

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR

S.B. Civil Writ Petition No. _____/2020

Madan Dilawar

.....Petitioners

Versus

Hon'ble Speaker, Rajasthan
Legislative Assembly & Ors

.....Respondents

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Counsel for the Petitioners *Ashish*

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SYNOPSIS

By way of the instant petition, the Petitioner seeks to challenge the validity, legality and correctness of the order dated 22.07.2020 wherein and whereby the Respondent No.1 had rejected the Complaint filed by the Petitioner seeking to disqualify members of BSP namely Sandeep Yadav, (Tijara), Wajib Ali (Nagar), Deepchand Kheria (Kisangarh Bas), Lakhan Meena (Karauli) and Rajendra Gudha (Udaipurwati) and thereby upholding their alleged merger with the Indian National Congress. The Petitioner had prayed that the BSP MLAs ought to be disqualified from the the Membership of the Rajasthan Vidhan Sabha w.e.f. 16-09-2019, owing to them having incurred the disqualification under Para 2 of the 10th Schedule of the Constitution of India.

The Legislative Assembly Election in Rajasthan was held on 7th December 2018 in which Respondent No. 2 to 7 were elected on the ticket issued by the Bahujan Samaj Party. However, on an application having been submitted by them to the Respondent

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No.1 on 16.09.2019, the Respondent No. 1 passed the impugned order dated 18.09.2019 declaring that Respondent 2 to 7 to be an integral part of the Indian National congress.

While coming to know of the same, the Petitioner filed application under the Right to Information Act seeking information in the form of the petition dated 16.09.2019 filed by the Respondent No 2 to 7 seeking a merger. The same was refused citing lame excuses. The Petitioner assailed the said order before the appropriate authority. In sum, the Petitioner was not provided with any document so sought by him for the reasons best known to the Respondent No.8.

Having left with no other option, the Petitioner on 16-3-2020 preferred a petition before the Hon'ble Speaker under 10th schedule of the Constitution of India, praying for disqualification of the Respondents 2 to 7 from the membership of the Rajasthan Vidhan Sabha w.e.f. 16-09-2019, because of their having incurred the disqualification under Para 2 of the 10th schedule of the Constitution of India. That remains still undecided.

The inaction of the Respondent No 1 was contrary to the dicta of the Hon'ble Supreme Court in the case of Keisham Meghachandra Singh vs The Hon'ble Speaker Manipur Civil Appeal No. 547 of 2020 decided on 20.01.2020 and also in the case of Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors. (2015) 12 SCC 381.



Further, from the information available in public domain, the Petitioner has come to know that while in a similar type of petition filed by Mr. Mahesh Joshi of the Indian National Congress seeking disqualification of certain other MLAs on 14.07.2020, the Respondent No.1 exhibiting extreme alacrity issued notice to the respondents on the same day and called upon the Respondents therein to show cause within a period of 3 days. Whereas in the present case, the Hon'ble Speaker has not issued notice to the respondents even within 4 months.

This leaves no doubt in the minds of the Petitioner that the Respondent No.1 having been elected on the ticket issued by the Indian National Congress continues to exhibit allegiance to the party.

The Petitioner therefore challenged the above said inaction by way of filing a Writ Petition before this Hon'ble Court. The same however was withdrawn as the intimation regarding the passing of the impugned order came to be served upon the Petitioner on 27.07.2020.

Hence the present petition

COUNSEL FOR THE PETITIONER

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

S.B. CIVIL WRIT PETITION NO. _____/2020

IN THE MATTER OF:

Sh. Madan Dilawar,

...Petitioner

Versus

1. The Hon'ble Speaker
Rajasthan Legislative Assembly
Jaipur
Rajasthan
2. Sh. Lakhan Singh, Karoli (155),
3. Sh. Rajender Singh Guda,
4. Sh. Deepchand, Kishangadbas (71)
5. Sh. Joginder Singh Avana,
6. Sh. Sandeep Kumar, Tijara (174),
7. Sh. Vajib Ali, Nagar (158),

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8. The Seceretary,
Rajasthan Legislative Assembly
Jaipur
Rajasthan
9. Mr. C.P.Joshi, MLA
At Present
Hon'ble Speaker
Rajasthan Legislative Assembly
49, Civil Lines,
Jaipur - 302 006
10. Bahujan Samaj Party
through its
National General Secretary,
Shri. Satish Chand Mishra,
having its Central Office at
4, Gurudwara Rakab ganj Road ,
New Delhi .

