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RAJENDRA SINGH RANA v. SWAMI PRASAD MAURYA -A COMMENT.

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1. ABSTRACT

An inexorable part of Parliamentary Democracies-significant in formulating laws and representing the electorates, is formed by Defections by the elected representatives to the 'House'. In our country, where, in the election of representatives to the House is accompanied by the vital role of the 'label of political parties- floor changing subsequent to being elected is regarded as perfidy against people's will especially when voters place their confidence in the capabilities of any political party'[1].The Indian Government sought to curb and reduce such political defections through the inception "The Anti-Defection law or the Tenth Schedule- enacted by the 52nd Constitutional Amendment in 1985". While the statute persists to minimize political corruption and deceit leading to political defections, perpetual debates and questions arise as to "how efficient these laws are at protecting political stability and discouraging acquisitive behaviour on the part of elected officials"[2]. In light of the same, the undertaking, shall thoroughly delve into the comprehension of the Anti-Defection law in India through analysing the landmark case of- *Rajendra Singh Rana v. Swami Prasad Maurya*[3].

[1] Manu Joseph G, *An Exigency to Revisit Anti-Defection Law in India,* 4 IJLMH 1212, 1212-1213 (2021).

[2] Sumit Vashishtha & Bhoomanna Reddy, *A Critical Analysis of Anti-Defection Laws in India,* 9, IJLS, 70, 70-71 (2023).

[3] Rajendra Singh Rana v Swami Prasad Maurya (2007) 4 SCC 270.

2. INTRODUCTION

'Defection' is regarded as the act of deserting or abandoning the position occupied by a Member of the House from the political party which he was originally associated or elected with, to join an opposing group or association. Nowhere in the original Constitution, was the mention of political parties to be found, however, with the inception of the multiparty system, the Parliamentary System of India has "observed defections in large numbers from one political party to another, resulting in the breakdown of public trust in a democratic form of government"[4]. The emerging multiparty democracy of India was affected by the instability in the political arena when in the fourth Lok Sabha elections in 1967- around 542 elected members defected across the lines of their parties. Therefore, the stability of the national and local governance was entirely depended upon the elected representatives who easily switched their allegiance among political parties. "This political phenomenon gave birth to the infamous phrase- *Aaya Ram, Gaya Ram* subsequent to when an MLA from the State of Haryana defected four times within a fortnight in 1967"[5]. The concerns and trepidation against these repeated defections were answered in 1985 through the 52nd Constitutional Amendment which introduced the Tenth Schedule consisting of Anti-Defection Laws for India. The enactment of the anti-defection laws in 1985, following several unsuccessful attempts, was largely due to Indian National Congress' majority in the Parliament. The situation ought to be fruitful for the ruling as well as the opposition party as both could make sure that members of each party do not cross among the party lines. The main objective of the anti-defection laws was to promote political stability and foster a sense of political accountability. These laws are designed to discourage, prevent and penalize members who switch parties. The move to sanction defectors was driven by a history of defections, where elected representatives frequently shifted between parties with conflicting ideologies. Various adjudication regarding the different aspects of the Tenth Schedule have been observed in several landmark cases, one of which is - *Rajendra Singh Rana v. Swami Prasad Maurya*[6]. The undertaking, shall, therefore delve into the analysis of the said case, having its start with the relevant facts of the case.

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[4] Mordhwaj, *Anti-Defection Law; Guard or Evil for Democracy*, 4 Supremo Amicus 260, 260-261 (2018).

[5] Charith Reddy & Shagun Bhargava, *For Laws May Come and Laws May Go, but Defections Go on Forever,* 10 NLIU L. REV., 328, 331-332 (2020).

[6] Rajendra Singh Rana v Swami Prasad Maurya (2007) 4 SCC 270.

2.1. FACTS OF THE CASE:

The elections to constitute the 14th Legislative Assembly of the State of Uttar Pradesh were held in February, 2002. No one party secured the required majority through elections. Therefore, a coalition government was set up- which was headed by the leader of the Bahujan Samaj Party (hereinafter referred to as B.S. P[7])- *Ms Mayawati*. B.S.P was avowedly acknowledged as a national party. However, in 2003, a unanimous decision- the recommendation for the dissolution of the Assembly, was taken by the Cabinet. Subsequent to and based on this, Ms Mayawati submitted her resignation to the cabinet, on the very next day of the Cabinet's decision. Apparently, before the Cabinet's decision to dissolve the Assembly and before Ms Mayawati's resignation, the leader of the Samajwadi Party- Mr Mulayam Singh Yadav, "staked his claim before the Governor for forming a Government. On that day, 13 members of the Legislative Assembly who were elected on tickets of B.S.P allegedly had a meeting with the Governor and requested him to form the Government. Mr. Swami Prasad Maurya, the leader of B.S.P filed a petition "before the Speaker in terms of Article 191 read with the Tenth Schedule to the Constitution of India, requesting the disqualification of the 13 MLAs who had declared their support for Mulayam Singh Yadav before the Governor on August 27, 2003, under paragraph 2 of the Tenth Schedule of the Constitution, on the grounds that they had voluntarily relinquished their membership of the BSP, their original political party". A request was made by 37 M.L. As on behalf of 40, for the Speaker to recognise a split in B.S.P. "The Speaker took up the application for split, agreeing with the claim that a split had occurred within the B.S.P as the group comprised of one-third of the members of legislature party and passed an Order accordingly". "The split group was known as Lok Tantrik Bahujan Dal, constituted under the leadership of Rajendra Singh Rana, which merged with the Samajwadi Party. A Writ Petition was filed by Maurya in the High Court of Judicature at Allahabad before the Lucknow Bench against the order of the Speaker". Meanwhile, the Speaker had adjourned the petition regarding disqualification and waited for the order of the High Court in the present matter. After two years, the High Court adjudicated by the majority and "quashed the orders of the Speaker and directed the Speaker to reconsider the matter particularly with reference to the petition for disqualification of the M.L. As and pass the appropriate orders"[8]. A little while prior, the Speaker, before the adjudication by the court rejected the petition filed for

