

SUPREME COURT OF INDIA

Anil Kumar Jha

Vs.

Union of India

Writ Petn.(Civil) Nos. 120 with 123 of 2005

(R. C. Lahoti CJI., Y. K. Sabharwal and D. M. Dharmadhikari JJ.)

09.03.2005

ORDER

1. This petition was filed on 7th March, 2005 and also mentioned at about 1.00 p.m. for being taken up for hearing on the same day. The Court directed the matter to be listed for hearing today at 1.40 p.m.

2. Issue notice in the petition as also on the application for stay.

3. We have heard Mr. Mukul Rohtagi, learned senior counsel assisted by Ms. Pinky Anand, Advocate for the petitioner as also Dr. A. M. Singhvi, learned senior counsel assisted by Mr. A. K. Mathur, Advocate for respondents 3 and 4. Also perused the decision of this Court in *Jagdambika Pal v. Union of India and others*¹.

4. At the very outset it is stated by the learned counsel for the petitioner that after the filing of the petition further developments have taken place and a few developments are in the offing, as reported by the media. It is pointed out that the Governor in exercise of his constitutional power appointed a Protem Speaker of the Legislative Assembly who is comparatively a junior member of the Legislative Assembly and it is submitted that though various senior members were available and as per constitutional convention the senior most member should have been appointed as a Protem Speaker, but that convention has been given a go-bye. It is also pointed out that in exercise of the power conferred by Article 333 of the Constitution the Governor is likely to nominate one member of the Anglo-Indian community to be a member of the Legislative Assembly. It is submitted that the stage for such nomination is not yet ripe and such a nomination may have the effect of tilting the balance of power as also may be vitiated inasmuch as a writ of quo warranto has been sought for against the present Chief Minister and the appointment will be on his recommendation.

5. Though many a relief has been sought for in the writ petition, as also in the application for grant of ex parte stay, for the present, we are satisfied that a strong prima facie case on the averments made in the petition duly supported by affidavit, has been made out to issue the following interim directions and we order accordingly:-

“(1) The Session of the Jharkhand State Assembly has already been convened for 10th March, 2005 on which day the newly elected Members of the Legislative Assembly shall be administered oath. We direct the Session to continue and on 11th March, 2005, i.e., the next day and on that day the vote of confidence to be put to test.

(2) The only agenda in the Assembly on 11th March, 2005 would be to have a floor test between the contending political alliances in order to see which of the political party or alliance has a majority in the House and hence a claim for Chief Ministership.

(3) It is emphasized that the proceedings in the Assembly shall be totally peaceful, and disturbance, if any, caused therein shall be viewed seriously.

(4) The result of the floor test would be announced by the Protem Speaker faithfully and truthfully.

(5) This order by the Court shall constitute notice of the meeting of the Assembly for 11th March, 2005 and no separate notice would be required.

(6) Till 11th March, 2005 there shall be no nomination in view of Article 333 of the Constitution and the floor test shall remain confined to the 81 elected Members only.

(7) We direct the Chief Secretary and the Director General of Police, State of Jharkhand to see that all the elected Members of the Legislative Assembly freely, safely and security attend the Assembly and no interference or hindrance is caused by anyone therein. Dr. A. M. Singhvi, learned senior counsel appearing for the State of Jharkhand through Chief Secretary and Director General of Police has very fairly assured the Court that even otherwise it is the duty of the State and its high officials to take care to do so and the direction made by the Court shall be complied with in letter and spirit.”

6. We are not inclined to appoint any observer for the proceedings on the Assembly to be held on 11th March, 2005. However, we desire and accordingly request the Protem Speaker of the Legislative Assembly to have the proceedings of the State Legislative Assembly as held on 11th March, 2005 to be video recorded and send a copy of the video recording to this Court forthwith.

7. Copies of the order be delivered to Mr. D. N. Goburdhan, Advocate for the petitioner and Mr. A. K. Mathur, Advocate for respondents Nos. 3 and 4 today itself, who are allowed liberty of communicating this order post haste to all the respondents.

8. Additionally, the Registrar (Judicial) of this Court shall communicate copies of this order to the respondents through fax today itself.

9. List on Monday, the 14th March, 2005.
WP (C) No. 120/2005

10. List on 14th March, 2005 along with WP (C) No. 123/2005.
Order accordingly.

¹(1999) 9 SCC 95