



समता आन्दोलन समिति (रजि.)

राष्ट्रीय कार्यालय : सी-28, निशान्त पार्क, ककरोला मोड, मेट्रो पिल्लर नं. 800 के पास, द्वारिका, नई-दिल्ली
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माननीय श्री अमिताभ गुप्ता
संरक्षक (पूर्व पुलिस महानिदेशक)

माननीय श्री जे.एस. राठौड़
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माननीय श्री भागीरथ शर्मा
संरक्षक (पूर्व आई.ए.एस)



हमारे प्रेरणा पुंज: पं० जवाहरलाल नेहरू
'जातिगत आरक्षण के रास्ते चलना
मूर्खता ही नहीं, विध्वंसकारी है।'
(27 जून 1961 को प्रधानमंत्री के रूप
में मुख्यमंत्रियों को लिखे पत्र से सामार)

श्री इकराम राजस्थानी

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प्रान्तीय उपाध्यक्ष एवं

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कोटा

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उदयपुर

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टार्गेट-2015

पदेन्नति में आरक्षण समाप्ति अभियान
द्वितीय चरण

क्रमांक

3417-4210

दिनांक :

22.03.2013

श्रीमान प्रणव मुखर्जी,

माननीय राष्ट्रपति महोदय,

भारत सरकार, नई दिल्ली ।

श्रीमान मनमोहन सिंह जी,

माननीय प्रधानमंत्री महोदय,

नई दिल्ली ।

श्रीमान मुख्य न्यायाधीश महोदय,

सर्वोच्च न्यायालय

नई दिल्ली ।

विषय :- माननीय सर्वोच्च न्यायालय की संविधान पीठ के निर्णय की पालना सुनिश्चित कराने बाबत
संदर्भ:- लोकसभा में लम्बित 117वें संविधान संशोधन विधेयक के लिए राजनैतिक दलों को व्हिप
जारी करने से रोकने की याचिका ।

महोदय,

विनय पूर्वक निवेदन है, आप यह भली भांति जानते हैं कि माननीय सर्वोच्च न्यायालय की संविधान पीठ द्वारा Shri Kihota Hollohon V/s Zachilhu & others (AIR-1993-SC-412) के प्रकरण में संविधान की दसवीं अनुसूची (Anti defection Provisions) की संवैधानिकता परखते समय यह स्पष्टतः अभिनिर्धारित किया गया है कि राजनैतिक दलों द्वारा केवल दो ही परिस्थितियों में व्हिप जारी किया जा सकता है:-

1. जब सदन की वोटिंग से सरकार के गिर जाने का खतरा हो, या
2. विचाराधीन प्रस्ताव राजनैतिक दल की ऐसी प्रमुख नीति और कार्यक्रम से संबंधित हो जिसके आधार पर जनादेश प्राप्त किया गया हो ।

संविधान पीठ के उपरोक्त निर्णय (सम्बद्ध पैराग्राफ की प्रति संलग्न है) से यह पूरी तरह स्पष्ट है कि लोकसभा में लम्बित 117वें संविधान संशोधन विधेयक के लिए किसी भी राजनैतिक दल को WHIP जारी करने का अधिकार नहीं है क्योंकि :- (I) इस संशोधन विधेयक पर मतदान से केन्द्र सरकार नहीं गिरेगी । (II) किसी भी राजनैतिक दल द्वारा माननीय सर्वोच्च न्यायालय के एम0नागराज, सूरजभान मीणा व यूपी. पावर कार्पोरेशन के निर्णयों को प्रभाव शून्य करने वाला संविधान संशोधन लाने के मुद्दे पर जनादेश प्राप्त नहीं किया गया है ।

अतः आपसे करबद्ध प्रार्थना है कि:-

- (1) माननीय सर्वोच्च न्यायालय के उक्त निर्णय की पालना सुनिश्चित कराते हुये लोकसभा में लम्बित 117वें संविधान संशोधन विधेयक के लिए सभी राजनैतिक दलों को कोई भी WHIPS जारी करने से रोकने के समुचित आदेश जारी करें और सभी सांसदों को सूचित करते हुये उसे सुप्रचारित करावें ।
- (2) राज्य सभा में असंवैधानिक रूप से जारी किये गये WHIP के आधार पर पारित कराये गये 117वें संविधान संशोधन विधेयक को पुनः प्रस्तुत कराके बिना किसी WHIP के पारित कराने की कृपा करें ।