[7] Ibid.

[8] Ibid at 4.

disqualification, through an order. Dissatisfied with the judgement, appeals were filed before the Hon'ble Supreme Court of India by respondents Rajendra Singh Rana v Ors.

2.2. ISSUES RAISED:

i) *Whether the split in the original political party, claimed under Paragraph 3, is proved prima facie?*

ii) *Whether "the Speaker was justified in keeping the petition seeking disqualification of 13 M.L.As. pending, even while he proceeded to accept a case of split in the B.S.P and if the Order was valid"?*

iii) *Whether, the High Court in remanding the decision of the Speaker to reconsider, was correct?*

iv) *Whether the 13 M.L. As and the other 24 who joined later, stand disqualified through defection according to the Tenth Schedule?*

2.3. RULE

- *Article 191 and 102 of the Constitution of India.*
- *Articles 32 and 226 of the Constitution of India.*
- *The Tenth Schedule to the Constitution of India.*

3. ANALYSIS

The disqualification of the members of the Legislative Assemblies and the Houses of Parliament is dealt by Articles 191 and 102 of the Constitution of India, respectively. The Fifty-second Constitutional Amendment Act, 1985 amended the said articles and prescribed that a member of the Houses of Parliament, Legislative Assembly or Legislative Council shall be disqualified as according to the "*Tenth Schedule to the Constitution of India".* In the present

case, the application by Swami Prasad Maurya was made under "***Paragraph 2 of the Tenth Schedule*** which provides for disqualification on grounds of defection- firstly, if he has voluntarily given up his membership of such political party or secondly, if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs, without obtaining prior permission and such voting or abstention is not overlooked by the party within fifteen days". "An independent member of a House shall be disqualified if he joins any political party after being elected and a nominated member "shall be disqualified if he joins any political party after the expiry of six months from the date, he takes the seat". Therefore, according to him, the 13 M.L. As had disqualified through defection as they had voluntarily given up their membership. However, the respondents contended that since a split and subsequent merger of forty M.L.A.s with Samajwadi Party had occurred, disqualification did not take place, considering ***Paragraphs 3, 4 and 5*** of the "Tenth Schedule. ***Paragraph 3*** provided that if one-third of the members of a legislature belonging to a party defected, they would not face disqualification as a split would occur". ("*This provision was omitted by the 91st Constitutional Amendment Act, 2003 in order to curb splits and defections. It also permitted a member to avoid disqualification if their party merges with another political party disqualification if their party merges with another party"*). "***Paragraph 4*** states that a member shall not be disqualified if their original political party merges with another and that at least two-thirds of the members of their party agree to the merger and become members of the new party or choose to remain independent". ***Paragraph 5*** provides an exemption for the Speaker of the Lok Sabha, the Chairman of the Rajya Sabha, and the Deputy Chairman of the Legislative Councils. If an elected member holds any of the said positions, he/she may voluntarily relinquish membership of their party without facing disqualification. After vacating the office, they can rejoin their original party without penalty.

The Speaker passed the Order relying on Paragraph 3 as both the conditions that- "The making of a claim by any Member of a House that he and some other members of his legislature party have constituted a group representing a faction which has arisen as a consequence of split in his original political party and the newly constituted group has at least one third of the total number of members of such legislature party" had been fulfilled. Therefore, according to him, no disqualification had taken place under Paragraph 2. The Speaker regarded his position as that of a Tribunal while deciding upon the matter and notwithstanding that "merely 13 M.L. As had originally quit their political party" and that other subsequently joined them, "the claim of 37 members of a split, was recognised by the Speaker. ***The Speaker, thus, did not decide***

whether there was a split in the original political party, even prima facie*"**[9]. To justify his reasoning for split, the Speaker relied on the observation in ***Ravi S. Naik v. Union of India[10] where the two conditions for a split were recognised that, "The member of a House should make a claim that he and other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original party; and (ii) Such group must consist of not less than one-third of the members of such legislature party"[11]. The first requirement was fulfilled; however, question arises as to the second. The Speaker failed to acknowledge in the judgement that "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" and therefore, "*the Speaker had not found if there was a split in the original political party-which is a requisite for the application of Paragraph 3".*

