

Justice H. K. Sema
(Former Judge, Supreme Court of India)

Dated, Kohima: 3rd November 2017

LEGAL OPINION

The core query between the disputing parties posed before me is as to who is the authority to appoint a whip/authority in terms of paragraph 2(b) of the Tenth Schedule to the Constitution of India.

The querist made available to me three legal opinions rendered by Soli J. Sorabjee, Senior Advocate, Supreme Court of India and former Attorney General for India and Fali S. Nariman, Senior Advocate, Supreme Court of India and V. Giri, Senior Advocate, Supreme Court of India.

I have gone through the opinions rendered by the aforesaid Senior Advocates of the Supreme Court.

I respectfully agree with the opinion rendered by Soli J. Sorabjee, Senior Advocate of the Supreme Court. However, I respectfully disagree with the opinions rendered by Fali S. Nariman and V. Giri Senior Advocate of the Supreme Court.

The Constitution (Fifty Second Amendment) Act, 1985, whereby the Tenth Schedule was added to the Constitution, with effect from 1st March 1985. In the statement of object and reasons of the bill, inter alia indicated that the evil of political defection has become a matter of national concern and if it was not checked it could very well undermine the very foundation of our democracy and the principles which sustain it. Keeping this view in mind, any authority/institution dealing with the interpretation of the Tenth Schedule to the Constitution of India would do so cautiously so that it would not render the inclusion of the Tenth Schedule to the Constitution otiose and defeat the objects and intent of the Fifty Second Amendment of the Constitution.

Issuing of a whip is a creature of paragraph 2 of the Tenth Schedule since the crux of the matter falls on the interpretation of paragraph 2 of the Schedule.

It is quoted :

“2. Disqualification on ground of defection:- (1) Subject to the provisions of [paragraph 4 and 5], a member of a house belonging to any political party shall be disqualified for being a member of the house-

(a) if he has voluntarily given up his membership of such political party; or (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining.. In either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. ((Emphasis supplied)

Explanation.- For the purpose of this sub-paragraph,-

(a) An elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member.”

For the sake of brevity I am not advised to recite the entire facts leading to the present controversy. Moreover, the same has been sufficiently delineated by Sorabjee in his legal opinion.

A cursory look at the language (Political Party) employed in paragraph 2(b) of the Tenth Schedule is clear enough to discern the intendment of the legislature. The word Political party repeated three times itself in the paragraph is implicit to mean the Original political Party.

Paragraph 1 (b) and (c) define the Legislature Party and Original Political Party as under:-

“(b) Legislature party, in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provision.

(b) Original Political party, in relation to a member of a House, means the political party to which he belongs for the purpose of sub-paragraph (1) and of paragraph 2;

The term Original Political Party in paragraph 1 (c) of the Schedule is very significant and clearly indicates the intendment of the Parliament that there cannot be another party/splinter/dissident political party, as the case may be, in the same political organization.

Thus, paragraph 2(b) of the Schedule recognized and authorized only original political party, who alone is empowered to issue whip/directions.

The term Original Political Parties has been interpreted by the Supreme Court in Rajendra Singh Ran and others vs Swami Prasad Maurya and others [(2007)4 SCC 270], in which I was a member of the bench, meant the party on whose ticket he had got himself elected to the House”

The next query is as to who is the appropriate authority to issue whip/directions in terms of paragraph 2 of the Tenth Schedule. It has been brought to my notice that Dr. Shürhozelie Liezietsu was elected the President of the NPF on 26.11.2014 for a period of five years and his term as the President would expire sometime in 2020. A copy of the NPF Constitution has also been brought to my notice. A perusal, the power of the President has been delineated