

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1130 of 2016

=====

Narendra Singh, Son of Late Sri Krishna Singh, Resident of 8, Strand Road, P.S.
Sachiwalaya, District - Patna

.... Appellant/s

Versus

1. The Bihar Legislative Council, Patna through the Chairman, Bihar Legislative Council, Patna
2. The Chairman, Bihar Legislative Council, Patna
3. The Acting Secretary, Bihar Legislative Council, Patna
4. Sri Sanjay Kumar Singh, Son of not known to the appellant, Chief Whip, Ruling Party Bihar Legislative Council, Patna

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Binod Kanth, Sr. Advocate

Mr. S.B.K. Manglam, Advocate

For the Respondent/s : Mr. Y.V. Giri, Sr. Advocate

Mr. Kaushal Kumar Jha, Advocate

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 17-07-2017

Seeking exception to an order dated 26.04.2016 passed by the learned Writ Court in two writ petitions C.W.J.C. No. 912 of 2016 and C.W.J.C. No. 335 of 2016, this appeal has been filed under Clause 10 of the Patna High Court Rules.

2. Facts in brief which are necessary for decision of this appeal is that challenge herein has been made to orders dated 06.01.2016 read with order dated 14.01.2016 passed by the Chairman, Bihar Legislative Council in declaring the appellant herein disqualified in view of the powers vested upon him under the 10th Schedule and the rules framed, namely, the Bihar Legislative Council (Disqualification on the ground of Defection) Rule, 1994. Appellant was elected as a member of the Bihar Legislative Council in February, 2012 as a candidate belonging to a political party, namely, the Janta Dal (United). It is stated that on 02.11.2015 Respondent No. 4 filed an application before the Chairman of the Bihar Legislative Council seeking him to exercise jurisdiction under 10th Schedule of the Constitution on account of the fact that the conduct and act of the appellant exhibited in May, 2014 during the general elections to the Parliament entitles him to be declared as disqualified under Sub Rule 1 and 7 of Rule 6 of the Disqualification Rules of 1994 as applicable



in the State of Bihar. The learned Chairman of the Bihar Legislative Council having accepted the same, matter was challenged in the writ petition and the Writ Court also having dismissed the same, the appeal is before us under Clause 10 of the Patna High Court Rules.

3. Even though various arguments have been advanced at length on the merits of the matter with regard to the allegations made by Respondent No. 4 before the Chairman, Bihar Legislative Council, on going through the detailed judgment passed by the learned Writ Court, we find that the learned Writ Court has gone into all the legal aspects and the factual aspect and after examining the provisions of Schedule 10 to the Constitution, the law laid down by the Supreme Court in the case of **Kihoto Hollohan Vs. Zachillhu and Ors. 1992 Suppl (2) SCC 651, Ravi S. Naik Vs. Union of India & Ors.- 1994 Suppl (2) SCC 641** has decided the issue and, therefore, we do not deem it appropriate to burden this judgment in elaborately dealing with the matter except to say that the learned Senior Counsel appearing for the appellant very fairly stated that knowing the limitations available with a Court exercising jurisdiction in such matters under Article 226 of the Constitution, he only highlights certain procedural infirmity in the inquiry conducted to say that the principles of natural justice have been violated. The allegations levelled against the appellant were not properly proved



and, therefore, in view of the breach of the principles of *audi alteram partem* the learned Writ Court should have interfered into the matter.

4. We find that the learned Writ Court has gone into practically all the aspects and after considering the two judgments as are indicated hereinabove so also a judgment in the case of **Dr. Mahachandra Pratap Singh Vs. Chairman, Bihar Legislative Council & Ors.-2005(1) PLJR 102 (SC)** has found that the Chairman has exercised his powers under Paragraph 8 of the 10th Schedule to the Constitution and the rules framed thereunder and keeping the law on the subject in question it is found that the arguments advanced with regard to gross deficiency in holding the case to be proved even though looks attractive but the learned Writ Court refused to exercise its jurisdiction and has held that the issue to be decided in such matters as held by the Supreme Court in the cases detailed hereinabove is not in the form of an adversarial litigation. The Speaker or the Chairman can take cognizance of the existing state of affairs either *suo motu* or on a petition filed before him and he is only required to conduct an inquiry to satisfy himself with regard to the state of affairs as indicated and thereafter the learned Writ Court dealt with the issue in the following manner:-

“Incidentally, it may be noted that apart from the materials placed by the complainant the respondent Chairman in order to satisfy himself got a confirmation



letter from the Election Commission of India (for short 'the ECI') disclosing that the petitioner was declared by the ECI as one of the star campaigners of the newly founded political party called HAM. On a request made by the petitioner copies of the communication of ECI received in the Secretariat of the respondent-Chairman and other materials were made over to the petitioner whereafter he filed his written submission/written statement which was considered by the respondent- Chairman and the final order was passed. Any such order passed by the respondent-Chairman, even according to the writ petitioner, can be challenged on the ground of non compliance of the principles of Audi Alteram Partem which is fundamental to adjudicatory system or on the ground of mala fide or being perverse. On bare perusal of the records, including the order impugned there is no doubt in the mind of the Court that adequate opportunity of making submission or being heard in the face of incriminating materials/ circumstances was afforded to the petitioner . The hearing of the matter was made on diverse dates. The petitioner instead of utilizing those hearings in the enquiry raised merely technical objection(s). Even in the written statement/ written argument he stuck to raising technical objection and not placing relevant circumstances which may demonstrate that he had not given up the Membership of the party which sponsored him and got a birth in the House. The Court would clarify that in the light of the



judgments of the Apex Court the enquiry made under the Tenth Schedule, cannot be equated with the proceedings of the election dispute or the suit. It is because any or every political action or conduct of the Member of the House is in the gauge of the people at large whom he claims to represent. The Chairman holds a revered constitutional post and is expected to take a decision on the existing state of affairs promptly as delay in such matter would defeat the very purpose of the constitutional provision. The Court is also not convinced by the submission of Mr. Kanth that the proceeding suffers from mala fide. There is no convincing material to hold so. Moreover, any such allegation would not sustain as the respondent-Chairman, the author of the order, is not party to the proceeding. The petitioner has rightly not chosen to do so considering the high constitutional post held by him and the pious duty cast on him to act in completely non-partisan manner. The impugned order cannot be held as perverse as indisputably the jurisdiction to exercise the power is conferred on the respondent and it is not a case of absolutely no material on record to record the satisfaction. The petitioner has rightly not founded his challenge on the ground that the impugned order is perverse. It has fairly been conceded by Mr. Kanth that even in absence of a written complaint by the respondent no.4, the respondent – Chairman was authorized in law to ignite the enquiry and pass order. Much insistence has been placed by the petitioner that



the satisfaction of the respondent-Chairman to recognize and declare an existing state of affairs with respect to the Member of the House has to be objective. The term objective satisfaction means presence of relevant material inspiring confidence. It may also be a case of perception but one should not forget the perception mirrors the conduct of the person. In the present case it was the political conduct of a well known political figure. Who can be the best Judge to appreciate the political conduct of the Member other than the Chairman of the House who conducts the proceedings of the House and take ancillary decision(s) thereto.”

5. After considering the aforesaid, the petition has been dismissed.

6. In our view, the approach and the principle followed by the learned Writ Court in the matter does not call for any interference as we are of the considered view that the learned Writ Court has applied the principles of law in its right perspective and it is not necessary to interfere into the matter on the grounds canvassed before us. This Court now with regard to the findings recorded, which are factual findings, cannot sit in appeal over the decision of the Chairman of the Legislative Council or the Writ Court and record a contrary finding. Once we are satisfied that based on the material that



came on record, the findings recorded is the possible finding which could be arrived at in the given set of circumstances, it is not necessary for us to interfere into the matter.

7. Accordingly, finding no ground, the appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	20.07.2017
Transmission Date	

