

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1120 OF 2018

1. Maharashtrawadi Gomantak Party
and another.

..... Petitioners.

Versus

1. Election Commissioner of India
and five others.

..... Respondents.

Mr. S.N. Joshi with Ms. Sameera Bhat, Advocate for the Petitioners.

***Coram : R.M. Borde, &
Prithviraj K. Chavan, JJ.***

Reserved on : 30 November 2018

Pronounced on : 17 December 2018.

ORDER : (Per R.M. BORDE, J.)

Petitioner No.1 is a regional political party, registered with the Election Commission of India under Section 29A of the Representation of Peoples Act; whereas, Petitioner No.2 claims to be a social worker and a Member of the Village Panchayat.

2. The Petitioners seek to challenge the decision of the Honourable Speaker of the Goa Legislative Assembly, dated 16 October 2018 accepting the resignation of Respondents No.5 and 6 as Members of the Goa Legislative Assembly. The Petitioners are

also praying for issuance of directions to the Election Commission of India to send appropriate recommendations to the Government, as well as the law Commission of India seeking amendment to the Anti-defection Law, whereby the Members of either the Parliament or the Legislative Assemblies or Council resign from the membership, without justifiable reasons, should be disqualified from contesting fresh elections and/or occupying any public posts for a period of six years.

3. The Petitioners contend that Respondents 5 and 6 were lured to resign from the membership of the House. They were elected on the tickets issued by the Indian National Congress. It is contended that they were assured tickets of Bharatiya Janata Party for membership during the next elections. In the meantime, they were also assured with Chairmanship of some Government Corporations. It is contended that on 16 October 2018, Respondents 5 and 6 met the National President of Bharatiya Janata Party in New Delhi and submitted their resignations to him. The letters of resignation came to be forwarded to the Honourable Speaker by fax. The Office of the Speaker received the same at around 12:55 hours and the Honourable Speaker accepted both the resignations forthwith. The Petitioners contend that Honourable Speaker did not secure the presence of the concerned Members before him and hurriedly

accepted the resignations, though the original letters were not before him. It is contended that the acceptance of resignations of the concerned Respondents by the Honourable Speaker is violative of the spirit of the Tenth Schedule of the Constitution of India.

4. The questions that are posed and recorded in the instant petition are: (1) whether the decision of the Honourable Speaker to accept the resignation of Respondents No.5 and 6 is liable to be quashed and set aside for being violative of principles of natural justice, equity, unjust, unreasonable, arbitrary, illegal and unconstitutional for being in violation of the Tenth Schedule of the Constitution ?

(2) Whether Respondents No.5 and 6 are liable to be disqualified under the Tenth Schedule of the Constitution of India ? and

(3) Whether the Petitioners are entitled to a writ, order or direction from this Court directing the Election Commission of India to examine and make appropriate recommendations to the Government restraining Respondents No.5 and 6 from contesting bye-elections and from holding any public posts in the Government during the remainder of their term ?

5. The letter of resignation tendered by Respondent No.5 to the Honourable Speaker of the Goa Legislative Assembly reads thus :

" 16th October 2018

To :
The Speaker,
Legislative Assembly
Goa

Sir,

I hereby tender my resignation of my seat in the house with immediate effect 16th October 2018, time - 12:30 PM, from Shiroda-22 Assembly Constituency.

Yours faithfully
Sd/-
Subhash Ankush Shirodkar."

The letter of resignation tendered by Respondent No.6 to the Honourable Speaker of the Goa Legislative Assembly reads thus :

" 16th October 2018

To :
The Speaker,
Legislative Assembly
Goa

Sir,

I hereby tender my resignation of my seat in the house with immediate effect 16th October 2018, time - 12:30 PM, from Mandrem-01 Assembly Constituency.

Yours faithfully
Sd/-
Dayanand Raghunath Sopte."

Endorsement of the Honourable Speaker on the said letters reads thus :

"Received today on 16th October 2018 at 12:55 hrs (afternoon) vide fax message confirmed the same over telephonic conversation with the member Resignation has been accepted w.e.f. 16/10/2018 (AN).

