

Shri A. Thanu Pillai : Is the decision of the Election Tribunal communicated by the Election Commission?

Mr. Speaker : It was communicated by the Commission.

Shri P. T. Chacko : That is true. But what I say is we have to take it that statement of the Member is true. If it is true, you can believe that and he has right to be here. If it is proved otherwise, he can be punished. As a matter of fact, if the stay order had reached you by this time, he has a right to be here. The balance of evidence is on his side and you will have to believe him for the moment. If it is wrong, he can be punished.

Shri A. Thanu Pillai : Now the position is this. Mr. Janardhanan is not committing a wrongful act. He knows that it has been stayed. The matter may perhaps be known in the course of the day. So far as he is concerned, he is not doing anything wrong. He has been a member of this House. Should we go to the extent of asking him to leave the House?

Shri T. A. Thomman : A point of order. Article 191 of the Constitution says that:

“A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified by or under any law made by Parliament;

Article 192 (1) says “If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in Clause (i) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final.”

(ii) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.”

My point is that the question has to be referred to the Governor.

Shri M. Narayana Kurup : Sir, the Article of the Constitution relates to the disqualification of Members. In this case it is the Representation of Peoples' Act which is to apply.

Mr. Speaker : In this case he is disqualified by the decision of the Election Tribunal and that has been communicated by the Commission. The stay ordered by the High Court is not communicated to me. I shall put a question to the Leader of the Opposition. Suppose he obtains a stay for any other matter from a Court. Will it have effect before it is communicated to the party. I think the stay will have no effect. Similarly, I am bound to act according to the communication before me. I am in possession of the order of the Election Tribunal that Shri Janardhanan is unseated. I did not receive any communication staying that order. In fairness, I cannot act on the presumption that the order is stayed.

Shri P. T. Chacko : I do not say that the Speaker is bound to accept what Mr. Janardhanan says, but he may accept it. This is a very delicate question. Mr. Janardhanan says that he has obtained the stay order and so, as he is entitled to his seat, he has taken his seat. The Speaker has got power to accept his assertion and allow him to continue in his seat.

Shri M. Narayana Kurup : Of course the actual stay order is not communicated to the Speaker. But an order takes effect from the moment it has been passed.

Mr. Speaker : I do not dispute your point. But the thing is this. What is now before me is only the communication of the Election Commission and I have to act according to that. Should I act against the communication received from the Commission?

Shri M. Narayana Kurup : In such cases the question of bona fide comes. Here there is conflict of orders, and I submit in such cases the question of bona fide comes. The authority acting on the order of the Election Commission can reasonably believe that there is such a stay order.

Mr. Speaker : It is not a matter of believing or disbelieving. I will have to act on the strength of what is before me.

Shri P. T. Chacko : Suppose he is not sent away from the House on the strength of the assertion made by the member, what harm is there? Suppose it turns to be wrong. In such case also, you can punish him according to the Constitution. If you do not disbelieve him, the proper course is to believe him. There is also a constitutional remedy. Then why not believe him and allow him to be here? Another thing is that suppose he is sent out of the House and after that, the stay order entitling him to be in the House is received, to have sent him out will then be a wrong done to him which would be irreparable.

Mr. Speaker : I do not want to disbelieve the member. But I will have to act according to the Rules of Procedure. The Election Commission has communicated to me that his election has been declared void. That is the only record before me.

Shri R. Raghava Menon : Shri Janardhanan has stated that he has obtained the stay order from the High Court. The order has not reached the Speaker. The veracity of Shri Janardhanan is not disputed by the Speaker. So what I say is that there is no harm in accepting the statement of Mr. Janardhanan that the order of the Tribunal has been stayed by the High Court.

There are various other circumstances also. The stay order from the High Court might have been delayed. Of course, sending him out is one thing. But we have to remember that it may be due to no fault of Mr. Janardhanan. That is the position. So, the best thing according to me is for the Speaker to allow Mr. Janardhanan to remain in the House and then ascertain afterwards whether there is anything wrong in allowing him to continue to sit in the House. Since there is the phone communication, it can be easily ascertained.