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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
UDAY UMESH LALIT; CJI., S. RAVINDRA BHAT, J., J.B. PARDIWALA; J.
CIVIL APPEAL NOS. 5463-5464 OF 2015; September 28, 2022
GYANDENDRA KUMAR & ORS. *versus* **BIHAR LEGISLATIVE ASSEMBLY, PATNA & ANR. ETC.**

Summary - Under the Xth Schedule of the Constitution, the Speaker of a Legislative Assembly does not have power to deny pension and other benefits available to a former MLA while deciding a disqualification plea against him.

Constitution of India, 1950 - 10th Schedule - the Speaker was not within his jurisdiction to issue directions other than those pertaining to disqualification. *Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly & Others, (2020) 2 SCC 595- relied on.*

Counsel for the Parties: Mr. Devadatt Kamat, Sr. Adv. Mr. Siddhartha, Adv. Ms. Pooja Dhar, AOR Mr. Mantavya Sharma, Adv. Mr. Devadatt Kamat, Sr. Adv. Mr. Vikas Chopra, Adv. Mr. Jai Krishna Singh, Adv. Mr. Smarhar Singh, AOR Mr. Rakesh K. Khanna, Sr. Adv. Ms. Shefali Jain, Adv. Mr. Aditya Pushkal Khanna, Adv. Ms. Ramya Khanna, Adv. Mohd. Fuzail Khan, Adv. Mr. Ashutosh Srivastava, Adv. Mr. Samant Singh, Adv. Ms. Preeja Nair, Adv. Mr. Rajesh Prasad Singh, AOR Mr. Manish Kumar, AOR

O R D E R

The instant appeals arise out of the order of disqualification issued by the then Speaker of 15th Bihar Legislative Assembly. The term of said Assembly was from 20.11.2010 till 20.11.2015.

One of the orders passed by the Speaker on 01.11.2014, in its operative part, directed as under:

"27.… I have reached this conclusion that due to proved acts, conduct and attitude of the above four Hon'ble Members they have been disqualified from the membership of Bihar Assembly under the para 2(1)(a) of the tenth schedule of Constitution.

28. Therefore I am hereby declaring Sh. Gyanendra Kumar Singh, Sh. Rahul Kumar, Sh. Ravindra Rai and Sh. Neeraj Kumar Singh as disqualified from the membership of Bihar Assembly and issuing instructions to delete the names of above four members from the list of members. Information to this effect must be sent without delay to the Election Commission of India. As a result of this order, the above four Hon'ble Members will not get any facility as an Ex-Member of Bihar Assembly."

Without going into the details about the challenge raised by the disqualified members, suffice it to state that the order of disqualification was stayed and the benefit of interim order was enjoyed by said disqualified Members all through.

The 15th Legislative Assembly stood dissolved long back. Today, the 17th Legislative Assembly is currently going on.

Mr. Devadatt Kamat, learned Senior Advocate appearing for the appellant has invited our attention to the decision of this Court in *Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly & Others,* **(2020) 2 SCC 595** and particularly to the following paragraphs:

"137. It is necessary for us to look at the submission of the learned Senior Counsel, Mr Kapil Sibal, that the Speaker can still be said to have inherent powers which allows him to pass restrictions like the one impugned herein. On this point, the counsel for the petitioners argued that such a broad inherent power does not exist with the Speaker. He contended that even for granting leave of absence, the Speaker is required to present the same before the Legislative Assembly, which needs to accept the leave application before leave of absence is actually granted.

138. We are unable to agree with the contention of the learned Senior Counsel, Mr Kapil Sibal, that the power of the Speaker to bar a disqualified Member from contesting re-election is inherent to his role and is required to be read into the Constitution to prevent the Speaker from becoming toothless. When the express provisions of the Constitution provide for a specific eventuality, it is not appropriate to read an "inherent" power to confer additional penal consequences. To do so, and accept the contention of the respondents, would be against the express provisions of the Constitution.

141. It is clear that nothing can be added to the grounds of disqualification based on convenience, equity, logic or perceived political intentions.

142. It is the contention of the respondents that the Court should consider desirability of having a stricter model of disqualification wherein a person who has jumped the party lines should not be encouraged and should be punished with severe penal consequences for attempting to do so. Further, learned Senior Counsel, Mr Kapil Sibal, has termed the actions of the petitioners as a constitutional sin."

It is thus clear that in exercise of his powers under the 10th Schedule, the Speaker does not have the power either to indicate the period for which a person would stand disqualified nor to bar someone from contesting elections.

Relying on these principles, Mr. Kamat submits that the direction issued by the Speaker, as quoted in paragraph 28 of his order dated 01.11.2014, went far beyond the scope of his power.

Since the 15th Legislative Assembly is no longer functioning, we need not go into the basic issue whether the order of disqualification issued by the Speaker of the Assembly was correct or not.

At this juncture, we are called upon to consider the effect of some of the directions issued by the Speaker in paragraph 28 of his order and on the touchstone of the law laid down by this Court in *Shrimanth Balasaheb Patil (supra)* in our considered view, the Speaker was not within his jurisdiction to issue directions other than those pertaining to disqualification.

Since we have not gone into the question of disqualification, all questions are left open.

We, therefore, set aside the directions other than those pertaining to disqualification *per se*, issued by the Speaker in paragraph 28 of his Order.

With these observations, the instant appeals stand disposed of, with no order as to costs.