AFR

Court No. - 4 Reserved

Case :- WRIT - C No. - 4493 of 2022

Petitioner :- Lal Bihari Yadav
Respondent :- Chairman/Sabhapati U.P. Legislative Council Vidhan Bhawan Lko & another
Counsel for Petitioner :- Krishan Kanhaya Pal,Pooja Pal
Counsel for Respondent :- Gaurav Mehrotra

Hon'ble Attau Rahman Masoodi,J.
Hon'ble Om Prakash Shukla,J.

(By Hon'ble Om Prakash Shukla, J.)

Heard Sri Mohd. Arif Khan, learned Senior Counsel assisted by Sri K.K. Pal for the petitioner and Sri Gaurav Mehrotra, learned counsel for the respondents.

This proceeding has been initiated under Article 226 of the Constitution of India by the petitioner seeking two fold reliefs, (i) A direction has been sought in the nature of

mandamus commanding the respondents to stay the operation of the impugned notification dated 07.07.2022 by which the recognition of the petitioner as the leader of the opposition in Uttar Pradesh Legislative Council has been withdrawn; and (ii) A direction has also been sought in the nature of Certiorari, seeking quashing of the said impugned notification dated 07.07.2022 by which the recognition of the petitioner as the leader of the opposition in Uttar Pradesh Legislative Council has been withdrawn.

FACTS

Article 168 of the constitution of India provides for a Legislature in every state of the country. The same article mentions that where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council (Vidhan Parishad in Hindi) and the other as the Legislative Assembly (Vidhan Sabha in Hindi), popularly known as the

upper house and lower house respectively. While all the states of India and even some union territory have Legislative Assembly, however the presence of Legislative Council is restricted to only few larger states, including the state of Uttar Pradesh. As of now, there are six states which have legislative council namely the state of Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana and the State of Uttar Pradesh.

This court is concerned with the legislative Council/ Vidhan Parishad/ Upper house of the state of Uttar Pradesh which is a permanent House, consisting of 100 Members, (90 elected + 10 nominated). (Annexure-2 of the writ) and the issue relating to the validity of the impugned notification dated 07.07.2022 by which the recognition of the petitioner as the leader of the opposition in Uttar Pradesh Legislative Council has been withdrawn.

The petitioner Lal Bihari Yadav is an elected member of the Uttar Pradesh Legislative Council since 2020 (Annexure-3 of the writ) and also a candidate of the political party, the Samajwadi party. The petitioner was recognized as a leader of the opposition in the Legislative Council (Vidhan Parishad) under section 2(h) of the Uttar Pradesh State Legislature (Members, Emoluments and Pension) Act, 1980 vide a letter dated 27.05.2022 (Annexure-4 of the Writ) issued by the Principal Secretary, Vidhan Parishad, Uttar Pradesh. Apparently, no reason or any criteria have been mentioned in the said letter relating to the appointment of the petitioner as the "Leader of the Opposition" and the only reference made in the said letter is that the petitioner is being appointed as "Leader of Opposition" in terms of section 2(h) of the Act, mentioned supra.

It is the case of the petitioner that as on 05.07.2022, the number of members of Samajwadi Party in Uttar Pradesh Vidhan parishad was 12 (Twelve) and it was decreased on 06.07.2022/07.07.2022 to 9 (Nine) and as such the petitioner's recognition as leader of opposition was withdrawn, which according to the petitioner was illegal, unconstitutional and in an arbitrary manner, without affording any opportunity of hearing. Thus, the petitioner has approached this court under the present writ petition.

CONTENTIONS

Heard Shri Mohd. Arif Khan, Senior Advocate assisted by Shri K.K. Pal for the petitioner, ld. Counsel appearing for the Petitioner while explaining the definition of "Leader of Opposition" as found in section 2(h) of the Uttar Pradesh Legislative Council, 1980, sought to draw pari-materia reference to the meaning of a leader of opposition in the houses of Indian Parliament. According to him, the leader of opposition is a statutory post and is defined in the salaries and allowances of leaders of opposition in parliament Act, 1977 as the leader of numerically biggest party in opposition to the government and as such recognised by the Speaker/Chairman. The Ld. Counsel has also drawn reference of definition of leader of opposition as defined in section 2(b) of the Gujarat Assembly (Leader of Opposition) salary and allowances Act, 1979 to contend that even in the said Act, the leader of the opposition has been defined to mean the member of the assembly who is for the time being the leader in the assembly of the party in opposition to the state government having the greatest numerical strength in the assembly.

