

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3501 of 2024

Prof. (Dr.) Ram Bali Singh son of Late Ramanand Singh, resident of Village-Ojha Bigha, P.O. Baidrabad, P.S. Arwal, District-Arwal.

... .. Petitioner/s

Versus

1. The Bihar Legislative Council, Patna through the Secretary.
2. The Secretary, The Bihar Legislative Council, Patna.
3. Sri Sunil Kumar Singh son of not known to the petitioner, presently Chief Whip (Ruling Party), resident of 101, Kanti Palace, Shastri Nagar, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S.B.K Mangalam, Advocate
Mr. Awnish Kumar, Advocate
For the E.C.I. : Mr. Siddhartha Prasad, Advocate
For the B.L.C. : Mr. Ashhar Mustafa, Advocate
Mr. Vikash Kumar Jha, Advocate
Mr. Ashish Kr. Ranjan, Advocate
Ms. Anita Kumari, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-07-2024

The writ petition challenges the disqualification of a Member of the Bihar Legislative Council. It has come up before the Division Bench based on a judgment of the Hon'ble Supreme Court in *Election Commission of India vs. Bajrang Bahadur Singh; (2015) 12 SCC 570*. Noticing that there is no



limitation prescribed for filing a writ petition against disqualification, the Hon'ble Supreme Court had prescribed eight weeks as the limitation period, till a period is prescribed by the Legislature, for the purpose of filing a writ petition and a further eight weeks within which the High Court was also obliged to consider and dispose of the writ petition. The said period was prescribed since, after the disqualification order has been passed, the Election Commission was obliged to carry out a fresh election within a period of six months.

2. In the present case, the disqualification was on 06.02.2024 and the writ petition was filed on 22.02.2024. The eight weeks time had expired on 22.04.2024. The writ petition ought to have been placed before a Division Bench which the Registry failed to do. We also notice that the learned Counsel for the petitioner did not apprise the learned Single Judge about the requirement as stipulated in the cited decision. In fact, the same was brought to the notice of the learned Single Judge only on 01.07.2024, when the learned Single Judge directed the matter to be placed before the Chief Justice. A motion was made before us on 02.07.2024 and the matter was posted on 03.07.2024 for hearing.

3. The disqualification was made on the complaint



made by the 3rd respondent. We see that the 3rd respondent has been served with notice, but none appears. We are apprised of the fact that as of now there is an election scheduled and there is only one nomination filed. The election is scheduled on 12.07.2024 and the last date of withdrawal of nomination is on 05.07.2024. Obviously, if the solitary nomination is not withdrawn, the result would have to be declared; when the time for withdrawing of nomination expires. In such circumstances, we heard the matter finally and posted the matter for judgment at 2:15 p.m. on 04.07.2024.

4. The petitioner, a member of the Legislative Council was disqualified and the writ petition was filed challenging Annexure-P-12 order passed by the Chairman of the Bihar Legislative Council (hereinafter referred to as 'the Chairman').

5. Sri. S. B. K Mangalam, learned counsel appearing for the petitioner alleged that there is clear violation of principles of natural justice. The petitioner was issued with a notice and the petitioner had approached this Court alleging that the complaint did not satisfy the requirements under Order VI Rule 15 of the Code of Civil Procedure, since no affidavit accompanied the complaint. This Court directed the said objection to be raised before the Chairman and the learned



Counsel for the Legislative Council had also assured that it would be considered. It was on the specific undertaking of the learned Counsel appearing for the Chairman that it would be considered, the petitioner was relegated to the Chairman. A preliminary objection was filed pointing out the procedural irregularity, which according to the learned Counsel required the Chairman to dismiss the complaint. However, no order was issued on the preliminary objection and final orders were passed without affording an opportunity of hearing, to refute the allegations raised. There is clear violation of principles of natural justice and complete absence of application of mind, as is evident from the impugned order. The impugned order records the arguments and without finding any of the ingredients for disqualification and without dealing with the allegations, ordered disqualification.

6. Learned Counsel relied on *Shri Baru Ram v. Smt. Prasanni and Other; AIR 1959 SC 93* to contend that when a procedure has been prescribed by statute, it should be done in that manner and not otherwise. *Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and Others; (2010) 13 SCC 216* is relied on to contend that if there is complete non-application of mind definitely there could be



interference of orders passed by Statutory Authorities/Courts/Tribunals. The learned Counsel for the petitioner also pointed out that Annexure-P-3 is a show-cause notice issued by the political party to which the petitioner belonged for making some remarks against the party leader. But no further proceedings were taken to oust him from the party. In such circumstances, the Chairman ought to have given some weight to the restraint exercised by the political party to which the petitioner belonged, who did not take any action against him for the remarks made; which is also the subject matter of the complaint made.