भारतीय संविधान, माननीय सर्वोच्च न्यायालय एवं प्रजातंत्र की रक्षा के लिए आपके सकारात्मक प्रभावशाली कदमों की प्रतीक्षा में,

भवदीय,

(पाराशर नारायण शर्मा)

संलग्न:- उपरोक्त

प्रतिलिपि:-

माननीय समस्त सांसद लोकसभा/राज्यसभा को भेजकर निवेदन है कि संसद एवं सांसदों की कीर्ति बढाने के लिए कृपया सहयोग करें ।

Supreme Court of India

Shri Kihota Hollohon vs Mr. Zachilhu And Others on 18 February, 1992, AIR 1993 SC 412

Bench: M Venkatachaliah L M Sharma, M V Verma, K J Reddy, S Agrawal

ORDER

.....49. We may now notice one other contention as to the construction of the expression 'any direction' occurring in paragraph 2(1)(b). It is argued that if the expression really attracts within its sweep every direction or whip of any kind whatsoever it might be unduly restrictive of the freedom of speech and the right of dissent and that, therefore, should be given a meaning limited to the objects and purposes of the Tenth Schedule. Learned Counsel relied upon and commended to us the view taken by the minority in the Full bench decision of Punjab and Haryana High Court in Parkash Singh Badal and Ors. v. Union of India and Ors. where such a restricted sense was approved. Tewatia J said: If the expression: "any direction" is to be literally construed then it would make the people's representative a wholly political party's representative, which decidedly he is not. The Member would virtually lose his identity and would become a rubber stamp in the hands of his political party. Such interpretation of this provision would cost it, its constitutionality, for in that sense it would become destructive of democracy/parliamentary democracy, which is the basic feature of the Constitution, Where giving of narrow meaning and reading down of the provision can save it from the vice of unconstitutionality the Court should read it down particularly when it brings the provision in line with the avowed legislative intent....

...the purpose of enacting paragraph 2 could be no other than to insure stability of the democratic system, which in the context of Cabinet/Parliamentary form of Government on the one hand means that a political party or a coalition of political parties which has been voted to power, is entitled to govern till the next election, and on the other, that opposition has a right to censure the functioning of the Government and even overthrow it by voting it out of power if it had lost the confidence of the people, then voting or abstaining from voting by a Member contrary to any direction issued by his party would by necessary implication envisage voting or abstaining from voting in regard to a motion or proposal, which if failed, as a result of lack of requisite support in the House, would result in voting the Government out of power, which consequence necessarily follows due to well established constitutional convention only when either a motion of no confidence is passed by the House or it approves a cut-motion in budgetary grants. Former because of the implications of Article 75(3) of the Constitution and latter because no Government can function without money and when Parliament declines to sanction money, then it amounts to an expression of lack of confidence in the Government. When so interpreted the Clause (b) of sub-paragraph (1) of paragraph 2 would leave the Members free to vote according to their views in the House in regard to any other matter that comes up before it. [p.313 & 314]

The reasoning of the learned judge that a wider meaning of the words "any direction" would cost it its constitutionality' does not commend to us. But we approve the conclusion that these words require to be construed harmoniously with the other provisions and appropriately confined to the objects and purposes of the Tenth Schedule. Those objects and purposes define and limit the contours of its meaning. The assignment of a limited meaning is not to read it down to promote its constitutionality but because such a construction is a harmonious construction in the context. There is no justification to give the words the wider meaning.

While construing Paragraph 2(1)(b) it cannot be ignored that under the Constitution members of Parliament as well as of the State Legislature enjoy freedom of speech in the House though this freedom is subject to the provisions of the Constitution and the rules and standing orders regulating the Procedure of the House [Article 105(1) and Article 194(1)]. The disqualification imposed by Paragraph 2(1)(b) must be so construed as not to unduly impinge on the said freedom of speech of a member. This would be possible if Paragraph 2(1)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of Government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political party to which the member belongs went to the polls. For this purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under Paragraph 2(1)(b), would have to be limited to a vote on motion of confidence or no confidence in the Government or where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate.

Keeping in view the consequences of the disqualification i.e., termination of the membership of a House; it would be appropriate that the direction or whip which results in such disqualification under Paragraph 2(1)(b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under Paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction.