Limitation on the Power of Suspension of MLAs

What is the issue?

The Supreme Court has set aside the one-year suspension of 12 BJP MLAs from the Maharashtra Legislative Assembly observing that the decision to suspend them was unconstitutional, substantively illegal and irrational.

What was the plea before the Supreme Court?

- On July 5, 2021, Leader of Opposition Devendra Fadnavis objected to tabling a resolution demanding the Centre release data on OBCs, so that seats could be reserved for them in local bodies in Maharashtra.
- Several BJP MLAs entered the well in protest, snatched the mace, and uprooted mics.
- MLA Bhaskar Jadhav, who was in the chair, adjourned the House for 10 minutes, following which some BJP MLAs allegedly entered his chamber and threatened, abused, and misbehaved with him.
- Maharashtra Parliamentary Affairs Minister Anil Parab subsequently moved a resolution to suspend 12 BJP MLAs for a year.
- The MLAs filed a writ petition in the Supreme Court last year against the Maharashtra Legislative Assembly and the State of Maharashtra and asked for the suspension to be quashed.

What had both sides argued?

- **Stand of the MLAS**- The MLAs challenged their suspension on grounds of denial of principles of natural justice, and of violation of laid-down procedure.
- They said that they were not given an opportunity to present their case violating their fundamental right to equality before the law under **Article 14** of the Constitution.
- They also said that they were not given access to video of the proceedings of the House, and it was not clear how they had been identified.
- The MLAs have contended that under **Rule 53 of the Maharashtra Legislative Assembly Rules**, the power to suspend can only be exercised by the Speaker, and it cannot be put to vote in a resolution.
- **Assembly and the State's view**- They had submitted that the action was taken due to undisciplined and unbecoming behaviour of the MLAs.
- It was argued that that House had acted within its legislative competence, and that under **Article 212**, courts do not have jurisdiction to inquire into the proceedings of the legislature.
- The state had also said that a seat does not automatically become vacant if the member does not attend the House for 60 days but it becomes vacant only if declared so by the House.
- It was submitted that the House is not obligated to declare such a seat vacant.

What did the court say?

- The court agreed with the MLAs' contention and said that the suspension of a member must be preferred as a short term or a temporary, disciplinary measure for restoring order in the Assembly.
- It said that Rule 53 only provides for the withdrawal of a member for the remainder of the day or in case of repeat misconduct in the same session, for the remainder of the session.
- The court said that as per this rule, withdrawal of a member can only be done in case of the member's conduct being "**grossly disorderly**".
- The year-long suspension will mean that the constituency remains unrepresented, while there would be no vacancy to be filled through a by-election.
- It noted that a thin majority coalition government could use such suspensions to manipulate the Opposition party members affecting their effective participation in discussions/debates.
- It also ruled that legislative procedures are open to judicial review on the touchstone of being unconstitutional, grossly illegal, irrational or arbitrary.
- The ruling is another reminder to legislative bodies that their functioning is subject to constitutional parameters.

Can members be suspended beyond the remainder of the session?

- The bench referred to **Article 190 (4)** of the Constitution which says, "If an MLA of a State is absent for a period of 60 days without permitted by the House and absent from all meetings thereof, the House may declare his seat vacant".
- Under **Section 151 (A) of The Representation of the People Act, 1951**, "a bye-election for filling any vacancy shall be held within a period of 6 months from the date of the occurrence of the vacancy".
- The court said that anything in excess of that would be irrational suspension entailing deprivation of the constituency from being represented in the House.
- It said further that if the conduct of a member is gross, warranting his removal from the Assembly for a longer period, the House can invoke its inherent power of expulsion.

Are there any similar rules for Parliament?

- Rules 373, 374, and 374A of the Rules of Procedure and Conduct of Business in Lok Sabha provide for the withdrawal of a member whose conduct is grossly disorderly.
- It provides for the suspension of one who abuses the rules of the House or willfully obstructs its business.
- The maximum suspension as per these Rules is for 5 consecutive sittings or the remainder of the session, whichever is less.
- The maximum suspension for Rajya Sabha under Rules 255 and 256 also does not exceed the remainder of the session.

References

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