

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.1951 OF 2019

ORDER: (Per the Hon'ble the Chief Justice)

The petitioner, Sabavat Ramulu Naik, has challenged the legality of the order dated 16.01.2019, passed by the Chairman, Telangana Legislative Council ('the Council', for short), the respondent No. 2, whereby the petitioner was declared as disqualified as a Member of the Council, in terms of Para 2(1)(a) of the Tenth Schedule of the Constitution of India, and was declared "to cease to be a Member of the Council ('M.L.C.', for short) with immediate effect".

Briefly, the facts of the case are that on 20.06.2014 the petitioner was nominated as a M.L.C. by the Governor of Telangana in exercise of powers conferred by sub-Clause (e) of Clause (3) of Article 171 of the Constitution of India, read with Clause (5) of the said Article. However, during the course of his tenure as the M.L.C., the respondents Nos. 3 and 4 submitted a disqualification petition under the Tenth Schedule of the Constitution of India, read with Rule 6 of the Members of the Telangana Legislative Council (Disqualification on Ground of Defection) Rules ('the Rules', for short) against the petitioner. In the petition, the respondent Nos. 3 and 4 claimed that the petitioner was a member of the Telangana Rashtra Samithi Party ('TRS Party', for short) on the date of his nomination to the Council. It is on the basis of his membership that he was nominated by the Governor of Telangana on 20.06.2014 as the M.L.C. They further claimed that on 27.10.2018, the petitioner

went to New Delhi and joined the Indian National Congress Party ('INC Party', for short) in the presence of its President, Mr. Rahul Gandhi. His joining the INC Party was reported both by the print and electronic media. Furthermore, the petitioner had canvassed for the INC Party in the elections that were conducted on 07.12.2018. Hence his conduct amounts to voluntarily giving up his membership of the TRS Party. Therefore, he should be declared as disqualified as the M.L.C.

Subsequently, on 18.12.2018 respondent No. 2 issued a notice to the petitioner calling upon him to submit his comments within seven days. However, as the petitioner did not receive all the documents attached with the disqualification petition, he sought time of one month to enable him to obtain the copies of certain documents relevant to the case. The petitioner further claims that he had applied, under the Right to Information Act, 2005, for obtaining certain other documents. However, as he did not receive these documents, he requested the respondent No.2 to grant him time for filing his counter. On 11.01.2019, the petitioner requested the respondent No.2 to wait till the papers were received by him under the RTI Act. But, instead of granting him time, the respondent No.2 proceeded with the case, and heard respondent Nos.3 and 4, and reserved the orders. Thereafter, the petitioner was surprised to receive the order dated 16.01.2019, passed by respondent No.2, whereby he was disqualified from being the M.L.C. in terms of Para 2(1)(a) and sub-para (3) of the Tenth Schedule of the Constitution of India. Hence, this petition before this Court.

Mr. Salman Kurshid, the learned Senior Counsel for the petitioner, has raised the following contentions:-

Firstly, since the petitioner was nominated to the Legislative Council, there is no indication that he belonged to any political party. In fact, the complainants have failed to prove the fact that prior to his nomination, or subsequent thereto, the petitioner was a member of the TRS Party.

Secondly, the petitioner was nominated by His Excellency the Governor on the ground that he is "*an active social worker*". Hence, his nomination was under Article 171(5) of the Constitution of India. Therefore, the petitioner was not associated with the TRS Party.

Thirdly, even the website of the Legislative Council does not indicate that the petitioner belonged to any particular political party.

Fourthly, the learned Chairman has disqualified the petitioner only on the basis of whims and fancies. The learned Chairman has drawn an assumption that the petitioner did belong to the TRS Party. However, such a presumption is not fortified by any cogent evidence. Therefore, the conclusion drawn by the learned Chairman that, in fact, the petitioner belongs to the TRS Party, and has voluntarily disassociated himself from the TRS Party, is a misplaced conclusion.

Fifthly, in the case of a nominated M.L.C., there are two possibilities: either the M.L.C. is a member of a political party, or that he is an independent person. In both these cases, the burden

of proving the disqualification would vary. In the former case, the complainant is required to prove that the M.L.C. has voluntarily given up his association with his own party, or that he has the intention to join another political party. In the latter case, the complainant would have to establish that the independent nominated person joined a political party after the lapse of six months, after taking his seat in the Legislative Council. In the second scenario, the complainant would have to demonstrate that the M.L.C., in question, has given up his independence and association with his political party. However, in the present case, this aspect has not been established by the complainant. Therefore, the learned Chairman is unjustified in disqualifying the petitioner.