The learned counsel in order to further buttress his point has also drawn reference to section 2 of the salary and allowances of the leader of opposition in the Assam Legislative Assembly Act, 1979 and section 2 of the leader of opposition in Maharashtra Legislature Salaries and Allowances Act, 1978. The crux of the argument of the petitioner by drawing inferences from these Act is the leader of the opposition ought to be the person, who is the leader of the opposition in the house, having the greatest numerical strength. It has been argued that the procedure for recognising the leader of the opposition is well laid down and on a request being made by the numerically largest party in opposition that its designated leader be recognised as the leader of the opposition, the speaker is bound to examine his or her request and recognise the said person as leader of the opposition.

According to the learned counsel for the petitioner, there is no power of discretion vested with the speaker in the matter of recognising the leader of opposition as the discretion vested with the speaker is neither political nor arithmetical but a statutory decision. Thus, as per the petitioner, the speaker has to merely ascertain whether the party claiming the post of leader of opposition is the largest party only and therefore to say that the party cannot claim the post of leader of opposition because it does not have at last 10% of the membership of the house is devoid of any merits. Thus, the learned counsel in order to vindicate his stand has given illustration of the Delhi Assembly, wherein the opposition party got the post of leader of opposition although it has only three members in an assembly of 70 members.

The petitioner has painstakingly pointed out that the impugned notification dated 07.07.2022, issued by the office of principal secretary, Uttar Pradesh relating to his de-recognition as the leader of the opposition in the Uttar Pradesh Legislative Council due to change in the number of members of the Samajwadi party from 12 to 9 by referring to rule 234 of the Uttar Pradesh Legislative Council's Procedure and conduct of Business rules, 1956 is illegal and unconstitutional.

Mr. Gaurav Mehrotra, learned counsel appearing for the respondents has vehemently opposed the writ petition and filed a Convenience Compilation/ primary point of Arguments. Mr. Mehrotra has resisted the writ filed by the petitioner on several grounds. However, the fulcrum of his argument was basically on four points namely (i) Jurisdiction/power and authority of the Chairman of the Uttar Pradesh Legislative Council to recognize/derecognize the Leader of Opposition; (ii)The writ petition being not maintainable against the impugned order dated 07.07.2022; (iii) Merits of the Impugned order dated 07.07.2022; (iv) Petitioner cannot claim the position of leader of opposition as a matter of right and opportunity of hearing.

It has also been argued by the learned counsel for the respondents that the petitioner has failed to point out any constitutional provisions or any statutory provisions in the statute applicable on U.P Legislative whereby any right to be appointed or to continue as leader of opposition has been conferred upon the petitioner. According to the Ld. Counsel, it was the discretion of the respondent No.1 to recognize the petitioner as leader of opposition vide order dated 27.05.2022 and discretion to de-recognize him vide the

impugned order dated 07.07.2022 has been exercised judiciously when his party lost the minimum number of members required to transact business in the Council as per Rules of Procedure and Conduct of Business Rules, 1956.

Both the sides have referred to various Judgments to espouse their contentions, which included:

(i) Karpoori Thakur Vs State of Bihar & Anr. 1982 SCC OnLine Pat 136

(ii) Kailash Nath Singh Yadav Vs Speaker, Vidhan Sabha, Lucknow & Another, 1992 SCC OnLine ALL 117

(iii) State of Kerala Vs K. Ajith & Otehrs, 2021 SCC Online SC 510

(iv) Ashish Shelar and Otehrs Vs Maharashtra Legislative Assembely & Anr., 2021 SCC OnLine SC 312

(v) Kihoto Hollohan Vs Zachillhu & Ors, 1992 Supp(2) SCC 651

(vi) N. Mani Vs Sangeetha Theatre and Others, (2004) 12 SCC 278

(vii) Raja Ram Pal Vs Hon'ble Speaker, Lok Sabha & Ors., (2007) 3 SCC 184

(viii) Amarinder Singh Vs. Special Committee, Punjab Vidhan Sabha and Others, (2010) 6 SCC 113

(ix) K. Lakshminarayan Vs Union of India & Anr. (2020) 14 SCC 664

DISCUSSION & ANALYSIS

Having heard learned counsels for the parties at considerable length, the following question falls for this court consideration:

A. What is the scope of interference by this Court under Article 226 of the Constitution of India in a case of recognition/derecognition of leader of opposition?

B. Whether the chairman of the Legislative Council has power to de-cognize and/or recognize the Leader of Opposition.

C. Whether the petitioner has a right to be appointed as a Leader of Opposition merely as being the leader of the numerically largest party in opposition in the Legislative council.

The learned counsel for the respondents has submitted that the instant writ petition challenging the order dated 07/07/2022 vide which the Chairman of the Legislative Council has derecognized the petitioner as the Leader of Opposition in the Legislative Council is not maintainable as the same is barred by the provision contained in Article 212 of the Constitution of India and has referred to the judgments delivered by a coordinate bench of this Court in the case of ***Kailash Nath Singh Yadav v/s Speaker, Vidhan Sabha, Lucknow, and Anr., 1992 SCC Online All 117*** and a judgment delivered by the Patna High Court in ***Karpoori Thakur v/s State of Bihar reported in 1982 SCC Online Pat 136.*** It was also submitted that in the classic case of ***Bradlaugh v/s Gossett reported in (1884) 12 QBD 271***, it has been held that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statue-law which has relation to its own internal proceedings. Thus, it was emphasized that what is said or done within the walls of the legislature with respect to conduct of business of the House, cannot be called in question in a court of law. The learned Counsel exuberantly also referred to the Commentary on the Constitution of India by D.D. Basu, wherein on page no, 10245, while discussing Article 212 of the Constitution of India, the Author has stated inter-alia "When the Speaker recognizes a member as leader of opposition, he exercises that power with respect to

conduct of business of the House and cannot be called in question in a court of Law.” Thus, it was submitted that the present writ petition is not maintainable.

This Court has given a thoughtful consideration to the arguments addressed by the learned counsel for the respondent at the Bar as well as the Convenience Compilation/ primary point of Arguments filed by him. In the understanding of this Court, our Constitution while defining "State" in Article 12 of the Constitution has included not only the Government but also the Parliament of India and Legislature of each of the States. The mention of the phrase “Parliament of India and Legislature of the state” has special significance. From time-to-time controversy has arisen as to whether the Legislature while exercising its functions under the Constitution is subject to judicial scrutiny by courts. On behalf of the Legislature, it has been always asserted that it has inherent right to conduct its affairs without interference from any court of law and it is the sole Judge of its own procedure as being sovereign in its own sphere. However, now in view of series of judgments of the Apex Court it is almost established that Legislature in India is not a sovereign body uncontrolled and with unlimited powers and in many respects their actions can be matter of judicial scrutiny. The first judgment on the said aspect could be found in re. Article 143, Constitution of India and Delhi Laws Act (1912) etc. ***(AIR 1951 SC 332)***, wherein it was observed as follows:

> *".....the principal point of distinction between the British Parliament and the Indian Parliament remains and that is that the Indian Parliament is the creature of the Constitution of India and its powers, rights, privileges and obligations have to*

> *be found in the relevant Articles of the Constitution of India. It is not a sovereign body, uncontrolled with unlimited powers."*
>
> *(Emphasis supplied)*

The Constitution Bench of the Apex Court has consistently expounded that the judicial scrutiny regarding exercise of legislative privileges is constricted but not altogether barred. Although, there is complete immunity from judicial review in matters of irregularity of procedure, however the same is not correct for issues relating to allegation of gross illegality or violation of constitutional provisions. The Constitution Bench of the Apex Court in the case of ***Raja Ram Pal Vs Hon'ble Speaker, Lok Sabha & Ors., (2007) 3 SCC 184***, enumerated the principles based on a catena of decisions and noted in the said decision as follows:

> ***"Summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions:***
>
> ***431.*** *We may summarise the principles that can be culled out from the above discussion. They are:*
>
> *(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;*
>
> *(b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi judicial decision;*
>
> *(c) The expediency and necessity of exercise of power or privilege by the legislature are for the*

determination of the legislative authority and not for determination by the courts;

(d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;

(i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;

(j) If a citizen, whether a non-member or a member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine

the merits of the said contention, especially when the impugned action entails civil consequences;

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;

(l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212;

(m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

(p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

(r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

Further, even on a plain reading of Article 212 of the Constitution brings us to the forth that framers of our Constitution have barred an enquiry in respect of any proceeding in the Legislature on the ground of any alleged irregularity of procedure. However, if the procedure followed is unconstitutional or illegal then the jurisdiction of the court to examine the validity of a proceeding based on such procedure has not been ousted. Thus, there is no absolute bar of the jurisdiction of any courts as is wrongly understood under Article 212 of the constitution of India. This aspect of the matter has also been examined by the Hon'ble Supreme Court in the well-known reference under Article 143 of the Constitution of India and the opinion is reported in ***AIR 1965 SC 745***; where while considering the scope of Article 212 it was pointed as follows (at p. 768):

> *"Article 212 (1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the Legislative Chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from any illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular."*

From the aforesaid pronouncements as also the Constitutional provisions, it is crystal clear that the exercise of any power or privilege by the Legislative council is immune only to the extent as indicated in Article 212(1), that is to say this court will decline to interfere if the grievance brought before it is restricted to allegations of "irregularity of procedure". However, in case there is any allegation of gross illegality or violation of constitutional provisions, the power of Judicial will not be barred by Article 212 of the Constitution of India.