7. Sri Ashhar Mustafa, learned Counsel appearing for the Bihar Legislative Council took us through the impugned order to urge that the petitioner had been given sufficient opportunity to put forth his contentions on merits with respect to the specific allegations; which he failed to do. The petitioner had been resorting to delaying tactics so as to continue in the membership of the Council. The complaint itself was filed on 02.11.2023 and notice was served on 21.11.2023. On 01.12.2023, the petitioner had sought for an additional time of 15 days, which was granted for the asking. On 12.12.2023, the petitioner approached this Court with a writ petition pointing



out a procedural irregularity, which writ petition was disposed off, as per Anneuxre-P-8. In fact, the only liberty reserved in the judgment is insofar as raising all the grounds before the Chairman of the Legislative Council which could include also the procedural irregularity, as pointed out from Rule 6. This does not mean that the Chairman should first rule on the preliminary objection and then give a further opportunity for refuting the factual allegations. In fact, a reading of the order would indicate that the petitioner had sufficient information as to the matter being proceeded with on merits.

8. The learned Counsel relied on *Mahachandra Prasad Singh (Dr.) v. Chairman, Bihar Legislative Council and Others; (2004) 8 SCC 747* and *Ravi S. Naik v. Union of India; 1994 Supp (2) SCC 641* to contend that Rules 6 and 7 are only directory in nature and not mandatory, especially since, as held by the Hon'ble Supreme Court it cannot lead to curtailing the content and scope of substantive provisions, in the Xth Schedule of the Constitution of India. The Xth Schedule does not provide for a verification in the manner laid down in the Code of Civil Procedure and merely because of such an irregularity, the jurisdiction of the Chairman or the Speaker of the House cannot be curtailed.



9. We also heard Sri Siddhartha Prasad, learned counsel appearing for the Election Commission, who pointed out that the Election Commission, in accordance with its obligations has ensured that an election is conducted within 6 months.

10. Annexure-P-5 is the complaint filed before the Chairman by another member of the Legislative Council belonging to the same political party and the petitioner himself. The complainant also was the Chief Whip of the political party. The complaint contains a verification, asserting that the complainant has read the written complaint and the statements therein are true to his personal knowledge. The learned counsel for the petitioner had urged that there was no affidavit accompanying the complaint, as is required under Order VI Rule 15 (4) of the Code of Civil Procedure, 1973. We have to immediately notice that the reference in Annexure-P-6, the rules framed; being Bihar Legislative Council (Disqualification on the Ground of Defection) Rules, 1994 (hereinafter referred to as 'Rules of 1994') by sub-rule (6) of Rule 6 provides for verification, as per the Code of Civil Procedure, 1908, which does not require an affidavit.

11. Be that as it may, we have seen *Mahachandra*



Prasad Singh (Dr.) (supra) which has stated so in paragraph 16, which is extracted hereunder:-

Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said rule and sub-rule (6) of the same rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The heading of Rule 7 is "Procedure". Sub-rule (1) of this rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said rule and sub-rule (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These Rules have been framed by the Chairman in exercise of power conferred by Paragraph 8 of the Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by Paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under



the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under Paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as a duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which the Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under Paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires.

[underlining by us for emphasis]

12. Apposite would also be reference to **Ravi S. Naik** (*supra*) from paragraph 18, which is extracted here under :-

.....It was also submitted that the petitions were also not



verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings and thus there was non-compliance of sub-rule (6) of Rule 6 also and that in view of the said infirmities the petitions were liable to be dismissed in view of sub-rule (2) of Rule 7. We are unable to accept the said contention of Shri Sen. The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in Kihoto Hollohan case [1992 Supp (2) SCC 651] . Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in Kihoto Hollohan case [1992 Supp (2) SCC 651] is confined to breaches of the constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in Kihoto Hollohan case.

[underlining by us for emphasis]



13. Hence, the requirement in Rule 6 is merely procedural, and as has been held in *Mahachandra Prasad Singh (Dr.) (supra)* “the provisions of Rule 6 and 7 are directory in nature and on account of non-filing of an affidavit as required by sub-rule (4) of Order VI Rule 15 of the Code of Civil Procedure, the petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis be adversely affected or rendered bad in any manner.” (sic para 18).

14. We have to find that the procedural irregularity raised as a preliminary objection before the Chairman of the Legislative Council is not sustainable. The contention, then raised is that even when the Chairman found that the preliminary objection was not maintainable, he should have ruled to that end and granted further time to the petitioner to file a detailed objection. It is also pointed out from the preliminary objection that the petitioner had reserved the right to file a detailed objection. We cannot accept the argument of the learned Counsel that by Annexure- P-8, the petitioner was directed to raise a preliminary objection or that it was directed to be considered first before the issue of disqualification itself was taken up.