Sixthly, the petitioner's rights under the principles of natural justice have been violated by the learned Chairman. For, although the petitioner had sought four weeks time to file his counter to the disqualification petition, the learned Chairman granted him only one weeks' time for the same.

On the other hand, Mr. J. Ramachandra Rao, the learned Additional Advocate General and Counsel for respondent Nos.1 and 2, has raised the following counter-contentions:-

Firstly, relying on the case of **Kihoto Hollohan v. Zachillhu**¹, the learned counsel has pleaded that while dealing with the case of disqualification, and while interpreting the provisions of the Tenth Schedule of the Constitution of India, its

¹ 1992 Supp. (2) SCC 651

very purpose and object should be kept in mind. The said Schedule was introduced by the Parliament in order to eradicate the virus of defection which had become quite prevalent in the political scenario. Defection not only plays fraud on the hopes of the electorate, but also undermines their faith in democracy. Therefore, defection, like termites, eats away the superstructure of democracy, and rule of law – the very structures which hold the entire nation together. Therefore, while dealing with a case of disqualification of a legislator, neither a pedantic, nor a hyper-technical view should be taken by the Court. The Court, in fact, should have a wide vision in order to protect democracy, and the rule of law. The Court should not reduce its vision to a myopic one. Therefore, the Court need not consider the case at the micro level of technicalities, but should consider it at the macro level of protecting democracy and rule of law.

Secondly, relying on the case of **Mahachandra Prasad Singh (Doctor) v. Chairman, Bihar Legislative Council**², the learned counsel submits that when a disqualification petition is filed by a person against the affected person, there is no *lis* between the complainant and the affected member. Therefore, the yardsticks which are applicable in case of adversarial litigation should not be applied.

Thirdly, the role of Speaker/Chairman is only to ascertain relevant facts. If the relevant facts are found to exist, the Speaker/Chairman has no other discretion, but to declare the affected person as disqualified.

² (2004) 8 SCC 747

Fourthly, the petitioner was registered as a member of the TRS Party on 28.01.2013. He was nominated on 28.06.2014. Although his nomination was made by the Governor under Article 171 of the Constitution of India, but in fact he was nominated as he was backed and supported by the TRS Party. During his tenure as a member of the Party, till his having joined the INC Party on 27.10.2018, he continued to be a member of the TRS party. The fact that he was a member of the TRS Party is clearly proven by Membership Registration Application-cum-Receipt dated 30.03.2017. According to respondents, the petitioner had paid Rs.50/- for being registered as member of the TRS Party. This document was produced before the learned Chairman. More importantly, in the writ petition itself, the petitioner has admitted that on 11.01.2019, *“the petitioner had informed the learned Chairman that prior to his nomination, he was a member of the TRS Party”*. Hence, the learned Chairman was justified in concluding that prior to joining the INC Party on 27.10.2018, the petitioner, in fact, was a member of the TRS Party. Most importantly, even in the petition, the petitioner does admit that he was a primary member of the TRS Party on the date of his nomination by the Governor to the Council. Once this admission is made, there is no need for the complainants to establish the said fact. For, admission is the best evidence.

Fifthly, the complainants had submitted sufficient evidence, based on the press reports, to establish the fact that the petitioner had joined the INC Party on 27.10.2018. Since the petitioner had joined the INC Party after expiry of six months from the date on which he took his seat in the Council, his case falls under sub-

para (3) of Para 2 of the Tenth Schedule to the Constitution of India. Therefore, the learned Chairman was also justified in declaring the petitioner as disqualified.

Sixthly, relying on the case of **Jagjit Singh v. State of Haryana**³, the learned Additional Advocate General has pleaded that although the Speaker/Chairman acts as a quasi-judicial tribunal, but while assessing the allegation made against the affected person, the Speaker/Chairman is permitted to rely upon his personal knowledge with regard to the conduct and the status of the affected person. After all, the Chairman has seen the legislator in the Council; he had heard the legislator during the deliberations of the Council. In the present case, he had also seen the videos and the images, in the media, showing the petitioner's presence with senior most members of the INC Party. Therefore, the Chairman would be justified in relying upon his own knowledge in disqualifying the petitioner.