Thus, the question would be, whether the petitioner by filing the present petition has questioned any "irregularity of procedure" or has alleged any violation of constitutional provisions. Apparently, the petitioner has challenged the impugned notification dated 07.07.2022 not only on the grounds of irregularity but also on the ground of violation of principle of natural justice and Jurisdiction of the Chairman/ Speaker of the Legislative Council i.e., the Respondent no.1 to derecognize a leader of opposition in the Council.

Whether the chairman of the Legislative Council has power to de-cognize and/or recognize the Leader of Opposition.

On behalf of the petitioner, it was submitted that the Chairman of the Legislative Council has no power to derecognize a Leader of Opposition. Although, the term or

post of the 'Leader of Opposition' has neither been defined nor finds any reference in the Constitution of India, however as commonly understood through past practise & precedence, a Leader of the Opposition is considered as the official spokesperson of the minority party in a parliament as has been commonly understood in the legislative jargon. It owes its existence to parliamentary convention according to which he is leader of the largest recognised opposition party in the House. In British Parliament, he can be regarded as the shadow Prime Minister; that is, in case the government falls or resigns, the Leader of the Opposition can lay claim to forming the next government. A Leader of opposition is usually the leader of the political party with the second largest number of seats in the House of Commons. Sometimes, he is also the overall Leader of the Opposition, viz., the leader of the opposition for both the houses of parliament taken together, which is, the House of Lords and the House of Commons. He or she receives a statutory salary and perquisites equal to those of a cabinet minister. Under the Ministerial and Other Salaries Act, 1975, the Speaker's decision on the identity of the Leader of the Opposition is final.

As far as the Indian Parliament is concerned, post-independence, the concept of the opposition took root in 1969, after the split of the Indian National Congress, and Ram Subhag Singh, the leader of the Indian National Congress (Organisation), was regarded as the Leader of the Opposition Party. However, it was only in 1977, with the passage of The Salary and Allowances of Leaders of Opposition in Parliament Act, 1977, that the position of the Leader of opposition came to be formally recognised along

with certain emoluments and perks. Having said so, it is to be noted that neither the Constitution of India nor the Rules of Procedure and Conduct of Business in the Lok Sabha or the Rajya Sabha make any provision or provides for any procedure for appointment of a Leader of the Opposition. Even the Act providing for the salary and allowances of leader of opposition in parliament enacted in the year 1977 does not provide for any procedure and merely defines a leader of opposition for the purposes of that act only. Thus, section 2 inter-alia states:

> *"2. **Definition**: In this Act, "Leader of the Opposition", in relation to either House of Parliament, means that member of the Council of States or the House of the People, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.*
>
> *Explanation. —Where there are two or more parties in opposition to the Government, in the Council of States or in the House of the People having the same numerical strength, the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, shall, having regard to the status of the parties, recognise any one of the Leaders of such parties as the Leader of the Opposition for the purposes of this section and such recognition shall be final and conclusive.*

Apparently, the aforesaid Act does not provide for any mechanism or procedure for appointment of a leader of opposition. Thus, one has to search for other collateral law enabling the speaker for recognition of a leader of opposition. This brings us immediately to Article 118 of the constitution of India, which inter-alia provides for making of

rules for regulating each house of parliament, its procedure and the conduct of its business, wherein the "Rules of Procedure and conduct of business in Lok Sabha" have been framed. Rule 389 of the said Rues provides residuary powers to the Speaker to regulate all matters not specifically provided for in these rules and all questions relating to the detailed working of these rules. Since, no specific rule has been provided for the said purposes, time and again the speaker while recognising a leader of opposition has relied on Directions issued under Rule 389. It is in terms of this rules that Direction 121 of the Directions by the Speaker of the Lok Sabha has been provided, which inter-alia provides that in recognising a parliamentary party or group, the Speaker shall take into consideration the following principles:

