2008, received from the Ministry of Foreign Affairs of Belgium giving the above clarification.”

(emphasis supplied)

6. Thereafter Shri Gopalaswami noted in para 15.1 as under:

“15.1 Under Article 102 (1)(d) of the Constitution, **accepting any ‘title’ from a foreign State is not by itself a disqualification.** The disqualification contemplated under the said Article 102(1)(d) is on account of being under acknowledgement of allegiance or adherence to a foreign State. Therefore, the disqualification under this Article is not attracted merely on account of receiving any award or decoration or for that matter even a

“Title”. Therefore, while invoking this clause, it has to be shown that there is an element of allegiance or adherence on the part of the recipient to the country conferring such award or decoration or even a title. On the ground that the petitioner has not come up with any clinching evidence to back his claim, my two learned colleague Commissioners propose to reject the contention of the petitioner without any further inquiry.” (emphasis supplied)

7. Having noted the above facts, Shri Gopalaswami nevertheless opined that the question whether the honour conferred was a ‘decoration’ or a ‘title’ was “wide open for want of information of the citation attached to the award” and further that “only that would help to get an answer to the question whether there was any adherence/allegiance, even if unintended, in the instant case.” Also, despite noticing that “the facts of this present case and that of the *K.S. Haja Shareff* case are obviously not the same”, Shri Gopalaswami insisted that it pointed to the “diligence required of the Commission by calling for all relevant information even if necessary suo motu and carrying out a detailed inquiry to place matters beyond all reasonable doubt.”

8. We fail to appreciate how the ECI can sit in appeal over the unambiguous clarification issued by the Government of Belgium in the form of a *note verbale*, that what has been conferred on Smt. *W.P.(C) No. 13873 of 2009*

Gandhi is not a title but a decoration. The desperate attempt by Dr. Swamy to doubt the bonafides of the Government of Belgium is without basis and deserves rejection. The reliance on the judgment of ***K.S. Haja Shareff*** is, in our view, wholly misplaced. The facts of that case, as set out in paras 8 and 9 of the said decision, show that the Petitioner there was appointed as Honorary Consul General of Turkey at Madras, which admittedly was a post of which he took charge. In para 25 it was concluded that “on being appointed as Consul, the petitioner has agreed to bind himself and observe the conditions stipulated by the Government of Turkey, to the extent to which he had been appointed to carry out his functions.” Therefore the High Court upheld the view of the ECI in that case that the petitioner had acknowledged adherence to the Government of Turkey.

9. There can be no comparison of the facts in ***K.S. Haja Shareff*** with the facts of the present case. In fact the minority opinion itself notices this. Being appointed to a post under a foreign State is not the same thing as being conferred an honour by a foreign State. We do not find the decision in ***K.S. Haja Shareff*** to have any relevance to the present case.

10. Article 102(1)(d) places an onus on a person seeking to disqualify an MP to show, even prima facie, that such MP “is under any acknowledgment of allegiance or adherence to a foreign State.”

Neither Shri P. Rajan, nor Dr. Swamy have discharged that onus. We fail to appreciate how without even a prima facie case being made out and some factual foundation laid, the ECI is supposed to undertake a detailed inquiry, overlooking the clarification of a foreign State about the nature of the honour conferred by it. Consequently we do not find any legal infirmity in the opinion of the ECI on the basis of which the President issued the impugned order dated 16th May 2009.

11. We find no merit in this petition and it is dismissed as such.

CHIEF JUSTICE

S. MURALIDHAR, J

DECEMBER 16, 2009
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