

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NOS.33333-33335 OF 2010

D.N. JEEVARAJU & ANR.

... PETITIONERS

VERSUS

D. SUDHAKAR & ORS. ETC.

... RESPONDENTS

J U D G M E N T

ALTAMAS KABIR, J.

1. These Special Leave Petition (C) Nos.33333-33335 of 2010 arise out of a final judgment and order dated 15th November, 2010, passed by the Karnataka High Court at Bangalore in M.W.No.9995/10, M.W.No.10529/10, M.W.No.10698/10,

W.P.No.32674/10, W.P.No.32675/10, W.P.No.32676/10, W.P.No.32677/10 and W.P.No.32678/10, allowing the writ petitioners' application, being Misc.W.No.9995 of 2010, praying for leave to amend a portion of paragraph 9 of the Writ Petitions.

2. The Writ Petitioners, D. Sudhakar, Venkataramanappa, Gulihatti D. Shekar, Shivaraj S. Thangadgi and P.M. Narendra Swamy, were all elected as independent Members in the General Elections held to the 13th Karnataka Legislative Assembly. After being elected, they supported the exercise undertaken by the Bhartiya Janata Party (hereinafter referred to as "B.J.P.") led by Shri B.S. Yeddiyurappa, leader of the B.J.P. Legislature Party, to form a Government in the State in May, 2008. The writ petitioners, who have been made the Respondent Nos.1 to 5 in these Special Leave Petitions, apart from extending support, also joined the Government as Ministers and it appears

that they also attended meetings of the B.J.P. Legislature Party.

3. On 6th October, 2010, each of the independent Members informed the Governor that due to corruption and nepotism in the functioning of the Government, they had become disillusioned and were thus withdrawing their support to the Government headed by B.S. Yeddiyurappa. The very next day, Shri D.N. Jeevaraju and Shri C.T. Ravi, who were the Chief Whip and Member Secretary of the B.J.P. in Karnataka, filed a petition before the Speaker for disqualification of the five independent Members from the Assembly under paragraph 2(2) of the Tenth Schedule to the Constitution. On 8th October, 2010, a show-cause notice was also issued by the Secretary of the Karnataka Legislative Assembly to the Respondent Nos.1 to 5 herein, requiring them to file objections in writing by 5.00 p.m. on 10th October, 2010, as to why appropriate orders should not be passed for their

disqualification under paragraph 2(2) of the Tenth Schedule to the Constitution. It was also mentioned that if the said Respondents failed to be present or to file their objections on or before the said date, the matter would be decided in accordance with law.

4. It is the case of the Respondent Nos.1 to 5 that they had not been individually served with copies of the said show-cause notice and that on 9th October, 2010, they came to learn through the media about the issuance of the show-cause notice and sought copies of the same along with all annexures. It is the further case of the said Respondents that on 10th October, 2010, at 11.00 a.m. they were provided with the copies of the show-cause notice and copies of the complaints and documents filed by the Respondents. According to the said Respondents, they filed interim replies dated 9th October, 2010, to the show-cause notice and sought for time to file complete objections thereto. The matter was

taken up for hearing at 3.30 p.m. on 10th October, 2010, and despite the prayer for time filed by the Respondents, the Speaker of the Assembly passed orders on the same day disqualifying the Respondent Nos.1 to 5 under paragraph 2(2) of the Tenth Schedule to the Constitution with immediate effect. The very next day, the vote of confidence sought by the 8th Respondent in the Writ Petition, the Chief Minister of the State, before the Karnataka Legislative Assembly, was to take place. The Respondents, therefore, hurriedly filed Writ Petition Nos.32764-78 of 2010 challenging the order dated 10th October, 2010, in Disqualification Application No.2/10 filed by D.N. Jeevaraju and C.T. Ravi, in order to obtain stay of the order of the High Court and enable them to participate in the proceedings of the House.

5. In view of the urgency of the matter, a request was made to the Chief Justice of Karnataka to convene a Bench and sitting of the Court while the

writ petitions were filed in the Registry. Acceding to the request made, a Division Bench was convened with the Chief Justice and the Hon'ble Judge. In such circumstances, certain unintended errors appear to have been incorporated in the writ petitions filed by the Respondents containing certain statements which were, in fact, part of another set of writ petitions, which had been filed on behalf of eleven B.J.P. M.L.As., who had also withdrawn their support to the Yedddiyurappa Government and had, therefore, faced disqualification proceedings as well.

