

G. Viswanthan

Vs

Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras and Another

Civil Appeals Nos. 2269-70 of 1996 and 2271-72 of 1996

(CJI A. M. Ahmadi, K. S. Paripoornan JJ)

24.01.1996

JUDGEMENT

AHMADI, CJI.:-

1.Special leave granted.

2. The appellants are two members of the Tamil Nadu Legislative Assembly elected in the general elections held in 1991. Both of them were candidates set up by All India Anna Dravida Munnetra Kazhagam (for short 'AIADMK'). Mr. Viswanathan was elected from Aroct Legislative Assembly constituency whereas Mr. Azhagu Thirunavukkarasu was elected from Orathanadu constituency. Both of them were expelled from AIADMK party on January 8,1984. In March 16,1994 the Speaker of Tamil Nadu Legislative Assembly(for short 'Assembly')declared the two appellants as 'unattached' member of the Assembly. Enclosing certain papers and other documents one Subburethinam, Member of the Assembly, informed the Speaker that both the appellants have joined another (new) party called Maru Malarchi Dravida Munnetra Kazhagam ('MDMK'for short) and hence they should, as per the provisions of law, be disqualified from the membership of the Assembly. On March 6, 1995 the Secretary Legislative Assembly issued a notice under Section 7 of the Tamil Nadu Assembly (Disqualification on Ground of Defections) Rules, 1986 and called for the comments of the appellants on the representation made by the Subburethinam to disqualify them. The appellants filed Writ Petitions Nos. 3562 and 3563/95 in the High Court of Judicature at Madras and assailed the said notice of the Secretary of the Assembly, dated March 6,1995. Sivaraj Patil, J. By order dated March 10,1995 dismissed the writ petitions with the following observations:

"Having regard to the law declared by the apex Court, I do not think it is appropriate to entertain these writ petitions. The learned Senior Counsel of the petitioner submitted that on similar questions this Court has already entertained two writ petitions by the same petitioners in W. P. No. 5349 of 1994 and 5496 of 1994. When specifically asked the learned Senior Counsel fairly submitted that as on the date when the earlier writ petitions were filed the petitioners were only unattached members having been expelled from the party and did not join other political party, but as on today, they have joined some other political party. Be that as it may, in the light of the judgment of the Supreme Court aforementioned, I am not inclined to entertain these writ petitions."

(Emphasis supplied)

3. Thereafter, the appellants filed representations before the Speaker, Tamil Nadu Legislative Assembly, stating they were "unattached members" of the Assembly and so the provisions of the Tenth Schedule of the Constitution of India regarding disqualifications did not apply to them. They also prayed that the preliminary question as to whether the Tenth Schedule of the Constitution would apply to them, they being unattached members, may be adjudicated in the first instance. The Speaker considered the entire matter in detail and disposed of the same by separate but similar orders dated April 20, 1995. In paragraph 14 thereof, the Speaker stated thus:

"14. The admitted relevant facts which are necessary for determination of the issues raised are as follows:-

A. That the respondent contested as an official candidate of All India Anna Dravida Munnetra Khazhagam Party from (Arcot) Orathanadu Constituency.

B. That he was expelled from All India Anna Dravida Munnetra Khazhagam party for anti-party activities.

C. That he had been declared as an 'unattached' member by a ruling dated 16-3-1994 as per the convention and not as per the Tenth Schedule or the relevant rules made by that Act.

D. That he had joined another political party, viz., Marumalarchi Dravida Munnetra Khazhagam."

Discussing the matter in detail, the Speaker construed, paragraphs 2(1), 2(2) and Explanation (a) to sub-paragraph (1) of paragraph 2 of the Tenth Schedule and held that if a person is set up as a candidate for election by a political party and gets elected, he must be deemed always to belong to the same party from which he was elected and if he joins another political party, it would amount to voluntarily giving up his membership of such political party and will become subject to disqualification under sub-paragraph (1)(a). In the light of the admitted facts and the view of law held by him, particularly in view of the fact that the appellants had not denied in their explanation that they had joined new party, the Speaker in paragraph 20 of the said order, entered the following findings.

"1. that he got elected to the Tamil Nadu Legislative Assembly as a candidate set up by a political party (viz.) All India Anna Dravida Munnetra Khazhagam (A.I.A.D.M.K.).

2. that for the purpose of Tenth Schedule he shall be deemed to belong to the Political Party, i.e., All India Anna Dravida Munnetra Khazhagam (A.I.A.D.M.K.) in accordance with the explanatory note of sub-para 2(1) (a), though he had been expelled from that party and declared as an 'unattached' member by me,

3. that he has joined another Political Party viz., Marumalarchi Dravida Munnetra Khazhagam,

4. that he has not denied any of the contents (sic) of the petitioner as alleged in the petition, and

5. that he does not come under the purview of the exception envisaged in Paragraphs 3 and 4 of the Tenth Schedule."

It was held that the appellants had incurred disqualification for being members of the Tamil Nadu Legislative Assembly under Article 191 (2) of the Constitution of India read with Clause (a) of sub-para (1) of Paragraph 2 of Tenth Schedule and had ceased to be members of the Assembly with immediate effect.

