

ORISSA HIGH COURT: CUTTACK

**WRIT PETITION (CIVIL) Nos.14868, 14869, 14870
and 14871 of 2012**

In the matter of applications under Article 226 and 227 of the
Constitution of India.

Utkal Keshari Parida (In all) *Petitioner*

-versus-

Speaker, Orissa Legislative Assembly *Opp. Party*

For petitioner : M/s.Gopal Agarwal and S. Lal.

For opp.party : M/s P. Acharya, S. Rath, B. Bhadra,
B.K. Jena and J.P. Parida.

P R E S E N T :

***THE HONOURABLE THE CHIEF JUSTICE SHRI V.GOPALA GOWDA
A N D
THE HONOURABLE SHRI JUSTICE B.K.MISRA***

Date of hearing & judgment : 27.09.2012

V.Gopala Gowda, C.J. Since common questions of fact and law are involved in these writ petitions, they are heard together and disposed of by this common order.

2. In these writ petitions, the petitioner, who is the President of Odisha State Nationalist Congress Party, is before this Court seeking for issuance of a writ of mandamus to the Speaker of the Odisha Legislative Assembly directing him to dispose of the disqualification petitions filed by him on 10.07.2012 against four members of the 14th Odisha State Legislative Assembly, who have joined in Biju Janata Dal (BJD) by invoking his power

under para 8 of the Tenth Schedule of the Constitution of India read with the Rules framed by him urging various facts and legal contentions.

3. Necessary brief facts are given hereunder for the purpose of elucidating the rival legal contentions particularly the locus standi of the petitioner to file the disqualification petitions in the backdrop of Rule 8 of the Member of Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987, hereinafter referred to as "the Rules" in exercise of the power under para 8 of the Tenth Schedule of the Constitution of India.

4. Learned counsel for the petitioner placing strong reliance upon the 10th Schedule of the Constitution of India submits that if any member of the Legislative Assembly belonging to a particular political party is sought to be disqualified for being a member of the house subject to para 4 and 5, the Speaker shall exercise power under paragraph 6 read with the Rules that are framed in exercise of power under paragraph 8 of the Tenth Schedule of the Constitution of India and pass orders expeditiously. Learned counsel for the petitioner has also placed reliance upon the judgment of the Supreme Court in **Rajendra Singh Rana and others V. Swami Prasad Maurya and others**, reported in (2007) 4 SCC 270, wherein the Apex Court has referred to the full Bench decision of the Punjab and Haryana High Court in **Prakash Singh Badal V. Union of India**, reported in AIR 1987 P & H 263. In the said case para 6 of the Tenth Schedule to the Constitution of India fell for consideration before the apex Court while referring to disqualification of the nominated member enumerated in para 2 (1) and made an observation that some interested person approaches the Speaker for declaring that the said member is disqualified from being a member of the house and the claim is refuted by the

member concerned. The power of Tenth Schedule upon the Speaker to do so accrues only when he is called upon to decide the question referred to in para 6 of the Tenth Schedule. The observation made in the aforesaid paragraph of the Supreme Court after referring to the relevant paragraphs 2 and 6 of the Tenth Schedule clearly indicates that any person who is interested in the disqualification to see that the Parliamentary democracy is given effect to and the Rules that are framed in exercise of the constitutional power under para 8 of the Tenth Schedule must be in consonance with the object and intendment of the Constitution but not to nullify the provisions of the Tenth Schedule of the Constitution. Further he submits that Rule 6 (1) of the Rules framed by the learned Speaker of the Legislative Assembly does not prohibit to file petitions against the members of the Legislative Assembly, who have defected from their party and joined in BJD. Rule 6 of the Rules framed must be given interpretation to achieve the object and intendment of the Tenth Schedule. Learned counsel for the petitioner sought to interpret Rule 6 (1) of the Rules by placing reliance upon the judgment of the Supreme Court in the case of **Dr. Mahachandra Prasad Singh V. Chairman, Bihar Legislative Council and others**, reported in (2004) 8 SCC 747, wherein in paragraph 16, the Apex Court had the occasion to interpret the Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994 in the backdrop of article 191 (2) and paras 2 (1) (a) and (b) of the Tenth Schedule. The Supreme Court in paragraph 16 with reference to the Constitution Bench Judgment of the Supreme Court reported in 1992 Supplementary (2) SCC 651 **Kihoto Hollohan V. Zachillhu** has made observation that 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 para 6, namely, for resolving any

dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rule 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, Tenth Schedule. The aforesaid observation has been made by the Supreme Court while interpreting similar Rules 6 and 7 of the Bihar Rules referred to (*supra*). Paragraphs 2 and 6 of the Tenth Schedule and the Constitutional provision of Article 191 of the Constitution has succinctly made it clear that the Rules shall be in consonance with the constitutional provision of Tenth Schedule and the same shall not be in derogation of the Tenth Schedule to the Constitution of India. Therefore, learned counsel for the petitioner submits that the petitioner has the locus standi to file the petitions and the same are legally maintainable and the Speaker has the Constitutional obligation to see that the petitions are taken up and heard and disposed of on merit in exercise of powers under Rule 6 framed in exercise of para-8 of the Tenth Schedule. The same view has been taken by the High Court of Karnataka in the case of **A.K. Subbaiah V. Chairman, Karnataka Legislative Council, Bangalore and another**, reported in AIR 2007 Karnataka 145. Both the learned counsel appearing for the petitioner and learned Senior Counsel appearing for the opposite party placed reliance upon the said judgment. However, learned Senior Counsel submits that the said judgment of the Supreme Court is sought to be distinguished for the reason that in the said judgment the vires of the Karnataka Legislative Council (Disqualification of Members on the Ground of Defection) Rules, 1986 was challenged wherein the

learned Single Judge has held that the said Rule is ultra vires to the Constitution. In the case in hand, the Rule is not challenged. Therefore, the Rule is binding on the parties and shall be strictly adhered to whether the petition is filed by a Member of the Legislative Assembly or a Leader of a particular political party.

5. Learned counsel for the petitioner placing strong reliance on paragraph 13 of the writ petition submits that even though more than one month has passed after filing of the disqualification petitions, the learned Speaker has not taken any action on the said petitions, thereby the object and intendment of the Tenth Schedule, which was added by the Constitution (Fifty-Second Amendment Act, 1985) have been frustrated. He further submitted that the learned Speaker has to see that Parliamentary Democracy must function in a healthier way and governance under the Constitution shall be given to the people either by the Central Government or by the State Government as they are required to govern the people strictly in conformity with the provisions of Constitution and implement the law enacted by them and the State Legislature is to see that the Constitutional philosophy and concepts to reach the common people and therefore, he submits that due to the delay in not taking steps till he approached this Court and thereby the object and intendment of Tenth Schedule has been frustrated. No wild allegations have been made against the learned Speaker in Para-13 as contended by the learned Sr. Counsel only the petitioner is interested to see that the petitions filed by him, who is the President of the Odisha State National Congress Party (NCP) get concluded and order is passed by the learned Speaker in exercise of the power under para 6 of the Tenth Schedule.

6. In reply to the averments made in the writ petition, a preliminary objection has been filed on behalf of the opposite party. In paragraph 9 of the said preliminary objection it is stated that the disqualification petitions were filed by the petitioner on 10.7.2012 and the same were registered as Disqualification Cases. The said case records were placed before the learned Speaker on 24.07.2012. It is further stated that the Secretary of the Odisha Legislative Assembly was busy in conducting Presidential Election poll in Odisha Legislative Assembly from 10.7.2012 to 23.7.2012. Thereafter, order was passed on 8.8.2012 by the learned Speaker to forward copies of the Disqualification Petitions to the Members of the House, who are alleged to have incurred disqualification. After receipt of the said petition, the concerned Members sought for time till 30.09.2012 but the learned Speaker allowed time till 26.9.2012. It is further submitted that after the monsoon session of the House was over on 7.9.2012, the learned Speaker as per the pre-schedule programme proceeded to attend the 58th Commonwealth Parliamentary Conference at Colombo, Srilanka and post conference tour to Japan, South Korea and Russia from 10th to 24th September, 2012 as per the programme under Annexure-A filed to preliminary objection. Learned Senior Counsel has referred to Article 191 (2) and Sub-Rule (1) of Rule (6) of the Rules which provides 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 a Member made in accordance with the provision of the rules. A petition in relation to a Member may be made in writing to the Speaker by any other Member of the Legislative Assembly and in the instant case the petition is not filed by the Member of the Legislative Assembly. Therefore, the petitioner has no locus standi to file the said

disqualification petitions. As per the learned Senior Counsel the writ petitions are liable to be rejected on this ground. In support of the said contentions he has placed reliance on the decisions of the Constitution Bench of the Supreme Court in the case of **Mayawati v. Markandeya Chand and others**, reported in AIR 1998 SC 3340, **Rajendra Singh Rana** (supra) and **Shri Kihota Hollohon v. Mr. Zachilhu and others**, AIR 1993 SC 412 (para 42). Therefore he submits that the present writ petitions are not maintainable and are liable to be rejected.