> *"(1) An association of members who propose to form a Parliamentary Party—(a) shall have announced at the time of the general elections a distinct ideology and programme of Parliamentary work on which they have been returned to the House;*
>
> *(b) Shall have an organisation both inside and outside the House; and*
>
> *(c) shall have at least a strength equal to the quorum fixed to constitute a sitting of the House, that is one-tenth of the total number of members of the House.*
>
> *(2) An association of members to form a Parliamentary Group shall satisfy the conditions specified in parts (a) and (b) of clause (1) and shall have at least a strength of 30 members."*

Thus, in exercise of Rule 389 of the Rules and Procedures and Conduct of Business in the House of People, the aforesaid directions were issued by the First Speaker of Lok Sabha i.e., G.V. Mavlankar which are popularly known as 'Mavlankar rule'. Direction 121 (c) of the aforesaid

directions states that party having at least 10% of the strength of the House be recognized as a Parliamentary Party and leader of the largest such Parliamentary party in opposition is designated as Leader of Opposition.

Further, this court cannot be oblivious of the fact that Section 2 Salaries and Allowances of the Leader of Opposition in Parliament Act, 1977, defines 'Leader of Opposition' as leader of the party in opposition to the government having the greatest numerical strength and recognized by the Chairman of Council of States or Speaker of House of People. However, due to the above 10% rule {Direction 121(c)} currently there is no leader of opposition in the 17th Lok Sabha as the strength of the party in opposition is less than 10% of the total strength of the House of People. As rightly pointed by the Ld. Counsel for the respondent, it was for this reason that the 1st, 2nd, 3rd, 5th,7th, 8th, and 16th Lok Sabha as well as 1st, 2nd, 3rd, 5th,7th and 8th Rajya Sabha had no leader of opposition recognized by the Speaker/ Chairman, due to the applicability of 10% rule in all these years, since no single opposition party had more than 10% of the total membership of house. It may be pertinent to mention herein that the present Lok Sabha also does not have any leader in opposition and in fact as reported in the news, an application of the numerically largest party to be appointed as a leader of opposition was rejected by the speaker of the Lok Sabha by stating inter-alia that "After consideration of applicable provisions of relevant statutes, Directions by the Speaker, Lok Sabha (Directions 120 and 121) and several past precedents repeatedly followed for the last nearly 60 years which have been based upon decision taken by many

eminent Speakers in the past, it has not been found possible to accede to your request."

Now, coming back to the issue on hand. As far as the state of Uttar Pradesh is concerned, the said state has also enacted The Uttar Pradesh State Legislature (Members' Emoluments and Pensions) Act, 1980, wherein Section 2(h) of the Act reads as under:

> *"2(h): 'Leader of Opposition' as the member of the Assembly or the Council who is for the time being recognized as such by the Speaker, or the Chairman, Deputy Chairman or Parliamentary Secretary."*

The phrase "greatest numerical strength" is conspicuously missing from the aforesaid definition, which bestows a discretion power on the speaker/ chairman of the assembly/council in choosing a Leader of Opposition. Further, Article 208 of the Constitution of India makes a provision with respect to Rules of Procedure for State Legislature and Article 208(1) of the Constitution of India confers power upon the concerned House of the Legislature of a State to make rules for regulating procedure and conduct of its business.

The U.P. State Legislature in exercise of the powers conferred by Article 208 of the Constitution of India has framed rules viz. U.P. Rajya Vidhan Mandal (Neta Virodhi Ki Suvidhayan) Niyamvali, 1981, wherein rule 3 of U.P. Rajya Vidhan Mandal (Neta Virodhi Ki Suvidhayan) Niyamvali, 1981 makes a provision with respect to payment of salary to the members of the opposition party. Rule 3(2) of the aforesaid rules, 1981 specifically provides that if the Chairman of the Legislative Council derecognizes a leader of opposition or if the aforesaid statutory posts otherwise falls

vacant, the salary would be payable on the very next day. Thus, the seat of the leader of opposition falling vacant and the salary being payable immediately on the very next date has been envisaged by the Act, which also brings us to the fore that de-recognition is not something which is foreign to the said Act as the seat of leader of opposition may fall vacant due to various reasons, including the reason of decrease in the numerical strength of the members of the opposition party.

Further, there is another aspect of the matter. It cannot be lost sight of the fact that Section 2(h) of the Uttar Pradesh State Legislature (Members' Emoluments and Pensions) Act, 1980 enables but does not make it incumbent upon the Speaker or Chairman to recognize a member as Leader of Opposition. However, a perusal of Rule 3(2) of the U.P. Rajya Vidhan Mandal (Neta Virodhi Ki Suvidhayan) Niyamvali, 1981, makes it evident that the Chairman or the Speaker as the case may be has been given the power and authority to derecognize a Leader of Opposition. Hence, it is not correct on the part of the petitioner to submit that the Chairman of the U.P. Legislative Council i.e. the Respondent no.1 has exceeded jurisdiction or has exercised authority not vested in him to derecognize the petitioner.

