REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 547 OF 2020
(ARISING OUT OF SLP (CIVIL) NO.18659 OF 2019)

KEISHAM MEGHACHANDRA SINGH …APPELLANT

VERSUS

THE HON'BLE SPEAKER MANIPUR
LEGISLATIVE ASSEMBLY & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NO. 548 OF 2020
(ARISING OUT OF SLP (CIVIL) NO.18763 OF 2019)

CIVIL APPEAL NO. 549 OF 2020
(ARISING OUT OF SLP (CIVIL) NO.23703 OF 2019)

CIVIL APPEAL NO. 550 OF 2020
(ARISING OUT OF SLP (CIVIL) NO.24146 OF 2019)

J U D G M E N T

R.F. Nariman, J.

1. Leave granted.

2. The Appeals in the present case raise important questions relating to the Tenth Schedule to the Constitution of India (hereinafter referred to as "Tenth Schedule"). The election for the 11th Manipur Legislative Assembly was conducted in March, 2017.

The said Assembly election produced an inconclusive result as none of the political parties were able to secure a majority i.e. 31 seats in a Legislative Assembly of 60 seats in order to form the Government. The Indian National Congress (hereinafter referred to as “Congress Party”) emerged as the single largest party with 28 seats, the Bharatiya Janata Party (hereinafter referred to as “BJP”) coming second with 21 seats. The Respondent No.3, in the Civil Appeal arising out of SLP(C) No. 18659 of 2019, contested as a candidate nominated and set up by the Congress Party and was duly elected as such. On 12.03.2017, immediately after the declaration of the results, Respondent No.3 along with various BJP members met the Governor of the State of Manipur in order to stake a claim for forming a BJP-led Government. On 15.03.2017, the Governor invited the group lead by the BJP to form the Government in the State. On the same day, the Chief Minister-Designate sent a letter to the Governor for administering oath as Ministers to eight elected MLAs including Respondent No.3. On the same day, Respondent No.3 was sworn in as a Minister in the BJP-led government and continues as such till date.

3. As many as thirteen applications for the disqualification of Respondent No.3 were filed before the Speaker of the Manipur Legislative Assembly between April and July, 2017 stating that

Respondent No.3 was disqualified under paragraph 2(1)(a) of the Tenth Schedule. The present petition that was filed by the Appellant, in the Civil Appeal arising out of SLP(C) No. 18659 of 2019, was dated 31.07.2017.

4. Since no action was taken on any of these petitions by the Speaker, one T.N. Haokip filed a writ petition being Writ Petition (C) No.353 of 2017 before the High Court of Manipur at Imphal, in which the Petitioner prayed that the High Court direct the Speaker to decide his disqualification petition within a reasonable time. On 08.09.2017, the High Court stated that as the issue of whether a High Court can direct a Speaker to decide a disqualification petition within a certain timeframe is pending before a Bench of 5 Hon'ble Judges of the Supreme Court the High Court cannot pass any order in the matter, and the matter was ordered to be listed so as to await the outcome of the cases pending before the Supreme Court.

5. After waiting till January, 2018, on 29.01.2018, the Appellant, in the Civil Appeal arising out of SLP(C) No. 18659 of 2019, filed Writ Petition (C) No.17 of 2018 before the same High Court asking for the following reliefs:

"i. Issue Rule Nisi;

ii. To issue an appropriate Writ, Order or Direction as to this Hon'ble Court may deem fit and proper;

iii. To declare that Respondent No. 3 has incurred disqualification for being a member of the Manipur Legislative Assembly under para 2(1) (a) of the Xth Schedule to the Constitution of India in terms of law laid down by the Constitution Bench of the Hon'ble Supreme Court in Rajendra Singh Rana and Ors. -Vrs- Swami Prasad Maurya and Ors. reported in (2007) 4 SCC 270.

iv. If the Hon'ble High Court is pleased to consider that the prayer made in para no. (ii) and (iii) above deserve merit for a favourable order, a writ in the nature of Quo Warranto be issued ousting Respondent No. 3 from the post/office of Minister."

6. The writ petition was taken up and heard by the High Court and disposed of by the impugned judgment dated 23.07.2019. The questions that the High Court posed before itself, which required consideration at its hands, were stated as follows:

"(a) Whether, in the facts and circumstances of the present case, the respondent No. 1 can be said to have failed to discharge its duties as enjoined in the Tenth Schedule to the Constitution of India to decide the petitions?

(b) If the above issue (a) is answered in the affirmative, whether the respondent No. 3 has prima facie incurred disqualification?

(c) If the respondent No. 3 is found to have incurred a prima facie disqualification, whether this Court can issue an order disqualifying the respondent No. 3 from being a member of the Manipur Legislative Assembly or alternatively, whether this Court has the power and jurisdiction to issue a writ of quo warranto declaring the holding of the post of a Minister by the respondent No. 3 as illegal, as it being without any authority of law?"

