

SUPREME COURT OF INDIA

Amar Singh

Vs.

Union of India

Writ Petition (Civil) No.317 of 2010

(Altamas Kabir and Cyriac Joseph JJ.)

15.11.2010

JUDGMENT

Altamas Kabir,J.

1. These two writ petitions have been taken up together to consider whether Rule should be issued as identical issues have been raised in both the matters and identical relief has also been sought for.

2. Both the writ petitioners were formerly members of the Samajwadi Party, of which Shri Mulayam Singh Yadav is the President. While Shri Amar Singh was one of the senior-most members of the party and had also held the post of All India General Secretary and was its National Spokesperson and had also been a Member of the Rajya Sabha for three terms, Ms. Jaya Pradha is also a prominent political leader who was elected to the Lok Sabha from the State of Uttar Pradesh and was elected for a Second Term to the Lok Sabha as a Member of the Samajwadi Party. Earlier, she had also been a Member of the Rajya Sabha from the said party.

3. In addition to the above, Shri Amar Singh is also a member of four different Parliamentary Committees and Ms. Jaya Pradha is a member of one such Committee.

4. The case made out by Shri Amar Singh is that on account of medical reasons and other personal difficulties he was constrained to resign from the posts of General Secretary and National Spokesman of the Samajwadi Party on 6th January, 2010. He, however, continued to be a member of the party till he was expelled therefrom on 2nd February, 2010. Thereafter, he was treated as an Independent Member of Parliament (MP) which will be evident from a glance at the alphabetical list of Members of the Rajya Sabha maintained by Parliament, produced on Shri Amar Singh's behalf.

5. The common case of both the writ petitioners is that they have had to approach this Court under Article 32 of the Constitution in view of the imminent threat to their continuance as

Members of Parliament, both Rajya Sabha and Lok Sabha, in view of the decision of this Court in the case of *G. Viswanathan vs. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras & Anr.*¹ .

6. In the said case this Court was called upon to consider, inter alia, the effect of paragraph 2(1)(a) and Explanation (a) thereto in the Tenth Schedule to the Constitution of India with regard to members of political parties who are expelled therefrom and have not voluntarily given up their membership of such political party. What also fell for consideration is Explanation (a) which provides that for the purposes of paragraph 2(1) 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.

7. In considering the said question, this Court held that in view of the Explanation to Paragraph 2(1) of the Tenth Schedule, even if a member is expelled from his party, for the purposes of the Tenth Schedule, he/she would not cease to be a member of the political party that had set him up as a candidate for the election and he would continue to remain attached to that political party even if he is treated as "unattached".

8. This Court, inter alia, held that when a person who has been thrown out or expelled from the party which set up him as a candidate and was ultimately elected, joins another party, it would certainly amount to his voluntary abandonment of the membership of the political party which had set him up as a candidate for election as such Member. It was held that if he, on his own volition, joined another political party, he must be taken to have acquired the membership of the other political party by abandoning 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.

9. It was further held that Paragraph (1)(b) of the Tenth Schedule cannot be read in isolation and had to be read with Paragraphs 2, 3 and 4 thereof. It was also observed that Paragraph 2(1) read with the Explanation clearly pointed out that an elected Member would continue to belong to that political party by which he was set up as a candidate for election as such Member. This is so notwithstanding the fact that he had been thrown out or expelled from that party. It was explained that that was a matter between the Member and his party and had nothing to do so far as the deeming clause in the Tenth Schedule is concerned. In other words, the action of a political party in relation to its member has no significance and cannot impinge on the fiction of law under the Tenth Schedule. This Court went on further to hold that labeling of a Member as "unattached" finds no place nor has any recognition in the Tenth Schedule and the classification of the Members in the Tenth Schedule proceeds only on the manner of their entry into the House, namely, (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. It was also held that it is impermissible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. In that view of

the matter, this Court came to the conclusion that the deeming fiction indicated in Explanation (a) to Paragraph (2) of the Tenth Schedule has to be given full effect as otherwise the expelled Member would escape the rigour of the law which was intended to curb the evil of defections which has polluted our democratic polity.

10. Mr. Harish N. Salve, learned Senior Advocate appearing for Shri Amar Singh, urged that it was not the legislative intent to bring persons, who are expelled from their political party, within the ambit of the Tenth Schedule and that the same would be evident from the parliamentary debates which followed the tabling of the Bill, which ultimately resulted in the introduction of the Tenth Schedule in the Constitution. Mr. Salve referred to the Parliamentary Debates relating to the Constitution (52nd Amendment) Bill, 1985, by which the Tenth Schedule was introduced in the Constitution. In the Draft Bill, besides Clauses (a) and (b) to Paragraph (1) of the Tenth Schedule, Clause (c) had also been included, which reads as follows:

“(c) if he has been expelled from such political party in accordance with the procedure established by the Constitution, rules or regulations of such political party.”

11. Mr. Salve submitted that the said clause was the subject matter of heated debate when the Bill was tabled in the Parliament and moved by the then Law Minister, Mr. Ashok Sen. In fact, Mr. Sen in his speech, while introducing the Bill, omitted the said clause from the Bill which later on became the Tenth Schedule to the Constitution. Mr. Salve drew our attention to the statement made by Shri Sharad Dighe, who, while supporting the Bill, objected to the inclusion of Clause 2(1)(c) in the Bill in the following terms:

“Now, there have been several clauses in this Bill and I am happy that the Law Minister has also announced that two of the clauses are to be amended. As far as clause 2 sub-clause (1) paragraph (C) is concerned, that has to be deleted and paragraph (b) has to be amended suitably. It was very much necessary to delete paragraph (c) because if a Member has to be expelled from a political party in accordance with the procedure for anything done outside the House, it would have created several practical problems and it would have given a handle especially to the bosses of similar parties; where this paragraph would have created some difficulties. Therefore, the main principle of this disqualification is that for something which a Member does in this House, in the presence of the Presiding Officer such as voting against the Party or abstaining from voting against the direction of the Party. Now this is something which is proved beyond doubt. No other enquiry is by any other committee or anybody else. So it is very clear that any act done by a member in the presence of a Presiding Officer, namely, voting or abstaining from voting would entail him to this disqualification. So there is no chance or any injustice being done nor is there any scope for any doubt whether he has committed that act or not. Therefore, from that point of view, acts done outside the House have been deleted or are proposed to be deleted now because there would have been the question of

proving them. Some doubt may arise and there will be questions of giving a hearing to that member also and rules of natural justice would have also to be followed.”

12. Mr. Salve urged that in G. Viswanathan's case (supra) the introduction of the Bill comprising the Constitution Fifty-second Amendment which led to the introduction of the Tenth Schedule in the Constitution, was probably not considered since the intention of including clause (c) in paragraph 2 of the Tenth Schedule was subsequently dropped. In G. Viswanathan's case (supra), in order to give a status in the House to Members expelled from their parties, the Court treated such Members at par with those who had voluntarily resigned their membership from such party by applying the provisions of the Explanation to paragraph 2(1) of the Tenth Schedule, which, in fact, was not the intention of the legislature. Submitting that the decision rendered in G. Viswanathan's case (supra) had highly prejudicial consequences for persons expelled from the membership of a political party, which was not the intention of the legislature, and had been so expressed in the debates in respect of the Bill, Mr. Salve contended that the decision in the said case required a re-visitation of the law. Mr. Salve also urged that the consequences of what had been propounded in G. Viswanathan's case (supra) would have dangerous portents if a Member, properly elected by the voters of a particular constituency, could be deprived of his membership of the House merely on the whims and fancies of the leaders of his party even though he may not have voluntarily resigned from the party which would then have attracted the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution.

13. Mr. K.K. Venugopal, learned Senior Advocate, who appeared for Ms. Jaya Pradha, while adopting and reiterating the submissions of Mr. Salve, submitted that on account of the decision in G. Viswanathan's case (supra), even an expelled Member stood exposed to the party whip in the House, if he was to be deemed to be, for all practical purposes, a member of the said party which had expelled him, in the House.

14. We had requested the learned Attorney General to assist the Court in the matter and he has also concurred with the submissions made on behalf of the writ petitioners that the decision in G. Viswanathan's case (supra) required a second look.

15. We are also convinced that in the background of the legislative history of the introduction of the Tenth Schedule in the Constitution, in which it was initially intended to include expelled Members within the ambit of the provisions relating to disqualification, the same was dropped after the debate in Parliament in which the dangerous effects of the inclusion of such a sub-clause were pointed out by many of the Members in the House. If it was the intention of the legislature not to include expelled members of a political party within the category of persons who could be clubbed with the category of persons who voluntarily resigned from membership of their parties, the same could not have been imported into the Tenth Schedule by virtue of the judicial pronouncement in the said case. In fact, what was sought to be excluded by the legislature has now been introduced into the Tenth Schedule by virtue of the said decision.

16. We are also convinced that the decision in *G. Viswanathan's case* (supra) merits another look as far as the Members of the House who are expelled from their parties on whose banner they had been elected to the House, are concerned, as they would be left completely vulnerable to the whims and fancies of the leaders of their parties. We, therefore, issue Rule in the two Writ Petitions and request Hon'ble the Chief Justice of India to refer the matter to a larger Bench on the following questions :-

“1. What is the status in either House of Parliament or the State Legislatures of a Member who is expelled from the party which set him/ her up as a candidate for election?

2. Will the provisions of the Tenth Schedule to the Constitution apply to such Member?

3. Was the view taken in *G. Viswanathan's case*², with regard to the status of Members in either House of Parliament who had not voluntarily resigned from their party but had been expelled therefrom, in harmony with the provisions of the Tenth Schedule to the Constitution?

4. In view of the fact that Members of the two Houses of Parliament, who are expelled from the membership of the parties which had set them up as candidates in the election, are not referred to in the Tenth Schedule to the Constitution, was the decision in *G. Viswanathan's case* that they must be deemed to continue to belong to such party in view of Explanation (a) to paragraph 2(1) of the Tenth Schedule, a correct interpretation of the said provisions, having regard to the Parliamentary debates on the Bill which became the Tenth Schedule ?

5. Can Explanation (a) to paragraph 2(1) of the Tenth Schedule to the Constitution be extended to include Members of the two Houses of Parliament who are expelled from their parties?

6. When a Member of either House of Parliament is expelled by the party which had set him up as a candidate for election and he either joins another political party or forms his own party, can it be said that he had voluntarily given up his membership of the party in view of the legal fiction created by Explanation (a) to paragraph 2 (1) of the Tenth Schedule?

7. What is the status of an "unattached" Member in either House of Parliament or in the State Legislatures?"

17. Pending the reference, the decision in *G. Viswanathan's case* (Supra) shall not be applied to the two writ petitioners, Shri Amar Singh and Ms. Jaya Pradha.

18. Let the records of the two writ petitions be transmitted to the Secretariat of Hon'ble the Chief Justice immediately.

¹(1996) 2 SCC 353

²(1996) 2 SCC 353