The power conferred by Section 2(h) is a discretionary power and is like any other statutory power to be exercised bona fide and in reasonable manner. In the absence of any statutory guideline, it would be a reasonable exercise of power under Section 2(h) if recognition is given to a Member as Leader of Opposition in conformity with the well-established Parliamentary conventions which are not in conflict with and do not contravene the provisions of the

Constitution or any other law for the time being in force. A provision analogous to that of Section 2(h) contained in Bihar Legislature (Leaders of the Opposition Salary and Allowances) Act, 1978 came up for consideration before the Patna High Court in ***Karpoori Thakur v. State, AIR 1983 Pat 86***, wherein the learned Judge held that the basis of recognition is not the Act in question but the prevailing practice and convention and, therefore, if the Speaker recognizes any person as Leader of Opposition, he has to follow the requirements of such practice and convention also.

Further, Rule 234 of the Rules of Procedure and Conduct of Business Rules, 1956 has been made, wherein although Rule 234 does not talk about de-recognition of the Leader of Opposition, but it defines the 'quorum' to run and conduct business in the House. That Rules 234 of the Rules of the Procedure and Conduct of Business Rules, 1956 entails inter-alia:

> *"Rule 234: When the attention of the Chairman is drawn by a member to a fact that less than ten members present in the Council, he shall cause a warning bell to be rung for two minutes. If the required number of members is still not present, the Chairman shall adjourn the Council to a later hour on the same day or to a future date to be named by him."*

Thus, Rule 234 provides for the quorum for conducting business in the Council and provides that in case the number of members in the House is less than 10 members then no business can be transacted as the quorum would be incomplete. Pertinently, the Mavlankar rule, also gives great significance to the concept of Quorum in choosing a Leader of Opposition. As a corollary, in case the leader of opposition when does not enjoy even the strength of forming

a quorum, obviously there cannot be any business transacted in the House and thus would be merely a ceremonial leader, without any relevance. Thus, there is no infirmity in placing reliance on Rule 234 of the Procedure and Conduct of Business Rules, 1956 as has been done in the impugned order dated 07/07/2022 since the rational is that the Leader of Opposition along with his opposition party should be capable of transacting business in the Council even in absence of the remaining members. Relevant to the context, as has been rightly pointed out by the learned Counsel for the respondent that in the Commentary on the Constitution of India, 9th Edition Volume 8 by D.D. Basu, page no. 7933 it has been stated by the great Author as follows:

> *"The Leader of Opposition in each house is recognized as the leader of the opposition provided that the party has the strength which would enable it to keep the house i.e., the number should not be less than the quorum fixed to constitute a sitting of the house which is one-tenth of the total membership of the house."*

Similar views have been expressed by other constitutional experts like Subhash C. Kashyap, who in his Book titled Parliamentary Procedure, The Law, Privileges, Practice and Precedents, (Volume 2, Chapter 2) has stated that the leader of the opposition in each house is recognized as the leader of the opposition provided that the party has a strength which would enable it to keep the house, i.e., the number should not be less than the quorum fixed to constitute a sitting of the house which is one-tenth of the total membership of the house.

Thus, from the aforesaid, it is evident that the impugned order dated 07/07/2022 wherein reliance has been placed on Rule 234 of the Rules of Procedure and Conduct

of Business Rules, 1956 does not suffers from any legal infirmity since the quorum to transact business in the U.P. Legislative Council is 10 and apparently the strength of the opposition party has fallen to 09 therefore, such an opposition party alone would not be able to transact any business in the Legislative Council. In the present case, as soon as the Respondent no. 1 was satisfied that the strength of the opposition party in the Council has fallen below 10 i.e., the minimum number required to complete the quorum to enable the opposition party alone to transact business in the Council, the Petitioner was de-recognized by the impugned order.

Whether the petitioner has a right to be appointed as a Leader of Opposition merely as being the leader of the numerically largest party in opposition in the Legislative council.