4. The appellants filed writ petition Nos. 6331 and 6332/95 and assailed the aforesaid order of the Speaker dated 20th April, 1995. They also filed CMP NOs. 10261 and 10262/95, praying for the grant of ad interim injunction to restrain the Speaker from giving effect to the aforesaid order. Though initially an order of injunction was passed, the learned single Judge vacated the injunction by his order dated April 26, 1995 and dismissed the CMPs. Aggrieved by the orders vacating interim injunction the appellants filed Writ Appeals Nos. 559 and 560 of 1995. A Division Bench of the High Court noticing that the writ appeals and the writ petitions raised the same issues, heard them together and disposed them of by a common judgment dated September 29, 1995. The Division Bench saw no merits, whatsoever, in the writ petitions and the writ appeals and dismissed them. It is against the said common judgment of the High Court that the appellants have filed the present appeals by special leave.

5. We heard Mr. Shanti Bhushan, Senior Counsel, for the appellants and Mr. Soli J. Sorabjee, Senior Counsel, for the respondents. The main thrust of the submissions made by appellants counsel was that Paragraph 2 (2) of the Tenth Schedule of the Constitution comes into play only to disqualify a member who voluntarily gives up his membership of the political party that had set him up as a candidate and not when he is expelled from the party and declared "unattached" i.e. not belonging to any political party. Paragraph 2 (a) will apply only when a member of his own volition gives up his membership of the party. Any member thrown out or expelled from the party that had set him up as a candidate will not fall within the mischief of paragraph 2(a). By expulsion, the member thrown out will 'cease' to be a member of the party that set him up as a candidate and even if he joins another party thereafter, it will not be a case of 'voluntarily giving up his membership of the political party that had set him up as a candidate for the election. On the other hand, counsel for the respondents, Mr. Soli, J. Sorabjee, submitted that the Tenth Schedule of the Constitution should be interpreted strictly, and keeping in view the mischief sought to be prevented by enacting the law, it is evident that though expulsion by the political party that had set up a person as a candidate by itself may not attract paragraph 2(1) (a), the further act of his joining another party amounts to voluntarily giving up the membership of the political party that had set him up as a candidate. Learned counsel submitted that the deeming provision contained in the explanation should be given full effect and in the light of the finding that the appellants had joined another political party, the High Court was justified in confirming the conclusion of the Speaker that the appellants had voluntarily given up them up as candidates and had thereby incurred the disqualification for being members of the Assembly under Article 191 (2) of the Constitution read with Clause (a) of sub-paragraph (1) of paragraph 2 of the Tenth Schedule.

6. Before we proceed further, we may notice the relevant provisions of the Constitution. Article 190 speaks of 'Disqualifications for membership. The relevant parts of the said two articles with which we are concerned read as under :-

"190. (1) & (2).....

(3) If a member of a House of the Legislature of a State-

(a) becomes subject to any of the disqualifications mentioned in Clause (1) of Article 191; or

"191. (1) A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State-

(a) to (b).....

(e) if he is so disqualified by or under any law made by Parliament-

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule."

Tenth Schedule

"1. Interpretation. In this Schedule, unless the context otherwise requires,-

(a) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) 'legislative party', in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or as the case may be paragraph 4, means the group consisting of all the members of the House for time being belonging to that political party in accordance with the said provisions;

(c) "original political party", in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(d) "paragraph" means a paragraph of this Schedule.

2. Disqualification on ground of defection. (1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-

(a) if he has voluntarily given up his membership of such political party; or

(b).....

Explanation. For the purposes of this sub-paragraph,-

(a) an elected member of a House shall be deemed to belong to the political party, if any by which he was set up as a candidate for election as such member,

(b) a nominated member of a House shall, -

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he

becomes, or as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188.

(2) An elected members of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the house if the joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or as the case may be Article 188."

7. The crucial point raised in these appeals centres round the interpretation to be placed on paragraph 2(1)(a) read with the explanation thereto of the Tenth Schedule. Does a member of a House, belonging to a political party, become disqualified as having voluntarily given up his membership of such political party on his joining another political party after his expulsion from the former?

7A. The legislative background for enacting the law affords a key for an understanding of the relevant provisions What impelled the Parliament to insert the Tenth Schedule can be seen from the Statement of Objects and Reasons appended to the Bill which ultimately resulted in the Constitution (Fifty-Second Amendment) Act, 1995, quoted in the decision, *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2)SCC 651 (668) : 1992 AIR SCW 3497 (3512). It is to the following effect:

"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, as 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."

When the constitutionality of the above provisions was challenged, this Court after referring to paragraphs 2,3 and 4 of the Tenth Schedule of the Constitution stated in *Kihoto Hollohan* (1992 AIR SCW 3497 at p. 3515)(supra),as under:-

"These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of paragraph 2(1) (a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election."