6. It is the further case of the Respondent Nos.1 to 5 that in view of the hurry in which the two sets of writ petitions were made ready, some of the facts which were common to both the sets of writ petitions were lifted from one set of writ petitions to the other and in the process certain unintended statements were included in the writ petitions filed by the Respondent Nos.1 to 5 herein

which were, in fact, identical to the paragraphs included in the earlier set of writ petitions filed by the other set of M.L.As. belonging to the B.J.P. who had also been disqualified. In the process, in paragraph 9 of the writ petitions filed by the Respondent Nos.1 to 5 herein, certain unintended statements had been included which in the context of the entire writ petition was obviously a mistake. For the sake of reference, paragraph 9 of Writ Petition (C) Nos.32674 to 32678 of 2010, is extracted hereinbelow :

"9. That the alleged petition made by the Respondent No.1 & 3 herein, is clearly mala fide and has been made with an oblique motive knowingly in violation of Rule 6(4) of Disqualification Rules, 1986, which required him to satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule. No reasonable person would in the facts of this case could come to the conclusion that the Petitioners had incurred any disqualification on the ground of defection. Even prima facie defection means leaving the party and joining another. Petitioner has not left the Bharathiya Janatha Party at all."

7. The entire case of the Petitioners in these Special Leave Petitions is centered around the said statements, which the High Court held, had been incorporated by mistake on account of the circumstances in which the two sets of writ petitions had been filed.

8. In view of the said error in the writ petitions filed by Respondent Nos.1 to 5 herein, an Interlocutory Application, being I.A.No.9995 of 2010, was filed by the writ petitioners under Order VI Rule 17 of the Code of Civil Procedure read with Articles 226 and 227 of the Constitution of India, for amendment of paragraph 9 thereof. In the light of the categorical statements made by the writ petitioners that they had not used the symbol of B.J.P. for contesting the Assembly Elections nor had they joined the B.J.P., but had only supported the formation of government as independent M.L.As., a prayer was made for leave to delete the last

sentence of paragraph 9, which reads as, "petitioner has not left the Bhartiya Janata Party at all" and to substitute the same with the following sentence, namely, "petitioners have not joined B.J.P. at all and the evidence of the second Respondent to the contrary are perverse and are liable to be set aside."

9. As indicated hereinbefore, the High Court by its impugned judgment and order dated 15th November, 2010, after considering the case of the writ petitioners as a whole, allowed the amendment upon holding that if such amendment was permitted, neither the nature of the dispute, cause of action, nor the nature of relief sought for in the writ petitions would change and that no prejudice or injustice would be caused to the Respondents.

10. The said judgment and order of the High Court is the subject matter of challenge in these Special Leave Petitions.

11. Initially, Mr. Mukul Rohtagi, learned Senior Advocate, appeared for the Petitioners herein, and submitted that the statements made in paragraph 9 of the writ petitions, which were allowed to be amended by the High Court, were not on account of a mere mistake but had intentionally been made and, in any event, admission being the best proof of a fact, the said statements would have to be taken as an admission, the benefit whereof could not be denied to the Petitioners in the Special Leave Petitions.

12. Mr. Soli J. Sorabji, learned Senior Advocate, who, thereafter, appeared for the Petitioners herein, continued in the same vein. In support of such contention, Mr. Sorabji firstly relied on the decision of this Court in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram & Ors. [(1974) 1 SCC 242], where the provisions of Section 58 of the Evidence Act, 1872, fell for consideration and

after considering the earlier decisions of this Court on the subject, it was held that the principle that emerges from an analysis of earlier cases is that if at the time of passing of the decree there was some material before the Court, on the basis of which, the Court could be *prima facie* satisfied about the existence of a statutory ground of eviction, a presumption would have to be drawn that the Court was so satisfied and the decree for eviction, even if passed on the basis of a compromise, would be valid. Such material could take the shape either of evidence recorded or produced in the case or it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself. This Court went on to observe that the admissions, if true and clear, are by far the best proof of the facts admitted. In other words, admissions and pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties

or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. Same is the view expressed by this Court in Gautam Sarup Vs. Leela Jetly & Ors. [(2008 (7) SCC 85], in which in similar circumstances, while considering an application under Order VI Rule 17 of the Code of Civil Procedure, this Court observed that an admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the *lis* is admissible against him *proprio vigore*. Various other decisions on the same point were cited by Mr. Sorabji in support of his submissions.

