G. VISHWANATHAN v. SPEAKER, TAMILNADU - A REVIEW

*Mrinal Chandran**

INTRODUCTION

The appellant was a member of the Tamil Nadu Legislative Assembly, being set up as a candidate by the All India Anna Dravida Munnetra Kazhagam (AIADMK) in the election held in 1991. He was subsequently expelled from the party and declared "unattached". Thereafter, he chose to join the Maru Malarchi Munnetra Kazhagam (MDMK). This was bought to the notice of the Speaker and proceedings for disqualification were subsequently initiated. The member did not deny that he had joined another political party viz. the MDMK. He contended that being declared "unattached" the provisions of the tenth schedule could no longer apply to him.

The Speaker's interpretation of para 2(1), 2(2) and explanation (a) of 2(1) held the member liable for disqualification. Discussing the matter, he stated that a person elected as a result of being set up as a candidate for a political party must be deemed always to belong to the same party; joining any other political party would amount to "voluntarily giving up membership"[1] of such political party and the member could be made subject to disqualification proceedings. It was held that the member had incurred disqualification under Article 191(2) read with para 2(1)(a) of the Tenth Schedule with immediate effect. The appellant thereafter filed writ petitions before the Madras High Court. A Division Bench saw no merit in the petitioner's contention and dismissed the petition.

Thereafter the matter came for hearing before the Supreme Court. The Apex Court concerned itself with the following issues:

A. The scope of the deeming fiction contained in explanation (a) to para 2(1)

B. The scope of the term "voluntarily giving up membership" as contained in para 2(1)a

C. The constitutional recognition of the term "unattached"

A. The scope of the deeming fiction

The Supreme Court has in its earlier decisions said that a legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact, which does not exist as such. In such a case, the courts must assume that

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* II Year B.A., LL.B. (Hons.), NLSIU.

1 Para 2(1)a.

such a state of affairs exist as real and must imagine as real the consequences and incidents which inevitably flow therefrom.[2]

In reading the explanation (a) to para 2(1), the court said that an elected member of the House shall be deemed always to belong to the political party, that has set him up as a candidate for election and shall continue to belong to such political party even if he is thrown out or expelled from the party. He will be deemed to belong to that political party even if he is recognised as "unattached".[3]

B. The scope of the term "Voluntarily giving up Membership"

The Supreme Court relied on its earlier decision where it was stated that an inference can be drawn from the conduct of a Member whether he has voluntarily given up Membership of the political part to which he belonged.[4]

In the instant case, the Court held that if a Member of his own volition joins another political party without express resignation then he must be taken to have "Voluntarily given up Membership" of his party and become liable for disqualification.

C. The constitutional recognition of the term "Unattached"

The court took the opinion that the labelling of a Member as "unattached" has no recognition under the Tenth Schedule. Elaborating on this viewpoint Ahmadi C.J. stated that the Tenth Schedule classified Members in accordance with their manner of entry into the House:[5]

1. One who has been elected on his being set up as a candidate by a political party for an election.

2. One who has been elected as a member otherwise than as a candidate set up by any political party.

3. One who has been nominated.

Taking the view that being treated as "unattached" as a matter of mere convenience, the Court held that it is impermissible to invent a new category not envisaged in the Tenth Schedule. Such a construction would defeat the purpose of the Tenth Schedule and fail to suppress the evil for which it was enacted. The appellant's contention was therefore unacceptable.

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2 *See, State of Bombay v. Pandurang,* AIR 1953 SC 244; *M. Venugopal v. Divisional Manager,* 1994(2) SCC 323

3 Per Ahmadi C.J., p. 537.

4 *Ravi S. Naik v Union of India,* (Supp) SCC 641 (649).

5 *Supra* n. 3 at p. 538.

CONCLUSION

The court in the instant case has tried to perform a balancing act. At hand are two important Constitutional issues a) the Rights and Privileges of the Members of the Legislature and b) the objectives of the Tenth Schedule, curbing the evil of defection.

The Court in its endeavour to curb the evil of defection has tried to ensure that the Rights and Privileges of the Members are not tampered with. Thus it has stated that though the practice of treating a member as "unattached" does not enjoy express Constitutional recognition the practice is not unconstitutional and such categorization may be done for the sake of convenience.

At this juncture one is bound to raise the question as to whether a member who has been declared "unattached" can be made amenable to the party whip? While this contention was raised by the appellant, the court has chosen not to address the issue. An acceptable explanation to this conundrum could be that once a Member is declared "unattached" he ceases to be a member of the Legislative party. However, such a contention leads to an anomaly. While the Member continues to be a part of the political party he no longer represents the Legislature party. This is contrary to what is envisaged under para 1(b) of the Tenth Schedule. The courts have also failed to take cognizance of the phrase "for the time being" in para 1(b).

The anomaly here is reflective of the deficiencies in the Tenth Schedule. While the Court has gone a step further in its crusade to clean up the political system, the glaring deficiencies in the Tenth Schedule demand reform of the law relating to Anti-Defection.