Seventhly, the petitioner did not file any counter to the notice. Therefore, the petitioner has accepted and admitted all the allegations made by the complainants. Once such an admission is made, the petitioner cannot claim that no opportunity of hearing was given, and principles of natural justice were violated by the learned Chairman. Hence, the learned Additional Advocate General has supported the impugned order.

Mr. Gandra Mohan Rao, the learned counsel appearing for respondent Nos.3 and 4, has echoed the arguments of the learned

³ (2006) 11 SCC 1

Additional Advocate General. Therefore, his arguments are not being narrated herein.

In rejoinder, Mr. Salman Kurshid, the learned Senior Counsel, submits that the disqualification petition was filed on 17.12.2018; on 18.12.2018, a notice was issued to the petitioner granting seven days time to file his comments; on 24.12.2018, the petitioner submitted a memo before the learned Chairman to defer the hearing for a period of four weeks, as he had applied for certain documents to be given to him under the RTI Act. Since the documents were not supplied to him, he would not be in a position to file his counter. However, by letter dated 28.12.2018, the petitioner was given only one week's time to file his comments i.e., by 03.01.2019. By letter dated 04.01.2019, the petitioner was directed to appear on 11.01.2019 before the learned Chairman. Although the petitioner could not appear before the learned Chairman, on 11.01.2019, he appeared through two counsel. They sought time for filing the comments. But instead of giving time, the learned Chairman heard the counsel for the complainants and the learned counsel for the petitioner, and reserved the matter. The impugned order was passed on 16.01.2019. Therefore, despite the petitioner's repeated requests to give him time to present his defence, and to argue his case, sufficient opportunity of hearing was not given to the petitioner. Hence, his rights under the principles of natural justice have been violated.

Heard the learned counsel for the parties, perused the impugned order, and considered the case law cited at the Bar.

The Statement of Objects and Reasons appended to the Bill, which was adopted as the Constitution (Fifty-second Amendment) Act, 1985, reads as under:

The evil of political defections 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. With this object, an assurance was given in the Address by the President to Parliament that the government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.

Therefore, the salutary object for amendment is to get rid of the mischief of political defection, which is undermining the very foundation of our democracy, and the principles which sustain it. In the case of **Kihoto Hollohan** (supra), the Apex Court had noted the fact that the object underlining the provisions in the Tenth Schedule was “to curb the evil political defections motivated by lure of office, or other similar considerations, which endangered the foundations of democracy. The remedy proposed is to disqualify the Legislator on the grounds specified in para (2) of the Tenth Schedule”.

It is also imperative to remember that the judiciary is not only the archangel of the rights of the people, but is also the upholder of the Constitution, of its basic structure, and ultimately, of rule of law. Therefore, while scrutinizing the order passed by the learned Speaker/Chairman disqualifying a Legislator, a broad vision has to be kept in mind. For, pedantic or hyper-technical view may permit a clever legislator to slip through the sieve of judicial scrutiny, and continue to play havoc with political stability of the country.

In the case of **Jagjit Singh** (supra), the Hon'ble Supreme Court has opined as under:

The Speaker, while exercising power to disqualify Members under Schedule X, acts as a Tribunal and though validity of the orders, thus, passed can be questioned in the writ jurisdiction of the Supreme Court or High Courts, the scope of judicial review is limited. If the view taken by the Tribunal is a reasonable one, the Court would decline to strike down an order on the ground that another view is more reasonable. The Tribunal can draw an inference from the conduct of a Member, of course, depending upon the facts of the case and totality of the circumstances. The orders can be challenged on the ground of ultra vires or mala fides or having been made in colourable exercise of power based on extraneous and irrelevant considerations. The order would be a nullity if rules of natural justice are violated. While considering the plea of violation of principles of natural justice, it is necessary to bear in mind that the proceedings under the Schedule X to the Constitution are not comparable to either a trial in a Court of law or departmental proceedings for disciplinary action against an employee. The proceedings are against an elected representative of the people and the judge holds the independent high office of Speaker. Howsoever limited may be the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated. The yardstick to judge the grievance that reasonable opportunity has not been afforded would, however, be different."

(Emphasis added).

