

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

WRIT PETITION No.2307 OF 2019

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

The petitioner, K. Yadava Reddy, 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. 1, whereby the petitioner was 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 as having ceased to be a Member of the Council ('M.L.C.', for short) with immediate effect.

Briefly, the facts of the case are that the petitioner, being a member of Telangana Rastra Samithi Party ('TRS Party', for short), was nominated by the party for being elected as a M.L.C., to the Council; on 04.06.2015, he was elected as a M.L.C. from Nizamabad Local Bodies Constituency.

However, during the course of his tenure as a M.L.C., the respondents Nos. 6 and 7 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. 6 and 7 alleged that although the petitioner was elected as a Member of the TRS Party, on 14.09.2018, the petitioner went to New Delhi, and joined Indian National Congress Party ('INC Party', for short). Moreover, on 23.11.2018, he had attended a meeting organized by the INC Party at Medchal. At the meeting, the petitioner had met Mrs. Sonia Gandhi. Furthermore, on 07.12.2018, he canvassed on behalf of the INC Party

in the pre-elections conducted for the Telangana State Legislative Assembly. Thus, he has not only indulged in anti-party activity, but has also voluntarily given up his association with the TRS Party. Hence, he should be disqualified as being a M.L.C.

On 18.12.2018, respondent No. 1 issued a notice to the petitioner; the petitioner was directed to submit his comments within seven days. The petitioner submitted his counter. In the counter, the petitioner pleaded that he was unanimously elected as a M.L.C. nominated by the TRS Party. Moreover, the petitioner categorically denied having gone to New Delhi on 14.09.2018. Although he admitted having attended the INC Party meeting on 23.11.2018 at Medhcal, but he claimed that he had gone to the meeting in order to thank Mrs. Sonia Gandhi, the then President of the INC Party, for the substantial role she had played in creation of the State of Telangana. According to the petitioner, it was essential for him to express his gratitude to Mrs. Sonia Gandhi, as it was her first visit to the State after the formation of the State. He further pleaded that his mere presence in the meeting of the INC Party, especially, in the light of the explanation given by him, does not amount to voluntarily giving up his membership of the TRS Party. Hence, the petitioner claims that he has neither acted against the interests of the TRS Party, nor earned any disqualification under Para 2(1)(a) of the Tenth Schedule of the Constitution of India. Lastly, he pleaded that the disqualification petition was based on newspaper clippings, media reports and videos, which were highly unreliable. He sought an opportunity of hearing, and to lead his evidence. The hearing was scheduled to be held on 11.01.2019, but was postponed till 12.01.2019. On 12.01.2019, the petitioner was represented by his

counsel, who reiterated the stand taken by the petitioner in his counter. The counsel did seek an opportunity to cross-examine the reporters who had flashed the news about the petitioner having joined the INC Party. However, no such opportunity was given. Instead, by order dated 16.01.2019, as mentioned hereinabove, the respondent No. 1 declared the petitioner as disqualified from being a M.L.C., and declared that he ceases to be a M.L.C. with immediate effect. Hence, this petition before this court.

Mr. D. Prakash Reddy, the learned Senior Counsel appearing on behalf of Sri Sriram Polali, the learned counsel for the petitioner, has raised the following contentions:-

Firstly, the evidence required to hold that a person has joined another party ought to be positive, reliable and unequivocal. However, the evidence produced by respondent Nos. 6 and 7 is neither positive, nor reliable, nor unequivocal. For, the respondents have admitted that there is no evidence to prove the fact that the petitioner had gone to New Delhi on 14.09.2018. Hence, they have failed to prove the case against the petitioner.

Secondly, although the respondent Nos. 6 and 7 claimed that on 14-09-2018, the petitioner had gone to New Delhi, and had joined the INC Party in the presence of Mr. Rahul Gandhi, but no evidence was submitted to buttress this plea. Hence, the plea has not been established by cogent and convincing evidence.

Thirdly, the complainants have relied upon press clippings and videos in order to establish that on 23.11.2018 the petitioner had joined the INC Party at Medchal. But it is a settled principle of law that media reports are hearsay evidence. They are secondary

evidence. Therefore, they are inadmissible in the absence of proof of their contents, or in absence of corroboration by other evidence. In order to buttress this plea, the learned Senior Counsel has relied upon **Laxmi Raj Shetty v. State of Tamil Nadu**¹ and **Borgaram Deuri v. Premodhar Bora**². Therefore, the learned Chairman is not justified in accepting the unreliable media reports as “ample irrefutable proof” of the petitioner voluntarily giving up his association with the TRS Party.

Fourthly, in his counter, the petitioner had specifically denied the contents of the press reports, and the video clippings. The petitioner had further given an explanation that he had gone to the meeting at Medchal, organised by INC Party, only to thank Mrs. Sonia Gandhi as she was highly instrumental in the formation of a separate State of Telangana.

