SC Judgement on Karnataka MLAs Disqualification

Why in news?

The Supreme Court delivered its judgement in regards with the disqualification of 17 MLAs of the Congress and Janata Dal-Secular (JD-S) in Karnataka.

What led to the MLAs disqualification?

- The 2018 Karnataka State elections produced a hung Assembly - the BJP won 104 seats, Congress 80, and JD-S 37 in the 224-member House.
- Three seats went to others.
- The BJP failed to gather a majority after 3 days of Yediyurappa being Chief Minister.
- The Congress and JD-S leaders forged an alliance soon after the results.
- They formed the government with H D Kumaraswamy of the JD-S as CM.
- In July 2019, 14 MLAs from the Congress and 3 from the JD-S quit the Assembly.
- It was apparently because they were unhappy with the coalition government.
- The resignations were seen as linked to a BJP attempt to topple the government.
- The Congress and JD-S thus sought the MLAs' disqualification, and a bar on their contesting elections.
- As the 17 rebels stayed away from the Assembly, the Congress-JD-S government collapsed during a trust vote on July 23.
- This paved the way for the BJP to stake claim to form a new government under Yediyurappa on July 26.

- In the interim, the 17 MLAs were disqualified from the 16th Karnataka Legislative Assembly by the then Speaker K.R. Ramesh Kumar on July 25 and 28 2019 under the anti-defection law.
- They were barred from contesting elections during the entire tenure of the current Assembly (which is until 2023).
- The MLAs subsequently moved the Supreme Court asking that the Speaker's orders be quashed.
- The Congress and JD-S too approached the court, seeking enforcement of the disqualifications.

What are the Court's ruling and observations?

- The Court upheld the disqualification of 17 dissident Congress and Janata Dal (Secular) MLAs by Karnataka Assembly Speaker under the Tenth Schedule (anti-defection law).
- It however held that their ouster is no bar from contesting repolls.
- **Contesting Polls** - Neither under the Constitution nor under the statutory scheme would disqualification under Tenth Schedule operate as a bar for contesting re-elections.
- The court said Section 36 of the Representation of the People Act, 1951 does not contemplate such disqualification.
- **Disqualification** - In the light of the existing constitutional mandate, the Speaker is not empowered to disqualify any member till the end of the term.
- However, a member disqualified under the 10th Schedule shall be subjected to sanctions provided under Articles 75(1B), 164(1B) and 361B of Constitution.
- These provide for a bar from being appointed as a Minister or from holding any remunerative political post.
- This applies from the date of disqualification till the date on which the term of his/her office would expire or if he/she is re-elected to the legislature, whichever is earlier.

- **Right to resign** - The court upheld the MLAs' submission that they had a right to resign.
- A member may choose to resign for a variety of reasons and the reasons may be good or bad but it is his/her sole prerogative to resign.
- An elected member cannot be compelled to continue his/her office if he/she chooses to resign.
- The Court held that the Speaker's enquiry on a resignation should be confined to whether it was a voluntary and genuine act.
- The Speaker had the discretion to reject a resignation but the decision should be based on "objective material" and not just ipse dixit (an assertion).
- **Procedure** - The MLAs contented that the Speaker did not give them reasonable time to defend themselves before disqualifying them.
- To this, the Court said that this would depend on the "unique facts and circumstances" of each case.
- However, the Speaker could not cut short the hearing period.
- The Speaker should give sufficient opportunity to a member before deciding a disqualification proceeding.
- They should ordinarily follow the time limit prescribed in the Rules of the Legislature.

What grounds are Speaker's decision reviewed on?

- The court said, “The Speaker, being a constitutional functionary, is generally presumed to have adjudicated with the highest traditions of constitutionalism.”
- It was for this very reason that the Constitution has limited the powers of the court to judicially review the Speaker’s order under the 10th Schedule.
- The Court held that an order of the Speaker under the 10th Schedule could be subject to judicial review only on four grounds:
    1. mala fide
    2. perversity
    3. violation of the constitutional mandate
    4. order passed in violation of natural justice
- The court rejected the MLAs’ contention that their disqualification was invalid as they had tendered their resignations.
- But, it said the act that led to their disqualification preceded their offer of resignation.

What impact does the ruling has?

- The court has paved the way for the ousted Janata Dal (S) and Congress MLAs to contest the coming by-polls in December 2019.
- They may also reap the benefits of their crossover by getting a ticket from the ruling BJP.
- Significantly, the verdict expresses concern to the fact that Speakers sometimes tend not to be neutral.
- It makes note that change of loyalty for the lure of office continues despite the anti-defection law.
- Identifying its weak aspects and strengthening the law may be the solution.

Source: Indian Express, The Hindu

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