The Apex Court further observed as under:

Undoubtedly, the proceedings before the Speaker which is also a tribunal albeit of a different nature, have to be conducted in a fair manner and by complying with the principles of natural justice. However, the principles of natural justice cannot be placed in a rigid mould or straitjacket. The court, on facts of a case despite denial of opportunity to lead evidence, or to cross-examine a witness, may come to the conclusion that reasonable opportunity has been afforded to the person aggrieved. These are flexible rules. Their applicability is determined on the facts of each case. The question to be asked in the ultimate analysis would be whether the person aggrieved was given a fair deal by the authority or not? Could a reasonable person, under the circumstances in which Tribunal was placed, pass such an order?

(Emphasis added).

In the case of **Mahachandra Prasad Singh (Doctor)** (supra), the Hon'ble Supreme Court has opined that, *"It is to be noted that the Tenth Schedule does not confer any discretion on the Chairman or Speaker of the House. Their role is only in the domain of ascertaining the relevant facts. Once the facts gathered or placed show that a member of the House has done any such act which comes within the purview of sub-paragraph (1), (2) or (3) of Paragraph 2 of the Tenth Schedule, the disqualification will apply and the Chairman or the Speaker of the House will have to make a decision to that effect"*. Moreover, the Apex Court held that, *"the purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under Paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as a duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision viz. the Tenth Schedule."*

Hence, while deciding this case, these salutary principles have to be kept in mind.

The learned Senior Counsel for the petitioner has pleaded that the complainants have failed to establish the fact that prior to his nomination, the petitioner was a member of the TRS Party. However, in the very petition, the petitioner has admitted, in ground (e) of the writ petition, that *"the petitioner submitted to the*

second respondent during the hearing on 11.01.2019, that the petitioner has only been the primary member of the TRS Party as on the date of his nomination by the Governor to the Legislative Council, and that he was not holding any other post or the chair". Once this admission was made before the learned Chairman, the complainants were not required to prove the fact that prior to his nomination, the petitioner was, indeed, a member of the TRS Party. Moreover, the Member Registration Application cum Receipt dated 30.03.2017, clearly establishes that during his tenure as a Member of the Legislative Council, the petitioner continued to be a member of TRS Party. Thus, the conclusion is irresistible that both prior to and subsequent to his election, the petitioner was certainly a member of TRS Party.

Furthermore, in the case of **Ravi S. Naik v. Union of India**⁴, the Hon'ble Supreme Court has defined the expression of "voluntarily giving up membership" as under:

The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of formal resignation from membership, an inference can be drawn from the conduct of the member that he has voluntarily given up his membership of the political party to which he belongs.

Admittedly, the complainants had produced sufficient evidence in the form of newspaper clippings, and video clippings to prove the fact that on 27.10.2018 the petitioner had gone to New

⁴ 1994 Supp. (2) SCC 641

Delhi, and had joined the INC Party. This fact was also mentioned by the petitioner in his Memo dated 24.12.2018. However, interestingly, even in the said Memo, the petitioner has neither questioned the authenticity of the news items, nor denied the contents of the news items. Thus, by his very silence, he has impliedly admitted that the contents of the news items are, in fact, true. Thus, there was sufficient evidence before the learned Chairman, to establish the fact that the petitioner had voluntarily given up his association with his political party and joined another political party, namely INC. Moreover, the petitioner had voluntarily given up his association with the TRS Party after six months, after taking his seat in the Legislative Council. Furthermore, even if for the sake of argument it were accepted that the petitioner was an independent candidate, his joining the INC Party had ended his status as an “independent” M.L.C. Hence, Mr. Salman Kurshid, the learned Senior Counsel for petitioner, is unjustified in contending that the complainants have failed to bring the case under Para 2(3) of the Tenth Schedule of the Constitution of India. Hence, the said plea is unacceptable.

In the case of **Mahachandra Prasad Singh (Doctor)** (supra), the Apex Court has opined that once the facts are laid before the Speaker/Chairman, which indicate that the affected Legislator has voluntarily given up his association, the Speaker has no other option but to declare the Legislator as disqualified. Therefore, once all the facts were laid before the learned Chairman in the present case, and since the petitioner did not challenge the evidence produced by the complainants, the learned Chairman had no option, but to declare the petitioner as disqualified.

