

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.816 of 2015

1. Ajit Kumar son of Late Gaya Chaudhary, Resident of village- Madhuban, P.O. Kalwari, P.S. Kanti, District- Muzaffarpur, presently Member of Bihar Legislative Assembly, 95 Kanti Assembly Constituency.
2. Suresh Chanchal, son of Mewa Lal Paswan, Resident of village and P.O. Muraul, P.S. Sakra, District- Muzaffarpur, presently Member of Bihar Legislative Assembly, 92 Sakra Assembly Constituency.
3. Raju Kumar Singh, son of Uday Pratap Singh, Resident of village and P.O. Bara Daud, P.S. Paroo, District- Muzaffarpur, presently Member of Bihar Legislative Assembly, 98 Sahebganj Assembly Constituency.
4. Poonam Devi wife of Late Janeshwar Prasad Singh, Resident of village and P.O. Surunganpur, P.S. Kalpa, District- Jehanabad, presently Member of Bihar Legislative Assembly, 181 Digha Assembly Constituency.

... .. Petitioner/s

Versus

1. The Bihar Legislative Assembly
2. The Speaker, The Bihar Legislative Assembly, Patna.
3. Sri Shravan Kumar son of not known to the petitioners, Chief Whip of the Ruling Party, Bihar Legislative Assembly, Presently residing at 12A, Bailey Road, P.O. - G.P.O., P.S. Secretariat, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar Manglam, Advocate Mr. Awnish Kumar, Advocate Mr. Kumar Gaurav, Advocate Mr. Vikash Kumar Singh, Advocate
For the Respondent/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate
For Legislative Assembly:	:	Mr. Balram Kapri, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

11 05-02-2024

1. The following prayer has been made by the
petitioners-

*“For Issuance of an appropriate writ in the
nature of certiorari for quashing the judgment and order
dated 27.12.2014 passed by the Speaker of the Bihar*



Legislative Assembly against the petitioners in a proceeding under the 10th Schedule of Constitution, whereby and where under the petitioners have been disqualified from their membership of Bihar Legislative Assembly under paragraph no. 2(1)(a) of the 10th Schedule of Constitution and has also directed that as a consequence of this order, the defector members, the writ petitioners would not be entitled to any benefit in the capacity of an Ex-Member of the 15th Bihar Legislative Assembly.

(ii) Consequent upon the quashing of the order impugned passed by the respondent no. 2, this Hon'ble Court may further direct the respondents for reinstatement of the writ petitioners as the Members of the Bihar Legislative Assembly and for consequential benefits for which the writ petitioners would have been entitled, if they would not have been declared disqualified by the impugned order passed by the respondent no. 2."

2. The petitioners prayed for the reliefs mentioned above and, thereafter, interim order dated 31.07.2015 was passed in favour of the petitioners.

3. Similarly situated persons had moved before the



Hon'ble Supreme Court in Civil Appeal Nos. 5463-5464 of 2015 which has been disposed of by the Hon'ble Supreme Court on 28.09.2022.

4. The order of the Hon'ble Supreme Court in Civil Appeal Nos. 5463-5464 of 2015 passed on 28.09.2022 reads as follows:-

The instant appeals arise out of the order of disqualification issued by the then Speaker of 15th Bihar Legislative Assembly. The term of said Assembly was from 20.11.2010 till 20.11.2015.

One of the orders passed by the Speaker on 01.11.2014, in its operative part, directed as under:

"27. ... I have reached this conclusion that due to proved acts, conduct and attitude of the above four Hon'ble Members they have been disqualified from the membership of Bihar Assembly under the para 2(1)(a) of the tenth schedule of Constitution.

28. Therefore I am hereby declaring Sh. Gyanendra Kumar Singh, Sh. Rahul Kumar, Sh. Ravindra Rai and Sh. Neeraj Kumar Singh as disqualified from the membership of Bihar Assembly and issuing instructions to delete the names of above four members from the list of members. Information to this effect must be sent without delay to the Election Commission of India. As a result of this order, the above four Hon'ble Members will not get any facility as an Ex-Member of Bihar Assembly."

Without going into the details about the challenge raised by the disqualified members, suffice it to state that the order of disqualification was stayed and the benefit of interim order was enjoyed by said disqualified Members all through.



The 15th Legislative Assembly stood dissolved long back. Today, the 17th Legislative Assembly is currently going on.

Mr. Devadatt Kamat, learned Senior Advocate appearing for the appellant has invited our attention to the decision of this Court in Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly & Others, (2020) 2 SCC 595 and particularly to the following paragraphs:

“137. It is necessary for us to look at the submission of the learned Senior Counsel, Mr Kapil Sibal, that the Speaker can still be said to have inherent powers which allows him to pass restrictions like the one impugned herein. On this point, the counsel for the petitioners argued that such a broad inherent power does not exist with the Speaker. He contended that even for granting leave of absence, the Speaker is required to present the same before the Legislative Assembly, which needs to accept the leave application before leave of absence is actually granted.

138. We are unable to agree with the contention of the learned Senior Counsel, Mr Kapil Sibal, that the power of the Speaker to bar a disqualified Member from contesting re-election is inherent to his role and is required to be read into the Constitution to prevent the Speaker from becoming toothless. When the express provisions of the Constitution provide for a specific eventuality, it is not appropriate to read an “inherent” power to confer additional penal consequences. To do so, and accept the contention of the respondents, would be against the express provisions of the Constitution.

141. It is clear that nothing can be added to the grounds of disqualification based on convenience, equity, logic or perceived political intentions. 142. It is the contention of the respondents that the Court should consider desirability of having a stricter model of disqualification wherein a person who has jumped the party lines should not be encouraged and should be punished with severe penal



consequences for attempting to do so. Further, learned Senior Counsel, Mr Kapil Sibal, has termed the actions of the petitioners as a constitutional sin.”

It is thus clear that in exercise of his powers under the 10th Schedule, the Speaker does not have the power either to indicate the period for which a person would stand disqualified nor to bar someone from contesting elections. Relying on these principles, Mr. Kamat submits that the direction issued by the Speaker, as quoted in paragraph 28 of his order dated 01.11.2014, went far beyond the scope of his power.

Since the 15th Legislative Assembly is no longer functioning, we need not go into the basic issue whether the order of disqualification issued by the Speaker of the Assembly was correct or not.

At this juncture, we are called upon to consider the effect of some of the directions issued by the Speaker in paragraph 28 of his order and on the touchstone of the law laid down by this Court in *Shrimanth Balasaheb Patil* (supra) in our considered view, the Speaker was not within his jurisdiction to issue directions other than those pertaining to disqualification.

Since we have not gone into the question of disqualification, all questions are left open.

We, therefore, set aside the directions other than those pertaining to disqualification per se, issued by the Speaker in paragraph 28 of his Order.

With these observations, the instant appeals stand disposed of, with no order as to costs.”

5. Since the case of the parties who had filed the Civil Appeal before the Hon’ble Supreme Court as well as the present



petitioners is similar, this application is also disposed of in the terms of the order of Hon’ble Supreme Court dated 28.09.2022.

6. This application stands disposed of.

(Sandeep Kumar, J)

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