15. The petitioner had taken up a contention that the show-cause notice was issued in violation of the Rules of 1994, which writ petition was disposed of directing the petitioner to raise all grounds including the one raised in the writ petition before the Chairman. The petitioner cannot have a piecemeal adjudication of the preliminary objection and the issue of disqualification, especially when the statute does not provide for such a preliminary objection to be first considered. We have also noticed the argument of the learned Counsel which clearly indicates that petitioner was given ample time to reply to the allegations raised. A complaint was filed on 02.11.2023 which was served on the petitioner on 21.11.2023. The time sought for submitting a reply of 15 days was granted by the Chairman on 01.12.2023. The writ petition was filed on 12.12.2023 and even before it was disposed of on 09.12.2023, the preliminary objection was filed on 15.12.2023.

16. A reading of Annexure-P-12 would indicate that the preliminary objections were looked into by the Chairman and it was specifically observed in the order that the factual statements made in the complaint were not refuted by the petitioner and the contention raised was only regarding the maintainability of the petition on the allegation of procedural



irregularity. Both sides were heard on 09.01.2024, when the complainant was represented by an Advocate and the petitioner was present in person. The Advocate appearing for the complainant specifically stated that the hearing should be done on the merits of the case. A request was given by the petitioner seeking time, so that an Advocate could appear for him, which was objected to by the complainant on the ground of unnecessary delay being occasioned. However, the Chairman granted the petitioner time for appearance through an Advocate and the matter was posted on 16.01.2024. Annexure-P-12 specifically records that the petitioner was informed that this would be the final opportunity for him to put forth his arguments and submit whatever documents or the evidence he had to give. Hence, there was a clear understanding, as is evident from the order, that the matter would be heard on merits and the question of procedural irregularity would also be considered, which was also directed by a learned Single Judge of this Court.

17. The Chairman, in his order, specifically referred to the decisions in *Ravi S. Naik and Mahachandra Prasad Singh (Dr.) (both supra)* to hold that the procedural irregularity does not vitiate the complaint. Following the dictum



that the procedure prescribed under Rules 6(6) and 7 to be directory and not mandatory, we fully agree with the said finding and further observe that the requirement of an affidavit was absent in Order VI Rule 15 as available in the C.P.C of 1908 which is specifically referred to and incorporated in the Rules of 1994.

18. We cannot, but notice that there is absolutely no contention raised against the allegations before the Chairman nor any ground raised against the decision of disqualification. We also reiterate the finding in *Ravi S. Naik (supra)* ‘Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in *Kihoto Hollohan case [1992 Supp (2) SCC 651]* is confined to breaches of the constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity” (sic). The learned Counsel before us had argued only on procedural irregularity and that there is non-application of mind. We find that after rejecting the preliminary objection, the Chairman had specifically referred to the allegations.

19. The allegations were made against the Leader in the Legislative Assembly, of the political party, to which the petitioner also belonged. There were also allegations of the



petitioner having made public statements against the declared policies of the State Government, passed by the Legislature; when the party on whose platform the petitioner had been elected, was a part of the Government. We would not refer to the allegations as such since there is no contention raised against those nor are they even denied. However, we find that the decision taken by the Chairman regarding the scurrilous remarks publicly made against the leader of the party in the Legislative Assembly and statements made, again publicly, against the declared policy of the Government in which the political party was associated were considered in the light of the decisions in *Ravi S. Naik (supra)* and *Kihoto Hollohan vs. Zachillhu & Ors.; 1992 Supp (2) SCC 651*. It was held that though every citizen has a fundamental right to free speech and expression; when he is a Member of the legislative body in the capacity of a Member of a political party, he should comply with the discipline, constitution and rules of the party. It was found that the petitioner by his conduct has voluntarily abandoned his political party and hence he is liable to disqualification based on the Rules of 1994.

20. The oft-repeated dictum in *Baru Ram (supra)* that whenever the statute requires a particular act to be done in a



particular manner and also lays down the consequence of failure to comply with the said requirement; it would always lead to that specific consequence, on failure to comply and not otherwise, is not applicable in view of the binding precedents that the stipulation in the Rules of 1994 is only directory and not mandatory. The learned Counsel for the petitioner had also relied on *Municipal Committee, Hoshiarpur (supra)* wherein it was held that *'If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the guise of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law (sic para 28)*. We see no application of the principle since first of all there is nothing raised refuting the allegations levelled against the petitioner or the decision that the conduct of the petitioner tantamount to voluntary abandonment of his membership in the political party, incurring disqualification under para 2(1)(a) of the Xth Schedule to the Constitution of India. The only contention before the Chairman and before this Court was regarding the procedural irregularity under Rules 6(6) and 7.

21. We find absolutely no reason to interfere with



the impugned order. We dismiss the writ petition leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Partha Sarthy, J; I agree

(Partha Sarthy, J)

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