"The query as to whether in satisfying the requirements of Paragraph 3- it was enough to establish split in the original party or it was necessary to prove it prima facie, instead of the ***Ravi Naik*** case where no prima facie proof was required, the case ***Jagjit Singh v State of Haryana***[12] was considered and the ratio of the decision that prima facie proof should be there, in addition to one-third members coming out of the party". Material should be presented as to a split. In the present case, the Speaker accepted a split merely on a claim and he did not regard the aspect whether split in original party was proved prima facie or not. Having wrongly relied on the case of Ravi Naik, he committed "an error so fundamental to the matter that even under limited judicial review, his order had to be interfered with".

"The majority view in the judgement of the High Court held that since the proceedings had arisen out of a *petition seeking disqualification under Paragraph 2, in regards to Paragraph 6*-(which states that in any case of question as to disqualification of a member under the Tenth Schedule, the decision of the Speaker shall be final and binding-however, subject to judicial review), the decision as to disqualification could not be reserved, even in the case where Speaker was recognising the split". "They therefore quashed the order of the Speaker and directed the Speaker to reconsider the question of defection raised by the writ petitioner"[13]. As stated in the ***Kihoto Hollohan v. Zachillhu***[14], "wherein, the constitutional validity of the Tenth

[9] Ibid at 4.
[10] Ravi S. Naik v. Union of India (1994) 1 SCR 754.
[11] Ibid at 4.
[12] Jagjit Singh v. State of Haryana AIR (2007) SC 590.
[13] Rajendra Singh Rana v Swami Prasad Maurya (2007) 4 SCC 270.
[14] Kihoto Hollohan v. Zachillhu and Ors (1992) 1 SCR 686.

Schedule was challenged for violating 'fundamentals of parliamentary democracy, it was held that judicial review" against the order of the Speaker could take place "*on grounds like gross violation of natural justice, perversity, bias and such like defects*". The Hon'ble Apex Court had held that the Speaker had misguided himself in answering to the claim of the M.L. As that a split had occurred, while he left open the question as to disqualification which was pending before him. This decision of the Speaker did not only contradict with the procedural realm, but also "it was against the very constitutional scheme prescribed in Tenth Schedule, read with Articles 102 and 191"[15]. It went against the rules and procedure framed for him and the same was a 'jurisdictional irregularity' instead of a mere procedural irregularity. Therefore, the Speaker's decision under challenge is subject to being overturned through the exercise of judicial review.

Preferably, the Court should have remanded the order back to the Speaker to adjudicate as per Article 212, however taking into account the significant delay since the petition was filed, permitting 13 members (if they were proved to have defected) to continue in their office, "at least subsequent to expiry of six months from the date they take charge of the office as ministers" would amount to "defiance in democratic principles" and be unlawful and illegal. Therefore, a decision without any further remand was required of the High Court to safeguard the democratic principles, a basic feature of our Constitution as and the delay was not correct.

Furthermore, the conduct of the M. L. As where they requested the Governor to call the leader of the opposition to form the Government, itself amounted to the voluntarily giving up of party membership as specified in Paragraph 2 of the Tenth Schedule and no further evidence was required to prove the same. The Apex Court relied on the case of *Ravi Naik v Union of India*[16] and reiterated, "A person may voluntarily give up his membership of an original 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 the 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"[17]. Therefore, the 13 M.L. As, with 24 others who later joined, stand disqualified under the Tenth Schedule of the Constitution of India.

[15] Rajendra Singh Rana v Swami Prasad Maurya (2007) 4 SCC 270.
[16] Ravi S. Naik v. Union of India (1994) 1 SCR 754.
[17] Ibid.

4. CONCLUSION

The dissension between "*voluntarily giving up of membership"* and its defence of "*split in the original political party"* has been well comprehended in the analysed case. Despite the omission of Paragraph 3, the judgement in the case remains to be a key precedent to be followed in disputes arising as to disqualification of members of Legislative Assemblies or the Houses of Parliament. While the Anti-defection laws have displayed effectiveness in curbing defections, however issue like delay in the process of disqualification petitions by the Speaker -like in the recent case of *Keisham Megha Chandra Singh v. The Hon'ble Speaker Manipur Legislative Assembly and Ors.*[18], the constant conflict with individual members' right to freedom of speech and coercively confining them in their parties where they have disputes[19] etc., still persist. Several defections still plaguing our democracy like in Telangana, Maharashtra, Goa etc. can only be curbed when a sense of unity and cohesion is inculcated within party members. The erosion of party cohesion and the precedence of individualistic ideologies over amalgamated political principles call for the effective application of India's Anti-Defection Laws.

[18] Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly and Others (2020) SCC OnLine SC 55.
[19] *Supr*a note 5 at 2.