Fifthly, the impugned order suffers from perversity. For, the order is self-contradictory: on the one hand, it claims that the petitioner has denied the fact that he had ever gone to New Delhi to join the INC Party, yet on the other hand the order claims that the petitioner has “*admitted*” having gone to New Delhi for the purpose of joining the INC Party. Thus, the impugned order blows hot and cold simultaneously. It has been passed in conscious violation of the pleadings.

Further, the impugned order has conveniently ignored the petitioner’s explanation for having met Mrs. Sonia Gandhi at Medchal. The order is, thus, perverse for having consciously and

¹ (1988) 3 SCC 319

² (2004) 2 SCC 227

deliberately disregarded the vital and relevant defence taken by the petitioner. Furthermore, the learned Chairman has accepted these media reports on the specious reasoning that the petitioner has not refuted these media reports immediately after they were published. According to the learned Senior Counsel, it is the duty of the complainants to establish their case against the petitioner. The duty is not cast upon the petitioner to prove his defence. Hence, the impugned order is perverse.

Lastly, despite the fact that the petitioner had denied the contents of the media reports, and had sought an opportunity to cross-examine the reporters, who had reported the meeting at Medchal, no such opportunity was given to the petitioner by the learned Chairman. Hence, the petitioner's rights under the principles of natural justice stand violated.

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

Firstly, relying on the case of **Kihoto Hollohan v. Zachillhu**³, the learned counsel has pleaded that while dealing with the case of disqualification, and while interpreting the provisions of Tenth Schedule of the Constitution of India, its very purpose and object should be kept in mind. The said Tenth 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

³ 1992 Supp. (2) SCC 651

superstructure of democracy, and rule of law – the very structure which holds the entire nation together. Therefore, while dealing with a case of defection or 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 the case 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**⁴, 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 in a case of disqualification of a legislator.

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

Fourthly, relying on **Jagjit Singh v. State of Haryana**⁵, 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

⁴ (2004) 8 SCC 747

⁵ (2006) 11 SCC 1

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 images and videos in the media, showing the petitioner's presence with senior most members of the INC Party. Therefore, the Chairman would be justified in drawing an inference about the petitioner voluntarily giving up his association with the TRS Party.

Fifthly, the petitioner is blowing hot and cold simultaneously. On one hand, he "admits" that he had attended the meeting at Medchal on 23.11.2018. Yet, on the other hand, he claims that the contents and the photographs of the print and electronic media are highly suspect. Once he has admitted his presence at the meeting, it is a subterfuge to claim that an opportunity to cross-examine the reporters, who had reported about his presence, should have been given to him. Therefore, the petitioner is not justified in claiming that opportunity of hearing has not been given to him. Hence, his rights under the principles of natural justice have not been violated by the learned Chairman.

Sixthly, the explanation given by him that he had gone to attend the public meeting merely to thank Mrs. Sonia Gandhi for her immense contribution to the creation of separate State of Telangana is nothing, but an after-thought. His justification is merely an excuse and a clever ploy to escape from the danger of being disqualified. The flimsiness of his explanation is apparent from the fact that the State of Telangana was created on 02.06.2014. Therefore, the petitioner had four long years in which he could have personally gone and thanked Mrs. Sonia Gandhi for her contribution

to the creation of the State. In fact, prior to the creation of the State of Telangana, the petitioner was a member of the INC Party, and subsequently upon the creation of the State he joined the TRS Party. Thus, he had ample opportunities for four long years to thank Mrs. Sonia Gandhi. However, he chose not to do so. Moreover, personal gratefulness should not have been expressed in the public at large. If the petitioner wanted to show his gratitude to Mrs. Sonia Gandhi, he need not have necessarily shown it at a public meeting of the INC Party. Moreover, the explanation was offered by the petitioner, for the first time, after the notice was issued to him by the learned Chairman. If, indeed, there was any truth in his defence, it would have been taken by the petitioner at the very first opportunity available to him, namely immediately after the press reports had appeared on 24.11.2018. Furthermore, between 24.11.2018, the date on which the print media published the news items, and 02.01.2019, the date on which he filed his counter, during this interim period of almost one and half months, the petitioner never gave such an explanation to his party members. Therefore, his silence speaks volumes about his intention to attend INC Party.

Lastly, since the proceeding before the learned Chairman is not “an adversarial proceeding”, the learned Chairman is expected to merely take a holistic view of the facts submitted before him. Hence, while considering the evidence produced by the complainants, the learned Chairman also has to equally consider the conduct of the affected legislator. Thus, the learned Chairman was justified in relying upon the media reports in drawing the conclusion that *“if there were any truth to the defence doubted by the petitioner, the said defence should have been taken at the first instance”*. Therefore, the

learned Senior Counsel is unjustified in stressing that the burden of proof, the extent of proof as applicable in a civil or criminal trial should equally be applied in a proceeding before the learned Chairman. A distinction has to be made between “an adversarial litigation” and “a finding to be given by the learned Chairman” on the basis of the material which are placed before him. Therefore, the learned Additional Advocate General has supported the impugned order.