.....Respondents

**S.B. CIVIL WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA QUESTIONING THE LEGALITY
VALIDITY AND CORRECTNESS OF THE ORDER DATED
22.07.2020 (SERVED UPON THE PETITIONER ON 28.07.2020
BY EMAIL) PASSED BY RESPONDENT NO.1 IN THE PETITION
DATED 16.03.2020 FILED BY THE PETITIONER UNDER 10TH
SCHEDULE OF THE CONSTITUTION OF INDIA, PRAYING FOR
DISQUALIFICATION OF THE RESPONDENTS 2 TO 7 FROM
THE MEMBERSHIP OF THE RAJASTHAN VIDHAN SABHA**

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W.E.F. 16-09-2019, BECAUSE OF THEIR HAVING INCURRED THE DISQUALIFICATION UNDER PARA 2 OF THE 10TH SCHEDULE OF THE CONSTITUTION OF INDIA READ WITH RAJASTHAN VIDHAN SABHA SADASYA (DAL PARIVARTAN KE AADHAR PAR NIRHARTA) NIYAM 1989 / (RAJASTHAN ASSEMBLY MEMBER (DISQUALIFICATION ON THE GROUNDS OF HAVING INCURRED THE DISQUALIFICATION FROM MEMBERSHIP OF THE RAJASTHAN VIDHAN SABHA UNDER THE 10TH SCHEDULE OF THE CONSTITUTION OF INDIA.

To,

Hon'ble the Chief Justice
And his other companion Judges
of the Rajasthan High Court at Jaipur

MAY IT PLEASE YOUR HONOUR:

The humble petitioner most respectfully submits as under:

1. That the Petitioner is a citizen of India and is entitled to invoke the extraordinary jurisdiction of this Hon'ble Court by way of this Writ Petition under Article 226 of the Constitution of India.
2. That the petitioner is filing the present Writ Petition under Article 226 of the Constitution of India questioning the legality, validity and correctness of the order passed by Respondent No.1 dated 22.07.2020 (SERVED ON THE

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PETITIONER ON 28.07.2020), accepting the merger of Respondent No 2 to 7, who were elected on the ticket of Bahujan Samaj Party, in to the fold of Indian National Congress and treating them as an integral part of the said Party.

3. That the brief facts leading to the filing of the present petition are as follows:
4. The Legislative Assembly Elections in Rajasthan were held on 7th December 2018 in which Respondent No. 2 to 7 were elected on the ticket issued by the Bahujan Samaj Party. The People of their respective constituency reposed faith in the said Respondents as they believed in the ideology of the party that issued them tickets.
5. That the Petitioner is an elected Member of the Current Rajasthan Vidhan Sabha, having been elected from Ramganmandi (Kota) constituency on the ticket of the Bharatiya Janata Party.
6. That all the Respondents, i.e. Respondents No. 2 to 7, were elected to the present Rajasthan Vidhan Sabha from the constituencies mentioned against their names as the candidates set up by the Bahujan Samaj Party.
7. That on 16-09-2019, the Petitioner was made aware by certain reports appearing in public domain that these 6 MLAs

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submitted an application before the Hon'ble Speaker of the Rajasthan Vidhan Sabha saying that all these 6 MLAs have unanimously decided to merge the BSP into the Indian National Congress. A copy of the media reports is annexed herewith and is marked as **ANNEXURE P-1**.

8. That by way of the impugned order i.e. on 18-09-2019, the Hon'ble Speaker accepted the so-called merger of the Bahujan Samaj Party into the Congress and allowed them to become Members of the Indian National Congress. A copy of the order passed by the Hon'ble Speaker dated 18-09-2019 is attached, herewith, as **ANNEXURE- P-2**.
9. That Sh. Nahar Singh Maheshwari submitted an application on 09.10.2019 to the Public Information Officer requesting for a copy of the application as well as the Documents submitted by the Respondents no. 2 to 7 to the Speaker on 16-09-2019, under Right to Information Act.
10. However, the request made vide letter dated 09-10-2019 was declined by the concerned Officer on 24-10-2019. A copy of the order dated 24.10.2019 is annexed herewith and is marked as **ANNEXURE P-3**.
11. It is further submitted that an appeal against this order was also dismissed by the First Appellate Officer of the Rajasthan Vidhan Sabha Secretariat, Jaipur on 10-12-2019. A copy of

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the order dated 10.12.2019 is annexed herewith and is marked as **ANNEXURE P-4**.

