Rajasthan HC & Sachin Pilot Camp

Why in news?

The Rajasthan High Court's (HC's) order pertaining to Sachin Pilot camp borders on judicial indiscipline.

What is the order?

- The HC order has admitted a petition filed by the 19 legislators in the Sachin Pilot camp.
- It does not give any reason for admitting the petition and overruling objections to its admissibility.
- Illogically, the petition has been declared maintainable on the ground that a Constitutional court proposes to examine its maintainability.
- The order has directed the assembly speaker not to disqualify these legislators under the anti-defection law (ADL), until further notice.
- The HC has passed this order despite an existing judgment of the Supreme Court (SC) on the constitutionality of the ADL.

What is the Anti-Defection Law?

- The ADL is contained in the Tenth Schedule of the Constitution.
- **Purpose** - To curb political defection by the legislators.
- It came into effect in 1985.
- **Reason** - In the Indian political scene for a long time, the legislators used to change parties frequently.
- Due to this, the governments had fallen, creating political instability.
- This caused serious concerns to the right-thinking political leaders of the country and at last, the ADL was enacted.

What is the problem with the HC's move?

- It has disregarded the **doctrine of precedent**.
- The SC prohibits the courts intervening in disqualification matters at a stage prior to a presiding officer giving a ruling.
- The question is whether the SC's judgment in **Kihoto Hollohan** (1992) is a bar on the HC examining the issues.

What was the 1992 judgment?

- This judgment upheld the validity of the anti-defection law.
- It also declared that Para 2 does not violate the freedom of speech, vote or conscience of elected members.
- [Para 2 has been used by Speakers to disqualify MLAs.
- Para 2 is the part of the law which is now under challenge and is the ostensible reason for the HC to entertain the petition.]

What is the HC trying to find out?

- It wants to examine the disqualification of lawmakers who voluntarily give up membership of their party.
- It wants to know whether this disqualification has been examined by the SC from the point of view of intra-party democracy.

Why does the HC's move amount to judicial indiscipline?

- If at all the provision's validity is to be tested, it can only be done in a case arising out of it.
- But, it is a fact that no decision has been rendered by the Speaker.
- So, it is beyond comprehension how the court entertained arguments on the issuance of the notice.
- Another question is regarding whether dissidents can be disqualified for questioning the party line.
- Para 2 has been used by Speakers for years, and many such disqualification orders have been upheld by the SC.
- Admitting a matter without explaining how the law laid down by the SC does not bind a HC raises grave questions of judicial propriety.

What should the SC do?

- The SC appears to be raising the question whether dissent within a party can attract disqualification proceedings.
- Whatever the circumstances, the SC should not excuse improper and premature judicial intervention.

Source: The Hindu

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