7. With reference to the aforesaid rival factual and legal contentions, the questions that arise for consideration in the present case are:-

- (i) Whether the disqualification petitions filed by the petitioner under Article 191 read with paragraph 2 of the Tenth Schedule of the Constitution read with Rule 6 of the Rules before the learned Speaker are maintainable?
- (ii) To what order

8. To answer the first point it would be necessary to refer to para 2 and para 6 of the Tenth Schedule which read thus :-

"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 authorized 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) Xx x xx xx

(2) An elected member of a House, who has been elected as such otherwise than 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.

Xx xx xx xx xx"

"6. Decision on questions as to disqualification on ground of defection –

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.

9. It is an undisputed fact that in exercise of para 8 of the Tenth Schedule, learned Speaker of the Legislative Assembly has already framed the Rules referred to supra. Rule 6 of the Rules which is relevant for our consideration reads as follows:-

"6. (1) 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 this rule.

(2) A petition in relation to a Member may be made in writing to the Speaker by any other member;

Provided that a petition in relation to the Speaker shall be addressed to the Secretary.

10. Para 8 of the Tenth Schedule clearly states that subject to the provisions of sub-paragraph (2), the Chairman or the Speaker of a House may make rules for giving effect to the provisions of the Schedule. The Tenth Schedule does not provide who is entitled to file petition. This aspect is no longer res integra in view of the Full Bench decision of the Punjab and Haryana High Court, which has been referred to by the Supreme Court in Dr. Mahachandra Prasad Singh (supra). It would be necessary to quote the relevant paragraph, i.e., paragraph 16 of the said judgment which reads thus:-

"16. 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 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.

11. The Apex Court has clearly laid down the principle that Rules that would be made by the Speaker in exercise of power under para 8 of the Tenth Schedule is only a procedural aspect to achieve the object and intendment to give effect to the provision of Constitution and that 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 Tenth Schedule was added, would be defeated. From a careful reading of the law laid down by the Supreme Court in the aforesaid paragraph read with another judgment of the Supreme

Court in **Rajendra Singh Rana (supra)** at para 28 of which the apex Court quoted with approval the following observation of the full Bench of Punjab and Haryana High Court in **Prakash Singh Badal v. Union of India**, reported in AIR 1987 P&H 263:

“.....The other pre-requisite for invoking the jurisdiction of the Speaker under para 6 is the existence of a question of disqualification of some members. Such a question can arise only in one way viz. that any member is alleged to have incurred the disqualification enumerated in para 2(1) and some interested person approaches the Speaker for declaring that the said member is disqualified from being member of the House and the claim is refuted by the member concerned.” (Emphasis laid by the Court)

It is abundantly clear that if any member of the house belonging to a political party has joined another political party, which is a disqualification under para 2(1) of the Tenth Schedule, any person interested can make a reference to the Speaker under Rule-6. It is not necessary that such a reference is required to be made by a Member of the Legislative Assembly.

12. The aforesaid observation of the apex Court in para-16 of the judgment in the case of Dr. Mahachandra Prasad Singh (supra) interpreting Rule-6 makes it abundantly clear that the petitioner being the President of a particular political party from which party four members defected and joined the BJD, is a interested person and he can make the petitions under para 2 of the Tenth Schedule read with Rule 6 of the Rules.

13. In view of the foregoing reasons, the other decisions cited by the learned Sr. Counsel on behalf the opposite party have no application to the fact

situation of the present case as the decisions to the contrary are well founded which we have answered in foregoing paragraphs.

14. Having regard to the aforesaid provisions of law and the law enacted thereunder, we are not inclined to accept the contention that a member of a Legislative Assembly can alone file the petition because the same would be in blatant violation of the object and intendment of the Tenth Schedule inserted by Fifty-Second Amendment of the Constitution. Therefore, we hold that the disqualification petitions filed by the petitioner, who is the President of NCP, are maintainable under Rule 6 of the Rules. Accordingly, we answer the point No.(i) in favour of the petitioner.

15. Since averment has been made by the opposite party in paragraph 9 of the preliminary objection that steps have been taken by the learned Speaker for disposal of the said petitions, it would suffice for this Court to give a direction to expedite the hearing of the said petitions and dispose of the same as expeditiously as possible not later than eight weeks from the date of receipt of a copy of this order after affording an opportunity of hearing to the petitioner.

16. With the aforesaid observation and direction, the writ petitions are disposed of.

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V.Gopala Gowda,C.,J

B.K. Misra, J. I agree.

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B.K. Misra,J.

Orissa High Court, Cuttack
*September 27, 2012/ **PKSahoo***