

Justice P. B. Sawant 5th National Moot Court Competition 2018

Moot Problem

Dr. M. S. Govinda

v.

Hon'ble Speaker Lok Sabha

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1. Indiana is the largest democratic country in South Asia. It was the colony of United Kingdom and imported the concept of Parliamentary Democracy from her. Indiana has written Constitution with Independence of Judiciary, Separation of Powers and Secularism as its basic features.
 2. Indiana's Parliamentary Democracy is having Multi-Party System. There are many national and regional political parties contributing towards national politics. Amongst all political parties, National Indiana Congress (herein after NIC) and Independent Party of Indiana (herein after IPI) are two major political parties. In general election of 2015, IPI got simple majority in Lok Sabha which enabled it to establish its government in center.
 3. Considering the simple majority, the ruling party always felt the potential threat to its Governmental stability not only from the opposition parties but also from some ambitious and unhappy leaders within the party itself. Few party leaders especially Dr. M. S. Govinda, a member of Lok Sabha and senior leader from IPI was feeling ignored and was not happy with way in which he was being treated by the top party leaders. He considered that being a mass leader as well as person having strong support within the party he actually deserved to be appointed as minister but minister ship was not given to him by the party.
 4. On 9th December, 2017, Central Government had proposed The National Highway Bill, 2017. Many members of Lok Sabha opposed the proposed Bill as they considered the said national highway unnecessary due to the availability of alternative state highways. Dr. Govinda was very upset as the proposed national

highway was going through some of the villages of his constituency. While discussion was going on new Bill in Lok Sabha, he protested against the Government policy by saying it went against farmer's interest. He said that the proposed national highway would result in the acquisition of thousands of hectares of fertile land. He also said that if required, he would lead the farmers of his constituency to strongly oppose the proposed project.

5. 27th Decemeber 2017 was decided to be the date of voting on the bill. Due to the strong opposition from the opponents, for compelling the attendance of its party members, the party leader in Lok Sabha, Mr. Anand Singh issued the whip.
6. The bill was passed with narrow majority. While analyzing the results the ruling party leader suspected that some of the party members would not have voted in favor of bill and found two of its members that is Dr. M. S. Govinda and Mr. Ramlal were absent for the voting. Taking cognizance of the matter, Mr. Anand Singh issued show cause notice to both of them.
7. Both members gave medical reasons to justify their absence. To support his contention Mr. Ramlal provided required documents but Dr. Govinda did not provide any documentary proof.
8. After few days, in one television interview, Dr. Govinda strongly criticized the Governmental policy towards farmers. He said that Government's plan to acquire farmers land shows lack of sensitivity on the part of Government towards farmers. He further expressed his wholehearted support to the people's fight for the interest of farmers.
9. Mr. Anand Singh forwarded a petition to the Speaker of Lok Sabha Mr. A. V. Prasad and requested him to take action against Dr. Govinda. Both parties were issued the notice and were asked to present their side within 5 days. On the 5th day Dr. Govinda prayed for the adjournment but it was rejected.

10. On the basis of the evidences produced by both parties, the Speaker held Dr. Govinda liable for anti-party activities. He said that opposing his own party in Lok Sabha, criticizing Governmental policy, publicly in an interview and remaining absent for voting after whip issued by party leader indicates Dr. Govinda's disloyalty towards the belief and agenda of his own party.
11. By relying upon paragraph 2 (b) of the 10th Schedule of the Constitution, Hon'ble Speaker disqualified Dr. Govinda's Lok Sabha Memberships. The decision was communicated to Lok Sabha and it was published in Lok Sabha Bulletin and Government Gazette. While justifying his decision the Speaker said that in country like India, political parties should be considered as the blood of Parliamentary set up. He further observed that voters gave votes to particular candidate as they supported the agenda of that political party which he was representing and not merely to an individual candidate. He specifically mentioned that expressing views publicly against the own party could definitely be construed as anti party act.
12. Dr. Govinda felt aggrieved and approached Supreme Court. Following are some of the points which were raised by him. He genuinely considered his stand on proposed bill as rational and in accordance with the principles of representative democracy. He felt member of Lok Sabha to be accountable to the people of his constituency and not to the party. He said that paragraph 2 of the 10th Schedule of the Constitution of India empowered the despotic dictates of the party whips and high command and it undermines the democratic spirit.
13. Dr. Govinda further emphasized that freedom of speech and expression within the party is essential feature of inner party democracy. It was his Parliamentary Privilege under Article 105 of Constitution to speak freely in houses of Parliament, but the anti-defection law is prohibiting honest and genuine dissent hence it is unconstitutional. He further objected the impartiality of the proceeding before the Speaker, who in spite of holding the Constitutional post continues membership of his original political party which is in this case, Independent Party of India. At the same time, he can continue with the office of Speaker only with the support of

majority. He pointed out that the procedure to deal with this type of matter should actually be accordance with the procedure governing the post-election dispute. He stressed that the purpose and object of the anti-defection law should be to ensure loyalty of the member to the electorate and not to the stability of a particular Government.

The following issues were framed by the Supreme Court for the argument:

- 1) Whether the Supreme Court of India has the jurisdiction to entertain the present petition?**
 - 2) Whether the Speaker while deciding the matter under the 10th Schedule satisfies the requirement of independent adjudicatory machinery?**
 - 3) Whether the 10th Schedule of the Constitution prohibiting honest and genuine dissent deserves to be declared as unconstitutional?**
 - 4) Whether section 2 (b) of the 10th Schedule violates Parliamentary Privileges provided under Article 105 of Constitution?**
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Note:-

- **India is a democratic Country like India and all Indian laws/rules/regulations are similar and applicable to India.**
- **Disclaimer – This moot problem is imaginary. Any resemblance with any fact, case, person or character is merely coincidental.**