12. That notwithstanding the above, the Petitioner presented a petition under the 10th schedule of the constitution of india, praying for disqualification of the Respondents 2 to 7 from the membership of the Rajasthan Vidhan Sabha w.e.f. 16-09-2019, because of their having incurred the disqualification under para 2 of the 10th schedule of the constitution of india. A copy of the petition dated 16.03.2020 filed by the Petitioner is annexed herewith and is marked as **ANNEXURE P-5**.
13. That not only has there been no decision on the petition filed by the Petitioner, the Respondent No.1 has not even issued notice to the concerned parties against whom serious allegations of floor crossing have been levelled.
14. Further, from the information available in public domain, the Petitioner has come to know that while on another disqualification petition filed by Mr. Mahesh Joshi of the Congress seeking disqualification of certain other MLAs on 14.07.2020, the Respondent No.1 exhibiting extreme alacrity issued notice on the same day and called upon the Respondents therein to show cause with in a period of 3 days.
15. That the Petitioner then moved this Hon'ble Court by way of a S.B. Civil Writ Petition No. 7631/2020 titled as Madari Dilawar V/s The Hon'ble Speaker and ors. seeking a direction

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to dispose of the Complaint. However, during the pendency of the said writ petition, the petitioner was vide email dated 27.07.2020 informed about the rejection of his aforesaid disqualification petition. Hon'ble Court in such circumstances, was pleased to allow the Petitioner to withdraw the Petition in view of the passing of the impugned order dated 22.07.2020, which was served to the petitioner on 28.07.2020. A copy of the impugned order 22.07.2020 received by email is annexed herewith and is marked a **ANNEXURE P-6.**

16. That the Respondent No. 10 BSP, the National Party to whom the Respondent No 2 to 7 belong have also sought to instruct Respondent No. 2 to 7 by way of various communications. A copy of the Communications are annexed herewith and is marked as **ANNEXURE P-7.**
17. This leaves no doubt in the minds of the Petitioner that the Respondent No.9 having been elected on the ticket issued by the Indian National Congress continues to exhibit allegiance to the party.
18. That aggrieved by the impugned order passed of the Respondent No.1 to take cognizance of the petition filed by

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the Petitioner herein, the Petitioner files the present Writ Petition on the following grounds amongst others:-

::GROUNDS::

- A. BECAUSE the impugned order is a non-reasoned order and exhibits non application of mind on the part of the decision making authority;
- B. BECAUSE it is a trite of law that the Quasi-Judicial authority must pass reasoned orders so that the reviewing authority must be in a position to adjudge the application of mind.
- C. BECAUSE having been elected as member of Rajasthan Legislative Assembly as candidates set up by a national party, Respondents No 2 to 7 are also aware that they represent a national party and that the "merger" which is contemplated under Paragraph 4 has to be a merger at the national level viz. the entire BSP needs to be merged with any other party so as to save the Respondent No 2 to 7 from being disqualified under Tenth Schedule.
- D. BECAUSE BSP which is a recognized national party has never merged with any at any given point of time. That it is further submitted that BSP is functioning even as a National

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Party and its members who are elected either to the Parliament or various State Legislative Assemblies are functioning as members in their respective Houses belonging to the BSP. There has been no act "over or covert" which can even remotely suggest that BSP has merged with any other political party. The law in this behalf is very well settled that in case of an alleged merger of national party, it has to be the merger at the national level.

E. That the Hon'ble Supreme Court in dictas laid down in Ravi S Naik vs Union of India [1994 Supp (2) SCC 641] and Jagjit Singh vs State of Haryana [(2006) 11 SCC 1]. Both the said judgments came to be considered by the Constitution Bench of the Hon'ble Supreme Court in the case of Rajendra Singh Rana vs Swami Prasad Maurya[(2007) 4 SCC 270] in the judgment dated 14.2.2007. The relevant part of the said Constitution Bench judgment is para 36 and 38 which is reproduced hereunder for ready reference:-

"36. The question whether for satisfying the requirements of para 3, it was enough to make a claim of split in the original political party or it was necessary to at least prima facie establish it, fell to be considered in the decision in Jagjit Singh v. State of Haryana [(2006) 11 SCC 1 : (2006) 13 Scale 335] rendered by a Bench of three Judges to which one of us, (Balasubramanyan, J.) was a party. Dealing with an argument that a claim of split in the original political party alone is sufficient in addition to showing that one-third of the Members of the legislature party had formed a separate group, the learned Chief Justice

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has explained the position as follows: (SCC p. 33, paras 67-69) "67. Learned counsel for the petitioner, however, relies upon para 37 in Ravi S. Naik case [1994 Supp (2) SCC 641 : (1994) 1 SCR 754] in support of the submission that only a claim as to split has to be made and it is not necessary to prove the split. The said observations are: (SCC p. 660)

'37. In the present case the first requirement was satisfied because Naik has made such a claim. The only question is whether the second requirement was fulfilled.'