The learned Senior Counsel, Mr. Salman Kurshid, has stressed on the fact that no opportunity of hearing was given to the petitioner. Therefore, the impugned order deserves to be set aside by this Court. However, the question before this Court is not whether an opportunity of hearing was given, but the question is whether sufficient opportunity of hearing was given or not? Admittedly, having received the disqualification petition on 17.12.2018, on 18.12.2018 a notice was issued to the petitioner requesting him to submit his comments "*within seven days*". By his Memo dated 24.12.2018, the petitioner had sought for four weeks time for submitting his comments. Considering his request, by letter dated 28.12.2018, the learned Chairman had granted one week's time to file his comments. Thus, he was required to file his comments by 03.01.2019. But even by 03.01.2019, no comments were submitted by the petitioner. Therefore, by letter dated 04.01.2019, he was directed to personally appear on 11.01.2019 and present his case. On 11.01.2019, the petitioner did not appear personally before the learned Chairman, but he did appear through his two counsel. According to the impugned order, both the counsel informed the learned Chairman that they are "*ready for hearing*". According to the petitioner, the counsel admitted the fact that prior to his nomination, he was a member of the TRS Party. There is no indication in the impugned order that during the course of hearing on 11.01.2019, the petitioner's counsel had either questioned the veracity, or authenticity, or validity of the newspaper clippings, and video clippings submitted by the complainants.

A bare perusal of the facts clearly reveals that sufficient opportunity was, indeed, given to the petitioner by the learned Chairman. However, the petitioner failed to utilise the opportunities to place his case before the learned Chairman. Even if the petitioner had sought certain documents before filing his detailed comments, nothing prevented the petitioner from filing an interim reply. But even an interim reply was not filed by the petitioner. In fact, both the counsel had informed the learned Chairman on 11.01.2019, that they were “*ready for hearing*”. In such a scenario, the petitioner cannot claim that sufficient opportunity of hearing was not given to him by the learned Chairman. Hence, the contention raised by the learned Senior Counsel for the petitioner is unacceptable.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned order. Therefore, the writ petition is devoid of any merit. Accordingly, it is hereby dismissed. No order as to costs.

Miscellaneous petitions, pending if any, shall stand dismissed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, CJ

Dr. SHAMEEM AKTHER, J

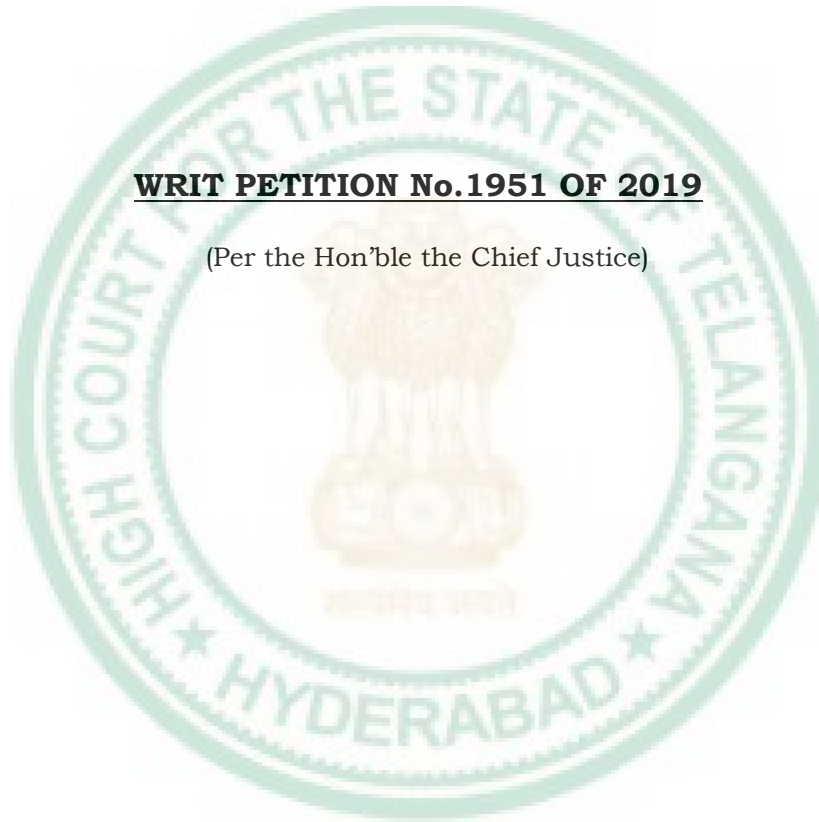
Date:10.07.2019

TSR/PLN

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

WRIT PETITION No.1951 OF 2019

(Per the Hon'ble the Chief Justice)



Date: 10th-JULY-2019

Pln/Tsr