

ITEM NO.20

COURT NO.2

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 240/2017

AMAR SINGH

Petitioner(s)

VERSUS

THE UNION OF INDIA

Respondent(s)

(with appln. (s) for directions and exemption from filing O.T. and permission to file synopsis and list of dates and office report)

Date : 17/04/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA  
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Mr. C.U. Singh, Sr. Adv.  
Mr. Rohit Mammen Alex, Adv.  
Mr. P.S. Sudheer, AOR  
Mr. S.P.M. Tripathi, Adv.  
Mr. Gaurav Jain, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Heard Mr. C.U. Singh, learned senior counsel along with Mr. Rohit Alex, learned counsel for the petitioner.

This writ petition is preferred under Article 32 of the Constitution of India. The petitioner has prayed for the following reliefs :-

“(a) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction for declaring that the provisions of the 10<sup>th</sup> Schedule to the Constitution, namely para 2 do not apply to an elected

member of a House who has been expelled by his/her political party; or

- (b) Declare the provisions of 10<sup>th</sup> Schedule to the Constitution, to the extent that para 2 applies to an expelled member, to be violative of the basic structure of the Constitution; or
- (c) In the alternative, declare that the petitioner having been expelled by the Samajwadi Party, his conduct would no longer fall within the acts that constitute a disqualification within the meaning of para 2(1)(a) and para 2(1)(b) of the Tenth Schedule to the Constitution.
- (d) pass any such other order and/or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

Having heard Mr. C.U. Singh, learned senior counsel, we are of the considered opinion that prayer (b) does not require to be considered by this Court and the same need not be adverted to. What is required to be adverted to is whether Para 2 of the Tenth Schedule to the Constitution would apply to the elected member who has been expelled from the political party. Paragraph 2 of the Tenth Schedule reads as follows :-

(2) Disqualification on ground of defection.—(1) Subject to the provisions of paragraphs 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) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or

abstention.

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 member 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 he joins any political party after such election."

Para 2 of the Tenth Schedule to the Constitution came for consideration before a two-Judge Bench of this Court in G. Viswanathan vs. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras & Anr. [(1996) 2 SCC 353] wherein this Court referred to Kihoto Hollohan vs. Zachillhu [1992 Supp. (2) SCC 651] and other authorities and came to hold as follows :-

"11. 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.

12. 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 members 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 rigor of the law which was intended to curb the evil of defections which had polluted our democratic polity.

13. Mr. Shanti Bhushan laid stress on paragraph 1(b) of the Tenth Schedule and contended 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 a candidate for election 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."

And again :-

"14. Our Attention was drawn to the decision of this Court in Ravi S. Naik v. Union of India and Others, (1994) Supp. (2) SCC 641. In the said decision, paragraph 2(1)(a) of the Tenth S schedule of the Constitution was construed and it is observed at page 649 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 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. Of course, courts would insist on evidence which is positive, reliable and unequivocal."

Similar issue cropped up in the case of the present petitioner in Amar Singh vs. Union of India [(2011) 1 SCC 210] wherein the two-Judge Bench referred to the Parliamentary debate in the Constitution and the objections raised to the inclusion of clause 2(1)(c) in the Bill and thereafter noted the submissions of the learned counsel for the parties and opined thus :-

"16. 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."

After so stating, the learned Judges came to hold that if the decision in G. Viswanathan case holds the field, the members of the House who are expelled from their parties on whose banner they had been elected to the House would have left completely vulnerable to the whims and fancy of the leader of their parties. Being of this opinion, the two-Judge Bench thought it appropriate 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 ? 14
3. Was the view taken in G. Viswanathan's case [(1996) 2 SCC 353], 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 15 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 ?"

The matter was heard by a three-Judge Bench which reserved the matter but eventually passed the following order on 3.8.2016 :-

"1. The petitioners who were members of the Rajya Sabha at the relevant point of time have completed their tenures in the meantime. In the above situation, though we have heard the matter at length and had reserved the judgment, we are now of the view that it would be more appropriate not to answer any of the issues referred to this larger bench by a two judge bench of this Court. We, therefore, decline to answer the question referred.

2. The writ petitions shall stand disposed of in the above terms. Naturally, the questions referred are kept open for decision in an appropriate case."

As we find, in the case at hand, the term of the petitioner shall be up to 04.07.2022. Thus, the reference that was made in the case of Amar Singh (supra), the present petitioner, remains to be dealt with as the same has not been answered with the efflux of time. As the question remains alive today, we think it appropriate that the matter should be placed before the larger Bench for consideration of the questions which we have reproduced from the decision rendered in Amar Singh (supra).

Mr. C.U. Singh, learned senior counsel appearing for the petitioner prayed for interim relief in terms of paragraph 18 of the decision rendered in Amar Singh (supra). The said paragraph reads as follows :-

"18. Pending the reference, the decision in *G. Viswanathan* case shall not be applied to the two writ petitioners, Shri Amar Singh and Ms. Jaya Pradha."

Keeping that in view, we issue notice to the respondents on the interim relief.

Let the papers be placed before Hon'ble the Chief Justice of India for constitution of the appropriate larger Bench.

(Gulshan Kumar Arora)  
Court Master

(H.S. Parasher)  
Court Master