13. Mr. Sorabji urged that it is hardly believable that such vital statements went unnoticed by the lawyers appearing for the writ petitioners, particularly in the circumstances which indicate that having by their acts and conducts, joined the B.J.P. for all practical purposes, it was only

natural that a statement was made in the writ petitions that they had not left the B.J.P. Mr. Sorabji submitted that far from being a mistake, the statement had been deliberately made on account of their conduct after the allegations were made that the writ petitioners had not only supported the B.J.P.-led Government, but had also participated therein by taking oath as Ministers in the Government led by Shri B.S. Yeddiyurappa as the leader of the B.J.P. Legislature Party. Mr. Sorabji laid special stress on the wording of paragraph 9 of the reply filed by the writ petitioners in which it was categorically stated that since Shri B.S. Yeddiyurappa had forfeited the confidence of the Speaker to continue as the Chief Minister, in the interest of the State, the people of Karnataka and the B.J.P., the concerned writ petitioners had withdrawn their support from the Government headed by Shri B.S. Yeddiyurappa as the Chief Minister.

14. Mr. Sorabji also emphasized the fact that in the application filed by the writ petitioners under Order VI Rule 17 C.P.C., the writ petitioners had not indicated in paragraph 4 thereof as to who had given the instructions to the lawyers concerned to draft the writ petitions, nor had the names of the lawyers been disclosed and in the absence of such relevant information, it could not be presumed that the statements made in paragraph 9 of the writ petitions were unintentional or had been made through oversight.

15. Mr. Sorabji ended on the note that the observation of the High Court that if the amendment was allowed, no one, including the Petitioners herein, would be prejudiced in any way, was also entirely erroneous, inasmuch as, if the prayer for amendment had been disallowed, the Petitioners herein would have been entitled to the benefit of the admission made by the writ petitioners, which

would have, in fact, cut away the very foundation of the writ petitioners' case.

16. Replying to the case made out on behalf of the writ petitioners herein, Mr. P.P. Rao, learned Senior Advocate, contended that admittedly there were two sets of cases relating to the disqualification of 11 B.J.P. M.L.As. and the disqualification of 5 independent M.L.As., where the facts are similar, although, the grounds of disqualification in the two cases are entirely different. In the first case, the ground of attack was that the said 11 M.L.As. had "voluntarily given up their membership of B.J.P.", and had thereby incurred the disqualification under paragraph 2(1)(a) of the Tenth Schedule to the Constitution. In the second case, the ground is that the independent M.L.As. having joined the B.J.P. by extending support to the B.J.P. Government soon after their election, had incurred disqualification under paragraph 2(2) of the Tenth Schedule. The

two sets of M.L.As. had addressed similar letters to the Governor on 6th October, 2010, intimating their intention to withdraw the support to the Government led by Chief Minister, Shri B.S. Yeddiyurappa, whose corruption, nepotism and favoritism had become unbearable. On the said basis, on the very same day the Governor requested the Chief Minister to prove his majority on the Floor of the House on or before 12th October, 2010. Mr. Rao submitted that apprehending that on account of the withdrawal of the support of 16 M.L.As., he would not be able to win the trust vote, the Chief Minister, with the help of the Speaker, chose to manipulate the trust vote by getting all the 16 M.L.As., who had withdrawn their support to him, disqualified before the Assembly met on 11th October, 2010, at 10.00 a.m. for the trust vote.

17. In pursuance of the said design, the Chief Minister himself filed a petition before the Speaker on 6th October, 2010, seeking

disqualification of the 11 B.J.P. M.L.As. on the ground that they had written to the Governor withdrawing support to the Government, without the decision of the party and such action attracted disqualification under the Tenth Schedule to the Constitution. A similar application was filed on 6th October, 2010, in which the petitioners herein Shri D.N. Jeevaraju, who was the Chief Whip of the B.J.P. and C.T. Ravi, M.L.A. and Joint Secretary of the B.J.P. State unit, filed a separate petition, being Disqualification Petition No.2 of 2010, for disqualification of the Respondent Nos.1 to 5 herein, alleging that by declaring their support to the Government soon after the elections, they had become Members of the B.J.P. and should, therefore, be disqualified under the Tenth Schedule to the Constitution.

18. On 7th October, 2010, the Speaker issued show-cause notices to the B.J.P. M.L.As. on the basis of the petition submitted by the Chief Minister.

Thereafter, on 8th October, 2010, the Speaker issued show-cause notices to the five M.L.As. being Respondent Nos. 1 to 5 herein, on the basis of the petition submitted by Shri D.N. Jeevaraju and Shri C.T. Ravi. Time to file objections to the petitions filed was given till 5.00 p.m. on or before 10th October, 2010. It is the case of the Respondent Nos.1 to 5 that they had not been personally served with copies of the notices which were pasted on the doors of their M.L.A. quarters when all of them were out of station, as the Assembly was not in Session, but on their coming to know from the media about the notice, they approached the Speaker through their counsel and obtained copies of the notice and hurriedly prepared interim replies which were submitted on 10th October, 2010, seeking time to file detailed replies. Thereafter, on the same day, the formality of going through a hearing was performed by the Speaker and in the night of 10th October,

2010, itself, the Speaker passed separate orders disqualifying the 11 B.J.P. M.L.As. and the 5 independent candidates from their membership of the Karnataka Legislative Assembly.

19. Mr. Rao submitted that it is in such circumstances that writ petitions were hurriedly prepared with the object of moving the High Court to obtain orders of stay before 10.00 a.m. on 11th October, 2010, before the trust vote could be taken in the Assembly. It is in such circumstances that certain paragraphs were lifted from the writ petitions filed on behalf of the 11 B.J.P. M.L.As., which resulted in the unintentional mistakes occurring in paragraph 9 of the writ petition.

20. Mr. Rao submitted that there could be little doubt that the statements made in paragraph 9 were entirely unintended, since it struck at the very root of the case of the writ petitioners and an attempt to submit otherwise was entirely absurd.

Mr. Rao submitted that the order of the High Court having been passed in the totality of the incidents which occurred between 6th October and 10th October, 2010, no interference was called for with the same.

21. From the submissions made on behalf of the respective parties, it is obvious that in these Special Leave Petitions we are only required to consider the correctness of the common judgment and order dated 15th November, 2010, passed by the High Court in the Writ Petitions referred to in paragraph 1 of this judgment, allowing the applications filed by the writ petitioners/ Respondent Nos.1 to 5 herein for leave to amend paragraph 9 thereof. Although, it has been strenuously urged on behalf of Special Leave Petitioners that the statements made in paragraph 9 of the writ petitions to the effect that the petitioners had not left the Bhartiya Janata Party at all, was not a mistake but was intentionally made, and that the High Court had erroneously held

otherwise, is not borne out by the circumstances indicated in the writ petitions, if considered in their totality. There is no doubting the fact that the writ petitioners had all throughout indicated that they had been elected as independent candidates and had neither contested the elections on the B.J.P. symbol nor had they, at any point of time, joined the B.J.P. On the other hand, even in their interim reply dated 9th October, 2010, submitted to the Speaker in respect of the show-cause notices issued to them, the Respondent Nos.1 to 5 have in no uncertain terms in paragraph 8 stated that they were Independents who had not joined any political party, least of all the B.J.P. and had been supporting the Yeddiyurappa Government from outside till 6.10.2010. In fact, except for an inference being drawn from the statement that the writ petitioners had not left the B.J.P., that they had earlier joined the party, there is no factual basis for the finding that the writ petitioners had

joined the B.J.P. Even in the letter addressed by them to the Governor, they had very clearly indicated that they were withdrawing support to the B.J.P. Government led by Shri B.S. Yeddiyurappa on account of the corruption, nepotism and favouritism, which was prevalent on a wide scale in the State. At no point of time has any positive evidence been adduced by the Special Leave Petitioners to establish that the Writ Petitioners/Respondent Nos.1 to 5 herein had at all joined the B.J.P.

22. In the circumstances indicated hereinabove, the statements made in paragraph 9 of the Writ Petitions filed by the Respondent Nos.1 to 5 herein that they had not left the B.J.P., was an inadvertent error. On the other hand, there is a good deal of substance in the stand taken by the Respondent Nos.1 to 5 that on account of the preparation of the two sets of Writ Petitions having similar facts but involving two sets of

M.L.As, some of the paragraphs which were not intended to be included in the Writ Petitions filed by the Respondent Nos.1 to 5 herein were inadvertently included, resulting in the statement in paragraph 9 of the Writ Petitions that the Respondent Nos.1 to 5 herein had not left the B.J.P. It is obvious that such a statement was intended to be made and was made in the Writ Petitions filed by the 11 B.J.P. M.L.As who had been disqualified on the ground that they had left the B.J.P. and had joined another party thereby attracting the consequences of paragraph 2(2) of the Tenth Schedule to the Constitution.

23. In our view, the High Court has correctly held that the mistake was unintentional and that nowhere, except in one stray sentence in paragraph 9 of the writ petitions, had the Respondent Nos.1 to 5 stated that they had left the B.J.P. and that the said sentence could not be considered as a categorical admission if looked at from the context

of the proceedings itself being under paragraph 2(2) to the Tenth Schedule. The Tenth Schedule provides that an elected member of a House who has been elected as such, otherwise than as a candidate set up by any political party, would be disqualified from being a Member of the House, if he joined any political party after such election.

24. We are not, therefore, inclined to accept the submissions made on behalf of the Special Leave Petitioners and all the Special Leave Petitions are, accordingly, dismissed without any order as to costs.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi
Dated:16.12.2010.