

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.5689 of 2020

and

W.M.P.No.6628 of 2020

D.Dhanavelou
S/o Narayanane,
Member of Legislative Assembly
of Pondicherry
residing at No.54,
Kuchipalayam Road,
Bahour,
Puducherry - 607 402.

...Petitioner

vs

1.Mr.V.P.Sivakolundhu,
The Hon'ble Speaker,
Union Territory of Puducherry,
Victor Simonel Street,
White Town,
Puducherry - 605 001.

2.Mr.R.K.R.Anantharaman,M.L.A.,
(Government Whip)
Union Territory of Puducherry,
Victor Simonel Street,
White Town,
Puducherry - 605 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus forbearing the 1st respondent from taking any action based on the petitions dated 14.02.2020 and 30.01.2020 sent by the 2nd respondent which are not in accordance with Rule 6 of the Members of Pondicherry Legislative Assembly (Disqualification on ground of Defection) Rules 1986 and to consequently direct the 1st respondent to reject the petitions dated 14.01.2020 and 30.01.2020.

For Petitioner : Mr. T.V.Ramanujam,
Senior Counsel
for Mr.B.Arvind Srevatsa

For Respondents : Mr.AR.L.Sundaresan.
Senior Counsel for
Mr.P.Dineshkumar for R1
Mr.A.Gandhiraj,
Government Pleader (P)
assisted by Mr.B.Nambiselvan,
Addl.Govt.Pleader(P). for R2.

O R D E R

This Writ Petition is filed for issuance of Writ of Mandamus forbearing the 1st respondent from taking any action based on the petitions dated 14.02.2020 and 30.01.2020 sent by the 2nd respondent which are not in accordance with Rule 6 of the Members of Pondicherry Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 and consequently, direct the 1st respondent to reject the petitions dated 14.01.2020 and 30.01.2020.

2. Heard Mr.T.V.Ramanujam, learned senior counsel appearing for the petitioner, Mr.P.Dineshkumar, learned counsel takes notice for the 1st respondent, who is being represented by Mr.AR.L.Sundaresan, learned senior counsel and Mr.B.Nambiselvan, learned Additional Government Pleader (P) takes notice for the 2nd respondent, assisting Mr.A.Gandhiraj, learned Government Pleader (Pondicherry).

3. The petitioner is a elected member of the Legislative Assembly of the Union Territory of Puducherry belonging to Indian National Congress Political Party. It is stated that the 2nd respondent viz., Government Whip has sent two petitions dated 30.01.2020 and 14.02.2020 to the 1st respondent for disqualifying the petitioner from the membership of the Legislative Assembly of the Union Territory of Puducherry for the reasons stated in those two communications. According to the petitioner, the reasons stated in those two communications will not attract the action under Tenth Schedule of the Constitution of India and therefore, the 1st respondent is not empowered to act, based on those two petitions. Therefore, the petitioner seeks for a prohibitory order from this Court preventing the 1st respondent from passing any order on the said two complaints/petitions made by the 2nd respondent against the petitioner.

4. Though the learned senior counsel appearing for the

petitioner wanted this Court to look into the various allegations/averments made in those two complaints, in support of his contention that those complaints do not disclose any material for the 1st respondent to act under Tenth Schedule of the Constitution of India, this Court is not inclined to entertain the above contention at this stage, for the simple reason that the very prayer sought for in this writ petition is in the nature of prohibitory action against the 1st respondent from passing an order on the complaints/ petitions made by the 2nd respondent as stated supra, which in my considered view is not maintainable.

5. The prayer sought for in the present writ petition is in effect, seeking for a judicial intervention against the Speaker, even prior to the making of a decision by the Speaker. The Hon'ble Supreme Court in *Kihoto Hollohan v. Zachillhu*'s case reported in 1992(2) SCC 651 has observed at paragraph No.110 that judicial review cannot be available at a stage prior to the making of a decision by the Speaker/ Chairman and a quia timet action would not be permissible. Paragraph No.110 of the said decision reads as follows:

110. In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/ Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence.

6. The above said decision was subsequently considered by the Hon'ble Apex Court in its decision rendered and reported in 2015(2) SCC 381 in the case of *Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors.*, wherein at paragraph Nos.39 and 44, it has been observed as follows:

