

SUPREME COURT UPHOLDS DISQUALIFICATION OF MLAS

Relevant for: Indian Polity | Topic: State Legislatures - structure, functioning, conduct of business, powers & privileges and issues arising out of these

“In the light of the existing constitutional mandate, the Speaker is not empowered to disqualify any member till the end of the term. However, a member disqualified under the Tenth Schedule shall be subjected to sanctions provided under Articles 75(1B), 164(1B) and 361B of Constitution, which provides for a bar from being appointed as a Minister or from holding any remunerative political post from the date of disqualification till the date on which the term of his office would expire or if he is re-elected to the legislature, whichever is earlier,” the court held.

In short, the court has, with this judgment, paved the way for the ousted legislators to contest the coming bypolls in December and face their electorate with the “taint” of disqualification on them.

The court rejected the MLAs’ contention that their disqualification was invalid as they had tendered their resignations.

Act of defection

But it said the act that led to their disqualification preceded their offer of resignation.

The court said: “We do not agree with the submission of the petitioners that the disqualification proceedings cannot be continued if the resignations are tendered...

“Disqualification relates back to the date when the act of defection takes place. Factum and taint of disqualification does not vapourise by tendering a resignation letter to the Speaker. A pending or impending disqualification action does not become infructuous by submission of the resignation letter, when act(s) of disqualification have arisen prior to the member’s resignation letter.”

The court noted that it would defeat the purpose of the Tenth Schedule if it was held that disqualification proceedings would become infructuous upon tendering resignation.

Resignation and disqualification were “distinct mechanisms provided under the law which result in vacancy” but they had very different consequences.

Right to resign

The court, however, upheld the MLAs’ submission that they had a right to resign. “A member may choose to resign for a variety of reasons and his reasons may be good or bad but it is his sole prerogative to resign. An elected member cannot be compelled to continue his office if he chooses to resign,” the judgment observed.

Justice Ramana said the Speaker’s enquiry on a resignation should be confined to whether it was a voluntary and genuine act. The Speaker had the discretion to reject a resignation but his decision should be based on “objective material” and not just *ipse dixit* (an assertion).

On the MLAs’ contention that the Speaker did not give them reasonable time to defend themselves before disqualifying them, Justice Ramana said that would depend on the “unique

facts and circumstances” of each case.

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