Mr. Gandra Mohan Rao, learned counsel appearing for respondent Nos.6 and 7 has echoed the arguments of learned Additional Advocate General. Therefore, his arguments are not being narrated herein.

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 was to get rid of the mischief of political defection, which was 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 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, the pedantic or hyper-technical view may permit the 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 opined 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.”

The above principles laid down by the Hon’ble Supreme Court necessarily have to be kept in mind while dealing with the present case.

Mr. D. Prakash Reddy, the learned Senior Counsel, has certainly harped on the fact that the respondents have admitted that there is no evidence to show that the petitioner had gone to New Delhi on 14.09.2018. However, the question is not whether the respondents have failed to establish one of the planks of the case, but whether there was sufficient evidence before the learned Chairman to conclude that the petitioner had voluntarily given up his association with the TRS Party or not? Moreover, the issue before this Court is whether the petitioner was given a fair deal by the learned Chairman or not, and whether the rights of the petitioner under the principles of natural justice have been violated or not? Therefore, even if the respondents have not been able to establish the fact that the petitioner had, indeed, gone to New Delhi on 14.09.2018, such a failure would not be fatal to the case.

The complainants had emphasised the fact that on 23.11.2018 the petitioner had attended the INC Party meeting held at Medchal. In order to support their plea, the complainants had submitted news items of print media, and videos from the electronic media. The petitioner, in fact, “admitted” that he had attended the meeting at Medchal on 23.11.2018. For, according to him, he had gone to the rally to express his gratitude to Mrs. Sonia Gandhi. Since the

pictures and the videos show his presence at the meeting, the authenticity and veracity of the news items cannot be doubted. Once the petitioner has admitted his presence at the rally, no fruitful purpose would have been served by giving the petitioner a chance to cross-examine the reporters. It would, in fact, be a mere formality. In catena of cases, the Apex Court has held that where giving of an opportunity of hearing would be merely a formality, the opportunity need not be given. Thus, the non-giving of opportunity of hearing to the petitioner does not violate the petitioner's right under the principles of natural justice. Hence, the argument submitted by the learned Senior Counsel is clearly unacceptable.

In the case of **Ravi S. Naik v. Union of India**⁶, the Apex Court has concluded that when an inference is drawn by the learned Chairman/ Speaker on the basis of pictures, which have not been controverted, no opportunity of hearing needs to be given. The said principle would be applicable in the present case as well.

The real issue is whether an inference that the petitioner has voluntarily given up the association with his party could be drawn, especially keeping in mind the defence pleaded by the petitioner that "*he had merely gone to the meeting to express his gratitude to Mrs. Sonia Gandhi*", or not?. Admittedly, the petitioner had pleaded the same defence before this Court. But, the issue is how valid is this defence?

The State of Telangana was formed on 02.06.2014. Admittedly, the petitioner was a member of the INC Party at the time of formation of State of Telangana. Subsequently, he joined the TRS Party. Yet,

⁶ 1994 Supp. (2) SCC 641

curiously, the petitioner waited for four long years to express his gratitude to Mrs. Sonia Gandhi. Moreover, instead of expressing his gratitude at a private meeting, surprisingly petitioner chose to publicly display his personal gratitude. Furthermore, between 22.11.2018 even after the petitioner was suspended from the TRS Party, till 02.01.2019, when the petitioner submitted his comments to the notice issued by the learned Chairman, the petitioner did not voice his defence in any forum. For the first time, the defence is voiced by the petitioner only when the comments to the notice are offered. Indeed, if there were even a kernel of truth in the defence pleaded by the petitioner, it should have been voiced at the earliest. Therefore, the petitioner's defence clearly is an after-thought in order to save his skin, and his position as the M.L.C.

As opined by the Hon'ble Supreme Court in the case of **Jagjit Singh** (supra) that "*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 possible*". The said principle is equally applicable to the present case. Considering the fact that the defence was not mentioned for a long time, the learned Chairman was legally justified in inferring that the defence was a mere excuse, an after-thought.

Moreover, the learned Chairman can draw an inference from the conduct of a member depending on the totality of the circumstances. Therefore, the learned Chairman was certainly justified, in totality of the circumstances, in concluding that the petitioner had voluntarily given up his association with the TRS Party.

Furthermore, in the case of **Ravi S. Naik** (supra), the Hon'ble Supreme Court has defined the words "voluntarily giving up his membership". According to the Apex Court, *"the words 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."* Hence, conduct of the affected person is sufficient to prove that he/she has voluntarily given up his/her membership.

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

Miscellaneous petitions, pending if any, shall stand dismissed.

RAGHVENDRA SINGH CHAUHAN, CJ

Dr. SHAMEEM AKTHER, J

Date: .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.2307 OF 2019

(Per the Hon'ble the Chief Justice)



Date: -JULY-2019

Pln/Tsr