39. Most of the questions raised by Mr. Nidhesh Gupta and Dr. Rajeev Dhawan contemplate a situation where the Speaker had taken a final

decision on a disqualification petition. However, in the instant case we are really required to consider whether the High Court was competent to pass interim orders under its powers of judicial review under Articles 226 and 227 of the Constitution when the disqualification proceedings were pending before the Speaker. In fact, even in Kihoto Hollohan's case, which has been referred to in extenso by Dr. Dhawan, the scope of judicial review has been confined to violation of constitutional mandates, mala fides, non-compliance with rules of natural justice and perversity, but it was also very clearly indicated that having regard to the constitutional scheme in the Schedule X, normally judicial review could not cover any stage prior to the making of the decision by the Speaker or the Chairman of the House, nor any quia timet action was contemplated or permissible.

...
...

44. We have to keep in mind the fact that these appeals are being decided in the background of the complaint made to the effect that interim orders have been passed by the High Court in purported exercise of its powers to judicial review under Articles 226 and 227 of the Constitution, when the disqualification proceedings were pending before the Speaker. In that regard, we are of the view that since the decision of the Speaker on a petition under Para 4 of the Schedule X concerns only a question of merger on which the Speaker is not entitled to adjudicate, the High Court could not have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under Para 6 of the Schedule X to the Constitution. It is in fact in a proceeding under Para 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order which is amenable to the writ jurisdiction of the High Court. It is in such proceedings that the question relating to the disqualification is to be considered and decided. Accordingly, restraining the Speaker from taking any decision under Para 6 of the Schedule X is, in our view, beyond the jurisdiction of the High Court, since the Constitution itself has vested

the Speaker with the power to take a decision under Para 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order.

7. The decision made in Kihoto Hollohan's case was followed by the Division Bench of this Court in 2018(3) LW 173 (R.Sakkrapani, Whip, Dravida Munnetra Kazhagam vs. The Secretary, T.N. Legislative Assembly), wherein the Division Bench has observed at paragraph No.107 as follows:

107. Moreover, as held in Kihoto Hollohan, supra, having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/ Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings.

8. Therefore, it is evident that the present writ petition seeking for prohibitory order against the 1st respondent cannot be entertained as the same is not maintainable, in view of the above law laid down by the Hon'ble Apex Court followed by the Division Bench of this Court.

9. Learned counsel appearing for the petitioner relied on the decision reported in 2016(8) SCC 1 (Nabam Rebia & Bamang Felix v. Dy.Speaker, Arunachal Pradesh Legislative Assembly) to contend that in the decision of the Hon'ble Apex Court made in Kihoto Hollohan v. Zachillhu's case, it is held that the decision of the 1st respondent can be challenged in a Court exercising constitutional jurisdiction.

10. Admittedly in this case, the 1st respondent has not passed any order and therefore, application of the above decision emphasising that the decision of the Speaker, while acting under the legislation acts as a Tribunal, can be challenged before the Constitutional Court, does not arise, at this stage. Learned senior counsel for the petitioner further submitted that the 1st respondent may pass orders without giving due opportunity of hearing to the petitioner, even though he has given his objection in writing. Learned senior counsel appearing for the 1st respondent submitted that due opportunity will be given to the petitioner before passing any order and therefore, the above apprehension of the petitioner is not well founded.

The said statement is recorded.

11. In view of the above stated facts and circumstances and the findings rendered by this Court on the maintainability of the writ petition, this Writ petition is dismissed as not maintainable. If any order is passed by the 1st respondent adverse to the interest of the petitioner, needless to say, it is open to the petitioner to work out his remedy against such order in a manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

1.Mr.V.P.Sivakolundhu,
The Hon'ble Speaker,
Union Territory of Puducherry,
Victor Simonel Street,
White Town,
Puducherry - 605 001.

2.Mr.R.K.R.Anantharaman,M.L.A.,
(Government Whip)
Union Territory of Puducherry,
Victor Simonel Street,
White Town,
Puducherry - 605 001.

+1cc to M/s.P.Dinesh Kumar, Advocate, S.R.No.19379

+1cc to M/s.R.Ramya, Advocate, S.R.No.19981

+1cc to the Government Pleader, S.R.No.19206

W.P.No.5689 of 2020

BP(CO)
RN(27/05/2020)