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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11102/2017

SHRI SHARAD YADAV

..... Petitioner

Through: Mr Kapil Sibal, Sr. Advocate with Mr Devadatt Kamat, Mr Nizam Pasha, Mr Javedur Rahman, Mr Rajesh Inamdar and Ms Sneha Iyer, Advocates.

versus

SHRI RAM CHANDRA PRASAD SINGH
AND ANR.

..... Respondents

Through: Mr Rakesh Dwivedi, Sr. Advocate with Mr Gopal Singh, Mr Shivam Singh, Ms Sansriti Pathak, Ms Shreya Tyagi and Ms Apoorva Srivastava, Advocates for R-1.
Mr Sanjay Jain, ASG, Mr Ramakrishna Prasad, Mr Vidur Mohan, Ms Sneh Suman and Ms Rhea Verma, Advocates for R-2.
Ms Zubeda Begum, Ms Sana Ansari and Ms Vaishali Tanwar, Advocates for Rajya Sabha.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.12.2017

CM Nos. 45386/2017 & 45387/2017

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 11102/2017 & CM Nos. 45385/2017 & 45388/2017

3. Issue notice. Learned counsel for respondent nos.1 & 2 accept notice.
4. The petitioner has filed the present petition, *inter alia*, impugning an order dated 04.12.2017 (hereafter 'the impugned order') passed by the Chairman, Rajya Sabha disqualifying the petitioner as a Member of the Rajya Sabha under paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India.
5. Mr Sibal, learned senior counsel for the petitioner has assailed the impugned order on several fronts. First, he contended that the procedure adopted by the Chairman was in violation of the principles of natural justice. He submitted that the petitioner was denied a full representation through counsel and thus was effectively denied a fair opportunity of being heard. He submitted that there were well established precedents that in matters of disqualification under the Tenth Schedule to the Constitution of India, advocates had been permitted to represent the members sought to be disqualified from Lok Sabha and various State Legislative Assemblies.
6. Second, he submitted that the impugned order has been passed mainly on the basis of newspaper reports and video clippings; none of which were supported by affidavits or corroborated by any other evidence. He also pointed out that the Chairman had proceeded on the basis that none of the reports had been denied. Apart from being factually incorrect, the approach was also contrary to law.
7. Third, he submitted that the impugned order is premised on the basis that the petitioner had criticised the leadership of the party in question. He

submitted that criticism of leadership cannot be equated to voluntarily giving up membership of the political party. He submitted that the petitioner has a right to criticise the leadership and such right cannot be fettered.

8. Lastly, Mr Sibal, submitted that the reliance placed on the decision of the Election Commission of India passed under paragraph 15 of the Symbols (Reservation and Allotment) Order, 1968 also cannot be relied upon as the same is only limited to the context of allotment of the election symbol and is also the subject matter of challenge in a Writ Petition pending before this Court.

9. While, some of the submissions made by Mr Sibal appears to be *prima facie* merited. It also appears that the petitioner had taken an unequivocal stand by supporting a petition or an Election Symbol that the party now under the leadership of Mr Nitish Kumar, Chief Minister is not the 'original party' and this contention appears to have been rejected by the Election Commission of India. This does appear to indicate that the petitioner is not claiming membership of that party.

10. In this view, this Court is not inclined to interfere with the impugned order at this stage. However, it is clarified that the petitioner would be permitted to draw all allowances and pre-requisites including retaining the residential accommodation as a Member of the Rajya Sabha, till further orders.

11. The respondents shall file their counter affidavits, if any, within a period of three weeks from today. Rejoinder, if any, be filed within a period of two weeks, thereafter. The parties would be at liberty to file Written

Submissions of their arguments along with the authorities relied upon by them before the next date of hearing.

12. List on 01.03.2018.

DECEMBER 15, 2017
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VIBHU BAKHRU, J