68. The observations relied upon are required to be appreciated in the light of what is stated in the next paragraph i.e. para 38, namely: (SCC p. 661) 'As to whether there was a split or not has to be determined by the Speaker on the basis of the material placed before him.'

69. Apart from the above, the acceptance of the contention that only a claim is to be made to satisfy the requirements of para 3 can lead to absurd consequences besides the elementary principle that whoever makes a claim has to establish it. It will also mean that when a claim as to split is made by a Member before the Speaker so as to take benefit of para 3, the Speaker, without being satisfied even prima facie about the genuineness and bona fides of the claim, has to accept it. It will also mean that even by raising a frivolous claim of split of original political party, a Member can be said to have satisfied this stipulation of para 3. The acceptance of such a broad proposition would defeat the object of defection law, namely, to deal with the evil of political defection sternly. We are of the view that for the purposes of para 3, mere making of claim is not sufficient. The prima facie proof of such a split is necessary to be produced before the Speaker so as to satisfy him that such a split has taken place." 38. Acceptance of the

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argument that the legislators are wearing two hats, one as members of the original political party and the other as members of the legislature and it would be sufficient to show that one-third of the legislators have formed a separate group to infer a split or to postulate a split in the original party, would militate against the specific terms of para 3. That paragraph speaks of two requirements, one, a split in the original party and two, a group comprising of one-third of the legislators separating from the legislature party. By acceding to the two hat theory one of the limbs of para 3 would be made redundant or otiose. An interpretation of that nature has to be avoided to the extent possible. Such an interpretation is not warranted by the context. It is also not permissible to assume that Parliament has used words that are redundant or meaningless.

We, therefore, overrule the plea that a split in the original political party need not separately be established if a split in the legislature party is shown."

F. In view of the aforesaid clear constitutional position, it is absolutely undeniable that Respondents No 2 to 7 have voluntarily given up the membership of BSP and thereby have incurred disqualification under para 2[1][a] of the Tenth Schedule.

G. BECAUSE considering that the application seeking merger came to be decided by the Respondent No.1 without issuing notice to the Petitioner/ Bahujan Samaj Party/ office bearers of the Bahujan Samaj Party the same is violative the principles of natural justice and against the settled

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principles of law as laid down by the Hon'ble Supreme Court.

- H. BECAUSE the act of non service of notice to the BSP smacks of mala-fide and a deliberate attempt to scuttle the process established by law.
- I. BECAUSE even at present, the BSP is continuing as a recognized Political Party, both at the State Level as well as at the National Level. The Bahujan Samaj Party never merged with the Congress, therefore its Legislative Party has no power or right to merge their party with the Indian National Congress or, for that matter, with any other Political Party.
- J. BECAUSE as a matter of fact, the Respondent No. 2 to 7 have "voluntarily given up the Membership" of the Bahujan Samaj Party, on whose ticket they were elected, and have also joined the Indian National Congress in violation of the provisions of law. Hence, they are liable to be disqualified under 10th Schedule of the Constitution of India.
- K. BECAUSE the Hon'ble Speaker has wrongly recorded in the impugned order dated 18.09.2019 that 2/3rd of the legislators of any Political Party can merge their party into any other Political Party.

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L. BECAUSE the above said is total misreading of the provisions of law. As per para 4 of the 10th Schedule of the Constitution of India, the condition of 2/3rd MLAs accepting merger is a second condition, not the first. The first is that the original Political Party of the legislatures who are claiming merger should have merged with another political party.

M. BECAUSE 2/3rd MLAs, or even 100 per cent, have no right to merge their original party with another political party, the Indian National Congress in the present case, unless the original political party has merged into the Indian National Congress.

N. BECAUSE, as pointed out earlier, the Bahujan Samaj Party has not merged with Indian National Congress. Both remain to be separate political parties at the National Level as well as State level. Therefore, these MLAs cannot drive any benefit of the provisions of para 4 of the 10th Schedule, even if all of them decided to merge with any political party.

O. BECAUSE That the Hon'ble Speaker had no jurisdiction to record a finding of so-called merger under Para 4, without giving a notice to the Bahujan Samaj Party and without

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holding an enquiry as to whether the Bahujan Samaj Party has actually merged in the Congress or not.

P. BECAUSE In the present case, the Speaker did not hold any proper enquiry to find out whether any actual merger of the BSP in the Congress has taken place or not.

Q. BECAUSE, the Hon'ble Speaker straight away illegally accepted the request of 6 MLAs and allowed the so-called merger of their party, i.e. BSP, into the Congress, recognized the merger and ordered that now onwards these 6 MLAs will be treated as MLAs belonging to Indian National Congress.

R. BECAUSE even in their application submitted to the Speaker, as reproduced by the Hon'ble Speaker in the impugned order, Respondent No. 2 to 7 MLAs never claimed that the BSP party, other than these 6 MLAs, has decided to merge with the Indian National Congress. Their only claim was that these 6 MLAs have unanimously decided to merge the BSP into the Congress.

S. BECAUSE It is submitted that what to talk of 2/3rd, even 100 per cent legislatures of any political party have no power to merge their political party into any other political party. The decision of merger of any political party into another political party has first to be taken by the party as a whole and not only by the legislatures.

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T. BECAUSE the Hon'ble Speaker ought to have come to a conclusion that Respondents No.2 to 7 have defected from the Bahujan Samaj Party to the Congress and, hence, are liable to be disqualified from the Membership of the present Rajasthan Vidhan Sabha.

U. BECAUSE the 10th Schedule, ordinarily called a "Anti Defection Law", was enacted to curtail all political defections. The interpretation to various provisions of this law has to be given which promotes the intention and purpose of the "Anti Defection Law" and not which encourages and promotes defections by the MLAs.

V. BECAUSE the inaction on the part of Respondent No .1 in taking action on the disqualification Petition **Annexure P-5** is in violation to the dicta as laid down by the Hon'ble Supreme Court in *Keisham Meghachandra Singh vs The Honble Speaker Manipur and Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors.* (2015) 12 SCC 381

W. BECAUSE the present case is a clear case of the Respondent Nos. 2 to 7 having voluntarily giving up the membership of the Bahujan Samaj Party, defecting to and joining Indian National Congress, which is in violation of the 10th schedule of the Constitution of India.

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X. BECAUSE the speaker's inaction on the Petition filed by the Petitioner 4 months ago smacks of mala-fide and lacks alacrity. It has been held by the Hon'ble Supreme Court that the Speaker should decide the disqualification petition within 4 months, whereas in the present case, the Speaker has not even issued notice to the respondents, what to talk of deciding the same within 4 months.

Y. BECAUSE it is settled proposition of law even if the Complaint suffers from technical infirmities, the same has to be decided on merits.

Z. BECAUSE the technical defects that are pointed out are flimsy and are done with a sole intention to non suit the Petitioner.

AA. That other grounds will be urged at the time of hearing.

PRAYER

Therefore, it is most humbly and respectfully prayed before this Hon'ble Court may :

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- A. Issue of Writ of certiorari or any other appropriate writ, order or direction setting aside the order dated 22.07.2020 (served on the Petitioner on 28.07.2020) passed by the Respondent No.1;
- B. Set aside the order dated 18.09.2019 passed by the Respondent No .1 has accepting the so-called merger of the Bahujan Samaj Party into the Congress and allowed them to become Members of the Indian National Congress;
- C. Call for records pertaining to the petition dated 16th March, 2020 filed by the Petitioner under 10th Schedule of the Constitution of India, praying for Disqualification of the Respondents No. 2 to 7 from the Membership of the Rajasthan Vidhan Sabha w.e.f. 16-09-2019 and decide the same exercising powers under Article 226 of the Constitution of India;
- D. Issue a Writ of Mandamus or any other such writ as this Hon'ble Court may deem fit disqualifying Respondent (s) No 2 to 7 from the Membership of the Rajasthan Vidhan Sabha w.e.f. 16.09.2019.

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E. Pass any other order deemed fit in the interest of justice and equity"

(Humble Petitioner)

Through Counsel:

ASHISH SHARMA
Advocate

Notes:

- 1. No such S.B. Civil Writ Petition has earlier been filed in the matter.*
- 2. PF, Notices and extra set would be filed as per direction of the court.*
- 3. It has been typed by the private typist*
- 4. Pie papers are not readily available, typed on stout papers.*

COUNSEL FOR THE PETITIONER