

Luis Proto Barbosa

Vs

Union of India and others

Civil Appeal No. 296 of 1991

(M. N. Venkatachaliah, S. C. Agrawal, G.N. Ray JJ)

10.12.1991

JUDGMENT

1. This appeal, by special leave, arises out of and is directed against the judgment and order dated 18-12-1990 of the High Court of Bombay, Goa Bench at Panaji in Writ Petition No. 324 of 1990, rejecting appellant's challenge to the order dated 14th December, 1990, of the Speaker of the Legislative Assembly of Goa, made under the provisions of the Tenth Schedule to the Constitution disqualifying the appellant from membership of the Assembly on grounds of defection.
2. The matter arose out of certain proceedings initiated under the Tenth Schedule of the Constitution introduced by the Constitution (52nd Amendment) Act, 1985 for the disqualification of the appellant, Dr. Luis Proto Barbosa, who was the then Speaker of the Goa Legislative Assembly on the ground that the appellant had voluntarily resigned from the membership of the political party otherwise than under circumstances which would attract the exemption under paragraph 5 of the Tenth Schedule.
3. Appellant was elected as member of the Legislative Assembly of Goa on the 26th November, 1989 as a candidate of the Congress (1) political party. On 2nd January, 1990 he was elected Speaker of the House. However, on 24th March, 1990, appellant while holding the office of the Speaker, resigned from the Congress (I) party along with six other members of the said party with the avowed intention of forming a new party styled the "Goan People's Party". On 25th March, 1990 the resignation was accepted by the Congress (1) party. On 28th March, 1990, the fourth respondent, another Member of the House, filed a petition alleging that the appellant had incurred the disqualification from the membership of the Legislative Assembly under the Tenth Schedule of the Constitution and that appellant, accordingly, be so disqualified.
4. The Legislative Assembly acting under Paragraph 6 of the Tenth Schedule referred the decision on the question whether the appellant was so disqualified or not to a member of the House elected in that behalf (sic). That member was a certain Dr. Kashi Nath Jalmi who, it would appear, by his order dated 14th December, 1990 found that the appellant had incurred such disqualification within the meaning of Paragraph 2 read with paragraph 6 of the Tenth Schedule and made an order disqualifying the appellant. The legality of the proceedings culminating in this order of disqualification was assailed before the High Court in the writ petition. The High Court by its judgment under appeal dismissed the writ petition.
5. We have heard Shri P. H. Parekh, learned counsel for the appellant and Shri Sharma for the contesting respondents. We, have been taken through the order of the High Court under appeal.

Shri Parekh in his submissions substantially reiterated the contentions urged before the High Court. Three contentions had been urged before the High Court. The first was one of non-compliance with Rule 6(6) of the Goa Daman and Diu Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986. It was alleged that copies of the petition and the annexures had not been signed and verified as required by the Rules. The High Court, in our opinion very rightly, found no merit in this contention. We agree with the reasoning of and the conclusions reached by the High Court on the point.

6. The second contention urged before the High Court was equally insubstantial. It was sought to be contended that inasmuch as appellant, after the filing of the petition for disqualification, had demitted office of the Speaker, the enquiry for disqualification could not be proceeded with. The disqualification incurred is from the membership of the House. The subsequent resignation from the office of the Speaker does not bestow immunity from that liability for disqualification. The High Court rightly rejected this contention.

7. The third contention urged before the High Court turned on the scope of the exemption under paragraph 5 of the Tenth Schedule. The circumstances in this case are such that appellant cannot avail of that exemption. The exemption would be available where the Speaker in view of the high office of the Speaker on a question of propriety and to sustain the image of impartiality of that office, resigns from the membership of the political party to which he might have belonged prior to his election as Speaker. In the facts of this case that provision does not protect the appellant. Shri Parekh rightly did not lay much store (stress) on this contention.

8. Shri Parekh, however, raised a new ground. That had not been urged before the High Court. Learned counsel said that the order of disqualification was made despite and in violation of an order dated 7th August 1990 of this court in Writ Petition No. 492 of 1990 directing the maintenance of "status quo" and submitted that the order of disqualification was void as it violated this Court's order and amounted to contempt of Court.

It is relevant to recall that the said Writ Petition No. 492 of 1990 was filed by a certain Dr. Wilfred De'Souja who sought a declaration that the appellant and several others had incurred the disqualification and had ceased to be the members of the House. Apart from the somewhat ironical situation that appellant should take shelter under an interlocutory order in a writ petition which itself sought a declaration of appellant's disqualification, it is doubtful whether the order for maintaining "status quo" made in the said writ petition could be said to be subsisting on 14th December, 1990 on which date the order of disqualification was made. The order on which Shri Parekh relies reads:

"Last time when the matter was listed before this Court, Mr. Jethmalani appearing for respondents had stated that until the end of July, disputes would not be adjudicated. This matter could not be taken up by this Court because of the exigencies of the work. In that view of the matter, the matter will be taken up as soon as the situation of the list of this court permits. List the matter on 30th October, 1990. In the meantime, status quo as on today will continue." (Emphasis supplied)

Respondent No. 3, who was elected under and for the purpose of the proviso to Paragraph 6 of the Tenth Schedule asserts that he was not a party to the said writ petition and that the said order did not bind him. Shri Sharma, his learned counsel, however, contends that even assuming that respondent could be attributed with the knowledge of this order, the order cannot be held to survive beyond the 30th October, 1990. Shri Sharma urges that the expression "in the meantime" limits, in point of

time, the operation of the order only till the 30th of October, 1990 and that, at all events, that order was not passed for the benefit or at the instance of the appellant to entitle him to take advantage of it.

9. The question as to what is the outer terminal point of the operation of the restraint, when the expression "in the meantime" is used is arguable. That expression takes its colour from the context. They are "words of relation and refer not only to a time that is to begin, but to a time which is also to end". It is difficult to say the period of the restraint spilled over 30th October, 1990 and the restraint or altering the "status quo" contained. The order was not made either at the instance nor for the benefit of the appellant. In the facts of the case we do not think we are justified in construing the "status quo" order to continue to operate even after 30th of October, 1990 or even if (it) did, it enured to the benefit of the appellant. The appeal is dismissed accordingly. No costs.

Appeal dismissed.

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