It has been argued by the learned Counsel for the petitioner that the petitioner is entitled to be appointed as the leader of the opposition by placing reliance on the Rules of various other State Legislative Assemblies and Councils like Assam, Maharashtra and Gujarat, wherein the leader of the numerically largest party in opposition is chosen as the leader of Opposition. It is the submission of the learned counsel that the petitioner may be treated in the similar manner for the UP legislative assembly as he continues to be the leader of the numerically largest party in opposition.

Since, Article 208 of Constitution of India, provides that every state legislature is empowered to frame its own rules for conduct of its business, therefore, Rules of Assam, Maharashtra and Gujarat Assemblies and Councils have got no relevance as far as the state of Uttar Pradesh is concerned, especially when as far as the U.P. State

Legislative Council is concerned, the U.P. Rajya Vidhan Mandal (Neta Virodhi Ki Suvidhyan) Niyamvali, 1981 has been enacted and it is this rules, which are applicable to the case of the petitioner.

Further, their does not exists any mandate under the constitution for appointment of leader of opposition. Merely because the petitioner is the leader of the numerically largest party in opposition in the legislative council does not gives him an inalienable right to be recognized as a leader of opposition and the onus is on the Petitioner to make a case for himself. Reliance in the aforesaid regard may be placed on the dictum of the Hon'ble Delhi High Court in the case of **Imran Ali v/s Union of India and others reported in 2015 SCC Online Del 6707**, wherein, one of the arguments of the Assistant Solicitor General before the Hon'ble Delhi High Court was that the speaker is not bound to recognize anyone as a leader of opposition and ultimately the Hon'ble Delhi High Court was pleased to dismiss the petition vide its Judgement and order dated 14/01/2015.

The Hon'ble Apex court in the case of **Kihoto Hollohan vs Zachillhu and Others, 1992 SCC Supl. (2) 651**, although answering to the adjudicatory functions vested in the speaker/ chairman under the anti-defection law, held that the speaker/chairman holds a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of parliamentary democracy. The Hon'ble Apex court went on to observe at paragraph 116 and 117 as follows:

"116. Mavalankar, who was himself a distinguished occupant of that high office, says:

"In parliamentary democracy, the office of the Speaker is held in very high esteem and respect. There are many reasons for this. Some of them are purely historical and some are inherent in the concept of parliamentary democracy and the powers and duties of the Speaker. Once a person is elected Speaker, he is expected to be above parties, above politics. In other words, he belongs to all the members or belongs to none. He holds the scales of justice evenly irrespective of party or person, though no one expects that he will do absolute justice in all matters; because, as a human being he has his human drawbacks and shortcomings. However, everybody knows that he will intentionally do no injustice or show partiality. "Such a person is naturally held in respect by all."

[See : G. V. Mavalankar : The Office of Speaker, Journal of Parliamentary Information, April 1956, Vol. 2, No. 1, p.33]

117. Pandit Nehru referring to the office of the Speaker said:

"....The speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's freedom and liberty. Therefore, it is right that that should be an honoured position, a free position and should be occupied always by men of outstanding ability and impartiality. [See: HOP. Deb. Vol.IX (1954), CC 3447-48]

Referring to the Speaker, Erskine may say:

"The Chief characteristics attaching to the office of Speaker in the House of Commons are authority and impartiality. As a symbol of his authority he is accompanied by the Royal Mace which is borne before him when entering and leaving the chamber and upon state occasions by the Sergeant at Arms attending the House of Commons, and is placed upon the table when he is in the chair. In debate all speeches are addressed to him and he calls upon Members to speak - a choice which is not open to dispute. When he

rises to preserve order or to give a ruling on a doubtful point he must always be heard in silence and no Member may stand when the Speaker is on his feet. Reflections upon the character or actions of the Speaker may be punished as breaches of privilege. His action cannot be criticized incidentally in debate or upon any form of proceeding except a substantive motion. His authority in the chair is fortified by many special powers which are referred to below. Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised....."

[See: Erskine May - Parliamentary Practice - 20th edition p. 234 and 235]

M.N. Kaul and S.L. Shakdher in `Practice and procedure of Parliament' 4th Edition, says:

"The all-important conventional and ceremonial head of Lok Sabha is the Speaker. Within the walls of the House his authority is supreme. This authority is based on the Speaker's absolute and unvarying impartiality - the main feature of the office, the law of its life. The obligation of impartiality appears in the constitutional provision which ordains that the Speaker is entitled to vote only in the case of equality of votes. Moreover, his impartiality within the House is secured by the fact that he remains above all considerations of party or political career, and to that effect he may also resign from the party to which he belonged."

