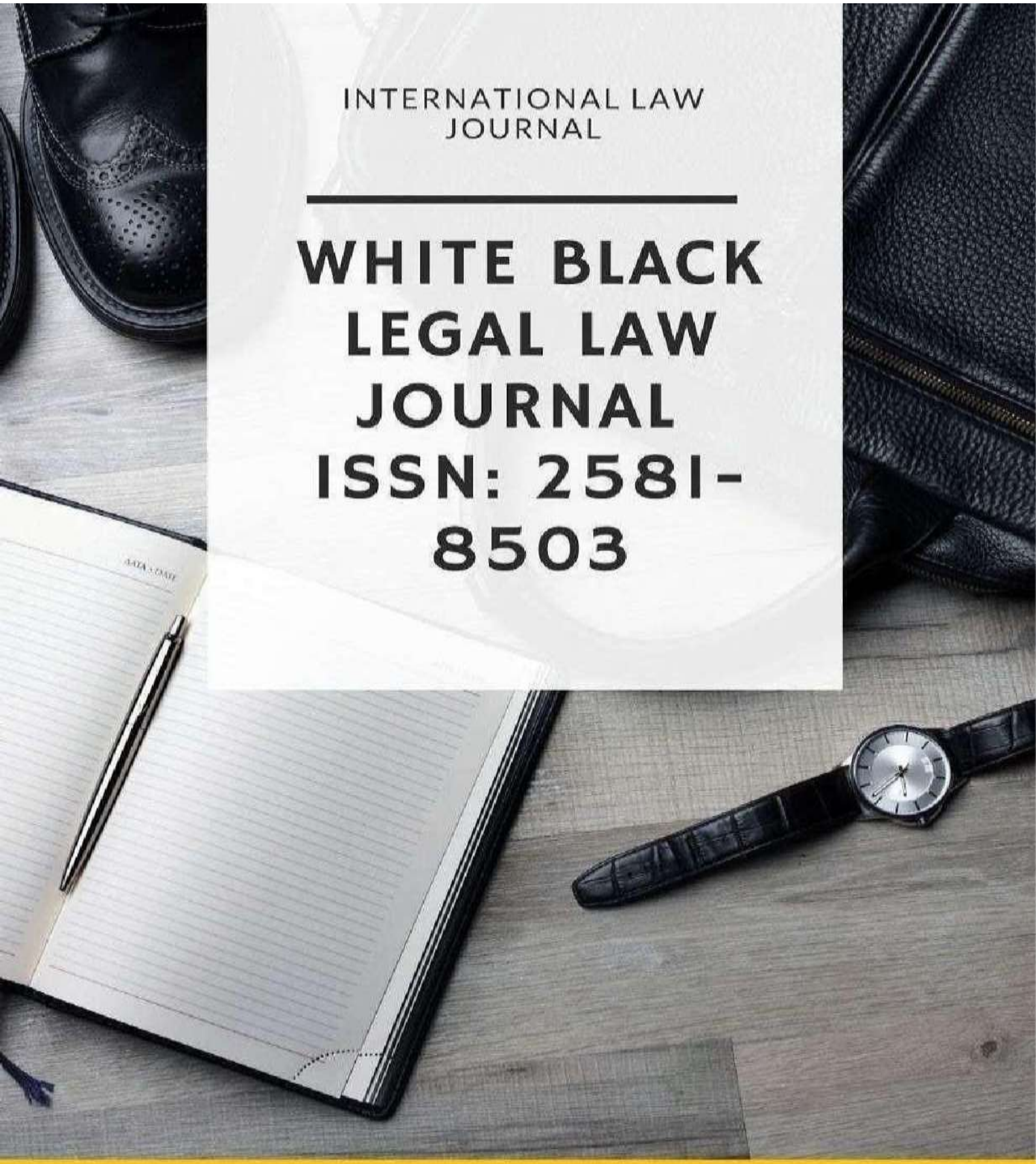

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CASE ANALYSIS: RAJENDRA SINGH RANA V. SWAMI PRASAD MAURYA AND OTHERS, (2007) 4 SCC 270

AUTHORED BY - ASTHA BHUMISH SHAH

FACTS

In February 2002, the 14th Legislative Assembly elections of the state of Uttar Pradesh took place. None of the political parties were able to secure a majority, so a coalition Government was formed with Ms. Mayawati (leader of Bahujan Samaj Party) as the head. Within a few months of taking office, the cabinet took a unanimous decision to dissolve. However, before Ms. Mayawati submitted the resignation for her cabinet, Mr. Mulayam Singh Yadav (leader of Samajwadi Party) staked his claim before the Governor to form the Government. It was alleged that 13 members who were elected to the assembly with tickets of BSP met with the Governor and asked him to invite Yadav to form the government. Subsequently, these 13 members along with 24 others made a request to the Speaker to recognise a split in the BSP that was done prior to the resignation. The Speaker accepted the same. This group was called Lok Tantrik Bhaujan Dal which on the same day merged with the Samajwadi Party. The leader of legislature BSP (Mr. Swami Prasad Maurya) filed a Writ Petition at the High Court of Allahabad challenging the order of the Speaker and that the 13 members had defected from their original party. The Chief Justice dismissed the Writ Petition, and two learned judges of the full bench directed the Speaker to reconsider the matter pertaining to disqualification. Feeling aggrieved by the said order, the respondents (lead by Rajendra Singh Rana) filed an appeal at the Supreme Court.

ISSUES

The issue that the Court had to decide in this case is twofold. Firstly, whether the High Court was correct in remanding the decision of the Speaker asking them to relook at it. Secondly, if a split based on Paragraph 3 of the Tenth Schedule of the Constitution is claimed, is the same proved *prima facie*. Additionally, if the 13 members stand to be disqualified, would the other 24 also be disqualified since the required 1/3rd to form a separate group would not be satisfied.