Sd/-

16/10/2018

Dr. Pramod Sawant

Speaker

Goa Legislative Assembly

SECRETARY - LEGISLATURE

Sd/-

16/10/2018"

6. Article 190 of the Constitution of India provides for disqualification of members. Sub-Article (3) of Article 190 provides that if a member of a House of the Legislature of a State (a) becomes subject to any of the disqualifications mentioned in Clause (1) or Clause (2) of Article 191; or (b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant. The proviso provides that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may

be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation. The Petitioners contend that the resignation tendered by Respondents No.5 and 6 is not in terms of Sub-Article (3)(b) of Article 190. The same has not been tendered to the Honourable Speaker, however, the letters of resignation have been faxed and the original letters of resignation have not been received by the Honourable Speaker. It is further contended that there was no inquiry conducted by the Speaker and that the satisfaction reached by the Speaker as regards the genuineness of the resignation or its voluntary nature cannot be presumed. The Petitioners contend that the Honourable Speaker, without holding any inquiry and without recording any reasons for satisfaction as regards the voluntary nature or genuineness of the resignation, has proceeded to accept the resignations. According to the Petitioners, the decision of the Honourable Speaker is in breach of the principles of natural justice and the same is arbitrary and, therefore, deserves to be quashed.

7. The first thing that has to be borne in mind is that the letters of resignation have been received by the Honourable Speaker and there is absolutely nothing on record to indicate that the concerned Members i.e. Respondents No.5 and 6 have, at any point of time, made any grievance as regards the acceptance of the resignations by the Honourable Speaker. Genuineness or voluntary

nature of resignation has not been challenged by the concerned Members of the Legislative Assembly who did tender their resignation letters. The decision of Speaker by very conduct of the concerned Respondents 5 and 6 shall be presumed to have been accepted by them. It cannot be presumed about the fact as to whether the voluntary nature of resignation of Respondents No.5 and 6 can be claimed to be within the knowledge of the Petitioners. The contents of the Petition are stated to be true to the own information and knowledge and some portion of the Petition is stated to be based on legal advice. It is surprising to note as to how the Petitioners can claim knowledge in respect of non-voluntary and non-genuineness of the resignation tendered by Respondents No.5 and 6. The fact as regards voluntary nature and genuineness of the resignation is within the personal knowledge of the concerned Respondents who have never disputed or raised any grievance as regards the decision of the Honourable Speaker of acceptance of their resignation, till this date.

8. Another argument advanced by the Petitioners that the letters of resignation ought not to have been accepted by the Honourable Speaker since the original letters were not before the Honourable Speaker and only faxed copies were transmitted to the Office of the Speaker. Sub-Article (3)(b) of Article 190 of the

Constitution stipulates that a Member may resign his seat by writing under his hand addressed to the Speaker. The letters of resignation are in their handwriting and addressed to the Honourable Speaker and thus satisfies the requirements of Sub-Article (3)(b) of Article 190.

9. Section 3(65) of the General Clauses Act, 1897 states that the expression referring to "writing" shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form. Undoubtedly, a paper which is typed or type written is a writing according to the above definition. On perusal of the endorsement of the Honourable Speaker it does appear that he made proper inquiry as regards genuineness of resignation. It is endorsed on the letters of resignation that the Speaker got correctness and the voluntary nature of resignation confirmed from the concerned Respondents by having telephonic conversation with the Members and thereafter proceeded to accept their resignation. The inquiry conducted by the Honourable Speaker satisfies the requirement of Sub-Article (3)(b) of Article 190 and the satisfaction arrived at by the Honourable Speaker cannot be a matter of challenge by a rival party having different political interest. The procedure adopted by the Honourable Speaker constitutes "inquiry". The provision does not stipulate any particular

type of inquiry. The nature of inquiry depends on facts and circumstances of each case. We do not think, in the facts and circumstances of the case, that any further inquiry was required or necessitated. It was for the Honourable Speaker to judge the situation and his decision cannot be said to be perverse or unreasonable. The satisfaction arrived at by the Honourable Speaker need not be a matter of scrutiny at the instance of the Petitioners who have different political agenda of their own.

10. In an identical situation, a challenge raised by the Petitioners before the Madhya Pradesh High Court and the High Court of Chhattisgarh was turned down by the concerned High Courts in the matter of ***Vikram Singh vs. Shri Ram Ballabhji Kasat and ors.***, reported in AIR 1995 MP 140 and in the matter of ***B.N. Bajpai vs. Ramdayal Uike and ors.***, reported in reported in 2001(1) CGLJ 238. The decision of the High Court of Chhattisgarh was challenged by the Petitioner therein in Special Leave to Appeal (Civil) No.11362/2001. The Supreme Court summarily rejected the Special Leave Petition and while rejecting the SLP, it observed that the High Court should not have entertained the supposed public interest litigation.

11. The Supreme Court in the case of ***Union of India vs.***

Gopal Chandra Misra reported in AIR 1978 SC 694, has laid down what is meant by resignation, in paragraphs 24, 25, and 26 which read thus :

“24. Resignation” in the dictionary sense, means the spontaneous relinquishment of one’s own right. This is conveyed by the maxim : *Resignatio est juris propii spontanea refutatio* (See Earl Jowitt’s *Dictionary of English Law*). In relation to an office, it connotes the act of giving up or relinquishing the office. To “relinquish an office” means to “cease to hold” the office, or to “loose hold of the office (cf. *Shorter Oxford Dictionary*); and to “loose hold of office”, implies to “detach”, “unfasten”, “undo or untie the binding knot or link” which holds one to the office and the obligations and privileges that go with it.

25. In the general juristic sense, also, the meaning of “resigning office” is not different. There also, as a rule, both, the *intention* to give up or relinquish the office *and* the concomitant *act* of its relinquishment, are necessary to constitute a complete and operative resignation (see, e.g. *American Jurisprudence*, Second Edn., Vol. 15-A, p. 80), although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, *resigning* office necessarily involves *relinquishment* of the office, which implies cessation or termination of, or cutting as under from the office. Indeed, the completion of the resignation and the vacation of the office, are the causal and effectual aspects of one and the same event.

26. From the above dissertation, it emerges that a complete and effective act of resigning office is, one which severs the link of the resignor with his office and terminates its

tenure...”

The concerned Members have relinquished their office which implies cessation or termination of, or cutting as under from the office. The resignations tendered are voluntary which have been accepted and have been acted upon and the same cannot be questioned by the Petitioners. The fundamental flaw in the argument of the Petitioners is that since the concerned Respondents have never come forward to object to the acceptance of the letters of resignation by the Honourable Speaker, the procedural objection would be of little significance. In these circumstances, if the Petitioner No.1 which is a registered political party, having different political inclination and having interest in conflict with the interest of another political party, shall not be permitted to raise any dispute. The objection raised by the Petitioners in this regard, therefore, deserves to be rejected.

12. The Petitioners contend that the tendering of resignation by Respondents No.5 and 6 has to be viewed as an act of defection since they were lured by Bhartiya Janata Party and they were awarded by the Bhartiya Janata Party. There is absolutely no material firstly to substantiate the contention. Secondly, the act of tendering resignation by a Member of Legislative Assembly does not come within the purview of the Tenth Schedule to the Constitution

of India and such an act cannot be construed as a defection. An eligible person has a right to contest the elections. It is for the electorate to make its choice. Once a candidate is elected, ordinarily he is expected to function as a Member of the Legislative Assembly for the requisite term. There is nothing in the Constitution which takes away the right of an elected member to resign from his seat. Denial of such a right to an elected member would be destructive of principles of democracy. A legislator is the servant, but not the slave of the people. It is true that frequent resignations and frequent by-elections are a drain on the finances of the State and may prove irksome. But that is no reason to compel an elected member who has no desire to continue his membership, to continue as such. A person, after getting elected, may, for variety of reasons, desire not to continue as a Member. His reasons may be good or bad, but that is his decision and his right.