(Emphasis supplied)

8. The scope of the legal fiction enacted in the explanation (a) to paragraph 2(1) of the Tenth Schedule assumes importance in this context. By the decision of this Court it is fairly well settled that a deeming provision is an admission of the non-existence of the fact deemed. The Legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not even exist. It means that the Courts must assume that such a State of affairs exist as real, and should imagine as real the consequences and incidents which inevitably flow therefrom, and give effect to the same.

9. The deeming provision may be intended to enlarge the meaning of a particular word or to include matters which otherwise may or may fall within the main provision. The law laid down in this regard in *East End Dwellings Co.Ltd.case (1952)AC 109:(1951)2 All ER 587*, has been followed by this Court in a number of cases, beginning from *State of Bombay v. Pandurang*, AIR 1953 SC 244 and ending with a recent decision of a three Judge Bench in *M. Venugopal v. Divisional Manager*, (1994)2 SCC 323 : (1994 SCW 778). N. P. Singh. J.,speaking for the Bench, stated the law thus at page 329 (of SCC) : (at p. 784 of AIR SCW):

"The effect of a deeming clause is well known. Legislature can introduce a statutory fiction and Courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in the case of *East End Dwellings Co. Ltd. v. Finsbury Brough Council (1952 AC 109)*, that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it-one must not permit his "imagination to boggle"when it comes to the inevitably corollaries of that state of affairs."

10. It appears that since the explanation to paragraph 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person 'voluntarily give up' his membership of such political party as provided in paragraph 2(1) (a)? The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected joins another (new)party it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member.

11. We are of the view that labelling of a member as 'unattached' finds no place nor has any recognition in the Tenth Schedule. It appears to us that the classification of the member in the Tenth Schedule proceeds only on the manner of their entry into the House, (1) one who has been elected on his being set up by a political party as a candidate for election as such member:(2)one who has been elected as a member otherwise than as a candidate set up by any political party- usually referred to as an 'independent' candidate in an election;and (3) one who has been nominated. The categories mentioned are exhaustive. In our view, it is impermissible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. If a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion

from the party or otherwise, he voluntarily gives up his membership of the political party and incurs the disqualification. Being treated as 'unattached' is a matter of mere convenience outside the Tenth Schedule and does not alter the fact to be assumed under the explanation to paragraph 2(1). Such an arrangement and labelling has no legal bearing so far as the Tenth Schedule is concerned. If the contention urged on behalf of the appellant is accepted it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief, namely, breach of faith of the electorate. We are, therefore, of the opinion that the deeming fiction must be given full effect for otherwise the expelled member would escape the rigour of the law which was intended to curb the evil of defections which had polluted our democratic polity.

12. Mr. Shanti Bhushan laid stress on paragraph 1(b) of the Tenth Schedule and condoned that the Legislative Party in relation to a member of a House belonging to any political party means the group consisting of all the members of that House for the time being belonging to that political party, and so understood, the appellants who were thrown out or expelled from the party, did not belong to that political party nor will they be bound by any whip given by that party, and so, they are unattached members who did not belong to any political party, and in such a situation the deeming provision in sub-paragraph (a) of the explanation to paragraph 2(1) will not apply. We are afraid it is nothing but begging the question. Paragraph 1(b) cannot be read in isolation. It should be read along with paragraphs 2,3 and 4, Paragraph 1(b) in referring to the Legislative Party in relation to a member of a House belonging to any political party, refers to the provisions of paragraphs 2,3, and 4, as the case may be, to mean the group consisting of all members of that House for the time being belonging to that political party in accordance with the said provisions, namely, paragraphs 2,3, and 4 as the case may be. Paragraph 2(1) read with the explanation clearly points out that an elected member shall continue to belong to that political party by which he was set up as such member. This is so notwithstanding that he was thrown out or expelled, from that party. That is a matter between the member and his party and has nothing to do so far as deeming clause in the Tenth Schedule is concerned. The action of a political party qua its member has no significance and cannot impinge on the fiction of law under the Tenth Schedule. We reject the plea solely based on Clause 1(b) of the Tenth Schedule.

13. Our attention was drawn to the decision of this Court in Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641 : (1994 AIR SCW 1214). In the said decision, paragraph 2(1)(a) of the Tenth Schedule of the Constitution was construed and it is observed at page 649 (of (Supp)SCC):(at p. 1224 of AIR SCW) thus:

"The said paragraph provides for disqualification of a member of a house belonging to a political party "if he has voluntarily given up his membership of such political party." 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 a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."

(Emphasis supplied)

If he of his own volition joins another political party, as the appellants did in the present case, he must be taken to have acquired the membership of another political party by belonging the political party to which he belonged or must be deemed to

have belonged under the explanation to paragraph 2(1) of the Tenth Schedule. Of course, Courts would insist on evidence which is positive, reliable and unequivocal.

14. For the aforesaid reasons we hold that the judgment of the High Court declining to interfere with the order of the disqualification passed by the Speaker, Tamil Nadu Legislative Assembly, calls for no interference in these appeals. The appeals are dismissed with costs. Each appellant to pay the costs in separate sets.

Appeals dismissed.