RULE

Anti-Defection Laws – Articles 191(2) and 212 read with Paragraphs 2, 3, 4 of the Tenth Schedule of the Constitution. Paragraph 3 of the Tenth schedule though now deleted, is of importance to this case. It "speaks of two requirements, one a split in the original party and two, a group comprising of one third of the legislators separating from the legislature party[1]". If this can be proved, then the member would not be disqualified on the ground of defection. Further, Paragraph 4 says that disqualification based on defection would not be applicable on cases where there is a merger between parties.

ANALYSIS

The petitioners of the original Writ Petition argued that the 13 members who had met with the Governor had "voluntarily given up their membership" of their original political party as under Paragraph 2(1)(a) of the Tenth Schedule and should therefore be disqualified for defection. The respondents (the appellants in the present case) argued that they should not be disqualified because they split from their original party as per the terms laid out in Paragraph 3 of the Tenth Schedule and there was a subsequent merger with the Samajwadi Party according to Paragraph 4 of the same.

While the Supreme Court agreed with the reasoning of the High Court of Allahabad, it did not do so without criticising the Court for its tardiness for postponing this matter until the term of the members was almost complete.

The Court said that the Speaker cannot adjudicate for a split without deciding about disqualification first. Because it was while the proceedings were pending before the High Court, "an application for recognition was moved by the 37 MLAs before the Speaker[2]" and this was heard. This goes completely contrary to what the Speaker had held before, that "it would be in the interests of justice[3]" to wait for adjudication in the High Court because that would be relevant for his consideration on certain issues. This is more than just a procedural default and would be liable for a judicial review as laid down in *Kihoto Hollohan v. Zachillhu and Others*[4]. It said that while deciding cases of

[1] Rajendra Singh Rana v. Swami Prasad Maurya and Others, (2007) 4 SCC 270 (India), p. 17.
[2] *Id.* p.4
[3] *Id.*
[4] Kihoto Hollohan v. Zachillhu and Others, (1992) SCR (1) 686 (India).

disqualification, the Speaker would act as a Tribunal and such decisions therefore could be subject to judicial review. The Speaker cannot first adjudicate whether there was a split as per their guaranteed powers and then for disqualification as a Tribunal. In this case the Speaker failed to exercise their jurisdiction and the order passed would therefore not be protected under Paragraph 6 (1) of the Tenth Schedule.

Ideally the Court would have remanded the order back to the Speaker to decide as per Article 212 of the Constitution. But since a lot of time had lapsed since the institution of the suit, if the 13 members are found to have defected, them continuing holding office would be illegal and violative of the principles of democracy and the Constitution. Therefore, the Supreme Court based on the evidence presented before it would be the correct in deciding this case.

"The Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up [their] membership.[5]" The Court relied on *Jagjit Singh v. State of Haryana*[6] which held that it is not enough to just claim a split in the party, the same needs to be proved *prima facie*. Such would be adjudicated by the Speaker based on the material placed before them. In the present case, there was no evidence that was put forth of a meeting of the 37 MLAs at the MLA Hostel in Darulshfa, Lucknow having taken place. "It [was] also pointed out that no agenda of the alleged meeting or minutes of the alleged meeting [was] produced.[7]" Therefore, the split cannot be proved *prima facie*, it seemed to be more like an 'afterthought'. The Speaker should have taken a decision at the first instance itself rather than postponing it and they shouldn't have accepted the split based on just a claim without looking at any evidence.

Finally, while the 24 other members would not be held liable for defection, the requirement of 1/3rd would not be satisfied. Firstly, as per Paragraph 2 all of the members did not leave at the same time, first it was 13 members then the remaining 24. Secondly, as per Paragraph 3 even these 24 members were not able to prove a split *prima facie* for the same reasons mentioned above. Further, even if it were to be considered as a split, this would just be a split of the legislature party. There is no proof that there was a split in the original party as required by Paragraph 3.

[5] *Supra* n.1, p.15
[6] Jagjit Singh v. State of Haryana, (2006) 11 SCC 1 (India).
[7] *Supra* n.1, p.19

CONCLUSION

Following what the Court had held in *Ravi S. Naik v. Union of India*[8] that an inference can be drawn from the conduct of a member that [they have] voluntarily given up [their] membership to the party to which they belong. The Court held that the 13 MLAs had defected the moment they met with the Governor requesting him to call the opposing party to form the government. These MLAs stood disqualified as under Article 191(2) of the Constitution read with Paragraph 2 of the Tenth Schedule as they were unable establish any defence under Paragraph 3.

This case perfectly elaborates on the concept of 'Voluntarily giving up membership' under Paragraph 2(1)(a) of the Tenth Schedule. Even though Paragraph 3 was deleted by the Ninety First Amendment Act in 2003, the precedent set by this case is being used even today. While Paragraph 4 requires there be at least 2/3rd of the party consenting to the merger, anti-defection provisions are still being misused today. The inherent problem with such laws is twofold. Firstly, they force members of a party to continue staying in a party whose ideology they might no longer resonate with. Secondly, these laws can be easily circumvented as seen through the ever-increasing cases of defection. Some of them include the Telangana State Elections of 2019 and Maharashtra State Elections of 2022. The Speaker's powers should be more clearly defined, or a separate tribunal can be constituted to adjudicate matters pertaining defection so that such actions are taken more seriously as they pertain to vital democratic features of the country.

[8] Ravi S. Naik v. Union of India, (1994) 1 SCR 754.