13. The Petitioners contend that the act of tendering resignation by the concerned Respondents shall be equated to the defection of the Members under the Tenth Schedule of the Constitution. Apart from the above, a request is made to recommend incorporation of necessary amendment in the constitutional provision, to the Election Commission of India and the Law Commission of India. Firstly, the Election Commission and the Law

Commission are recommendatory bodies and it is for the Parliament to bring about the necessary amendments to the Constitution. It is exclusively within the domain of the law makers and the Courts have little role to play in the process of law making. That apart, it is difficult to accept the argument of the Petitioners of equating the act of tendering resignation and linking the same with the concept of defection which is incorporated in the constitutional provision, more specifically the Tenth Schedule of the Constitution. The object of introducing the amendment bill for inclusion in the Tenth Schedule is primarily to curb the political defection which is a matter of national concern. As has been stated above, a member of a political party, for variety of reasons, may relinquish his office, but such an act cannot be equated with defection. The basic principle providing for curbs on the political defection is that if a person after election changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The Supreme Court in matter of *Kihoto Hollohan vs. Zachillhu and ors.*, reported in 1992 Supp (2) SCC 651, in paragraph 13 has observed thus :

“13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the

election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election.”

In view of the observations as referred to above, the contentions raised by the Petitioners as regards making recommendations to the Law Commission and the Election Commission do not deserve any consideration.

14. We must place on record our displeasure for filing petitions by political parties with a view to achieve their political objectives and usurping the precious time of the Court which, otherwise, can be utilized for disposal of the matters brought before the Court by needy and poor. In the matter of ***Dattabhau s/o. Annasaheb Pathrikar vs. State of Maharashtra & ors.***, reported in 2007 (3) MjLJ 76, relying on the judgment in the matter ***Vishnu Shivram Mehre Vs. City of Akola Municipal Corporation & ors.***, 2003 (5) MhLJ 522, this Court had observed in paragraph

No.13 as under :

“13. Reliance is placed on the judgment of this Court in the matter of (I) Sunil Ramdas Kotkar Vs. State of Maharashtra, 2005 (4) Mh.L.J. 375 = 2005 (3) ALL MR 143, (ii) Vishnu Shivram Mehre Vs. City of Akola Municipal Corporation 2003 (5) Mh.L.J. 522 = 2004 (3) ALL MR 151 and Abdul Rashid s/o. Abdul Sattar vs. Vikas Jain, 2003 (2) Mh.L.J. 902. In Vishnu Mehre’s case (supra), the question that was posed before the Court was whether on refusal by the party having greatest numerical strength in the Corporation to shoulder the responsibility of the leader of opposition, whether the party having next higher numerical strength in the house could be permitted to set up their candidate for the post of Leader of Opposition. This Court came to the conclusion that there was nothing wrong in recognizing a Corporator belonging to a party having next higher numerical strength as a Leader of Opposition in the circumstances where the party having greatest numerical strength in the house refuses to shoulder the responsibility. The Court while determining the issue has dealt with the political question doctrine. In para 32 of the judgment, the Court has observed thus:

“32. As already noticed hereinabove, it is now well settled that the Courts are expected to decline jurisdiction over all “political questions”. One of the important corollary of Court’s refusal to exercise judicial powers is the doctrine of “political questions”. In exercise of its powers of its judicial review; time and again it has been pointed out by the various courts that certain powers are vested in the legislative of executive departments of the Government to be exercised in a purely discretionary manner, and that whether they have

been constitutionally exercised or not is a “political question” which the Court is not expected to undertake to decide. (See Luther Vs. Borden, 7 Hardward 1: 12 Ed. 581)(1849).

... ”

15. In the instant case, applying the political question doctrine, this Court exercising the writ jurisdiction should be slow in entertaining the petitions having the political overtones. In the instant case before us, in view of the facts presented before us, we do not deem it appropriate to enter into the political questions presented for determination in the petition. The Petition is, according to us, in a way abuse of the process of the Court. We, therefore, while dismissing the Petition, direct the Petitioners to pay costs which we quantify at ₹ 1.00 lakh.

16. The Writ Petition is dismissed with costs, which are quantified at ₹ 1.00 lakh.

Prithviraj K. Chavan, J.

R.M. Borde, J.