In the present facts & circumstances, apparently Section 2(h) of the Uttar Pradesh State Legislature (Members' Emoluments and Pension) Act, 1980 defines 'Leader of Opposition' as the member of the Assembly or the Council who is for the time being recognized as such by the Speaker, or the Chairman, Deputy Chairman or Parliamentary Secretary. What is the scope of the power of Speaker while recognising a person as the leader of

opposition? In the Act there is no indication as to what factors have to be taken into consideration by the Speaker or the chairman for purpose of recognition. In fact, none of the sections of the Act in terms imposes any duty on the Speaker or the chairman to recognise any Leader of Opposition. This court has already referred to the different provisions of the Act. Its sole object is to make provisions for payment of salary, allowances and certain other benefits to leader of opposition. With that object in view, the Act gives the definition of leader of opposition. There is no provision in the Act which enjoins any mechanism or mandates the Speaker to recognise the leader of a party having the greatest numerical strength, to be the leader of opposition. The power of recognition of any such leader by the Speaker is not to be exercised under this Act. If the Speaker recognises any person who is the leader of a party in opposition having greatest numerical strength as the leader of opposition, he is doing so on the basis of the practice prevailing and, therefore, has to follow the other requirements of such practice and convention.

Thus, in the considered view of this court, whenever the Speaker recognises any person as a leader of opposition he does so on the basis of precedent or practice of the Legislature in question, keeping in view at the same time, the definition in the Act, If the basis of recognition is not the Act in question but the practice prevailing then he has to follow the practice of recognising the leader of an opposition party which has not only the greatest numerical strength as required by the definition in the Act, but has also one-tenth of the total membership of the House. In that event, it is difficult to hold that the impugned decision is

illegal or unconstitutional. It would be pertinent to quote the concluding paragraph of the judgement passed by a co-ordinate division bench of this Court, wherein the Ld. Division Bench was called upon to answer a similar question as has been raised in the present case. The Ld. Division Bench in the case of **Kailash Nath Singh Yadav Vs Speaker, Vidhan Sabha, Lucknow & Another, 1992 SCC OnLine ALL 117 at paragraph 23** held as follows:

> *"23. The leader or opposition in a Parliament any functionary inextricably connected with the business of the House and its functioning. According recognition to a member of the House as Leader of Opposition is a function which relates to the conduct of business of the House. Whatever is done by the Speaker who is an Officer of the Assembly is done by him for carrying on the business of the House as understood in the wider sense, except in regard to those functions which he has to perform under the Constitution, in his own right as Speaker or as a statutory authority under any law for the time being in force. It has already been noticed that the statutory recognition given to the Leader of Opposition has not made any substantial changes as to the manner in which recognition may be given to him by the Speaker. Thus, when the Speaker accords recognition to a member of the House as Leader of Opposition, he exercises power with respect to conduct of business of the House. That being so, he shall not be subject to the jurisdiction of any court in respect of the exercise by him of that power in view of the mandatory provisions of clause (2) of Art. 212. If a member of the House has any grievance against the action of the Speaker in exercise of the powers vested, in him, it is open to such member to ventilate his grievance and seek redress in some other appropriate forum according to law. In view of the aforesaid discussion, we have come to the conclusion that the petitioner has failed to make out a case for our interference in the exercise of jurisdiction under Art. 226 of the Constitution."*

Thus the petitioner cannot, as a matter of right, claim any continuation as leader of opposition of the Council as even in Section 2(h) of the Uttar Pradesh State Legislature (Members' Emoluments and Pension) Act, 1980, no such right has been conferred upon the petitioner.

CONCLUSION

In view of the discussion and the prevailing law, the petitioner do not have an inalienable right to be appointed or to continue as Leader of Opposition. The Uttar Pradesh State Legislature (Members' Emoluments and Pension) Act, 1980 does not prescribes any mechanism for recognising a leader of opposition. The Chairman of the Vidhan Parishad was not bound to be guided only with the criteria of recognising the leader of an opposition party, which has the greatest numerical strength. The rules provides for discretion of the Respondent no.1 to recognize and/or de-recognise a Leader of Opposition. The reliance of the Respondent No.1 on rule 234 of the Rules of Procedure and Conduct of Business Rules, 1956 is a fair & judicious exercise of discretion in derecognising the petitioner as leader of opposition and is also in conformity to the precedent and practise of the legislative council.

Accordingly, for all the aforesaid reasons, we do not find any infirmity or violation of constitutional provisions in the impugned order dated 07.07.2022. Thus, this writ application as being devoid of any merits is dismissed, but, in the circumstances, there will be no order as to costs.

Order Date : 21.10.2022
SKS