7. In answer to a preliminary objection taken by the Speaker that judicial review is shut out in cases like the present, the High Court held that the Speaker is a quasi-judicial authority who is required to take a decision within a reasonable time, such reasonable time obviously being a time which is much less than five years since the life of the House was five years. The High Court held that the remedy provided in the Tenth Schedule is in essence an alternative remedy to be exhausted before approaching the High Court, and this being the case, if such alternative remedy is found to be ineffective due to deliberate inaction or indecision on the part of the Speaker, the Court cannot be denied jurisdiction to issue an appropriate writ to the Speaker. Consequently, the preliminary objection was dismissed and the Court went on to hear the writ petition on merits. On the facts as stated above, following **Ravi S. Naik v. State of Maharashtra** 1994 Supp. (2) SCC 641, the Court found that the voluntary giving up of the membership of a political party may be express or implied by conduct, and that the unequivocal conduct of the Respondent No.3 becoming a Minister in a BJP-led Government after fighting the election by being a member of the Congress Party would make it clear that the disqualification contained in paragraph 2(1)(a) of the Tenth Schedule is clearly attracted. The High Court then cited several judgments on the writ of

quo warranto but ultimately came to a finding that since the very same issue was pending before a Constitution Bench of the Supreme Court, it would not be appropriate for the High Court to pass any order for the time being, which would include orders relating to the inaction or indecision on the part of the Speaker, as well as the issuing of a writ of *quo warranto*. The High Court thus ultimately declined to grant any relief in the writ petition, as a result of which the Appellant is before us.

8. Shri Kapil Sibal, learned Senior Advocate appearing on behalf of the Appellant, in the Civil Appeal arising out of SLP(C) No. 18659 of 2017, has argued that the Speaker in the present case has deliberately refused to decide the disqualification petitions before him. This is evident from the fact that no decision is forthcoming till date on petitions that were filed way back in April, 2017. Further, it is clear that notice in the present disqualification petition was issued by the Speaker only on 12.09.2018, long after the petition had been filed, and as correctly stated by the High Court, it cannot be expected that the Speaker will decide these petitions at all till the life of the Assembly of 5 years expires. In these circumstances, he has exhorted us to issue a writ of *quo warranto* against Respondent No.3 stating that he has usurped a constitutional office, and to declare that he cannot do so. For this purpose, he has cited several

judgments of this Court. He has also argued that though it is correct to state that whether a writ petition can at all be filed against inaction by a Speaker is pending before a Bench of 5 Judges of this Court, yet, it is clear from a reading of paragraph 110 of **Kihoto Hollohan v. Zachillhu & Ors.** (1992) Supp. (2) SCC 651, that all that was interdicted by that judgment was the grant of interlocutory stays which would prevent a Speaker from making a decision and not the other way around. For this purpose, he read to us Black's Law Dictionary on the meaning of a *quia timet* action, and argued that the judgment read as a whole would make it clear that if the constitutional objective of checking defections is to be achieved, judicial review in aid of such goal can obviously not be said to be interdicted. He also strongly relied upon the observations of this Court in **Rajendra Singh Rana v. Swami Prasad Maurya** (2007) 4 SCC 270 and exhorted us to uphold the reasoning contained in the impugned judgment and then issue a writ of *quo warranto* against Respondent No.3.

9. Mrs. Madhavi Divan, learned Addl. Solicitor General appearing for the Hon'ble Speaker of the Manipur Legislative Assembly, has argued that the reliefs prayed for in the writ petition filed by the Appellant, in the Civil Appeal arising out of SLP(C) No. 18659 of

2017, are diametrically opposed to the relief asked for in Writ Petition (C) No.353 of 2017, as a result of which, there being mutually destructive pleas and prayers made in the two writ petitions, no relief ought to be granted in the present case. In any case, the prayers asked for in the present case are directly interdicted by the judgment of a Constitution Bench of this Court in **Kihoto Hollohan** (supra) inasmuch as a writ of *quo warranto* cannot possibly be granted without first deciding whether Respondent No.3 stands disqualified, which is within the exclusive jurisdiction of the Speaker. She argued that the High Court was wholly incorrect in holding that the Speaker's decision under the Tenth Schedule would be in the nature of an alternative remedy and held that this would be directly contrary to several judgments of this Court, in particular, **Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly** (2016) 8 SCC 1, which states that the Speaker has exclusive jurisdiction to decide disqualification questions that are referred to him. In any case, she argued that a Three Judge Bench cannot decide the present case and has to await the judgment of a Five Judge Bench which has been made on a specific reference made by a Two Judge Bench of this Court. She also distinguished the sheet anchor of Shri Sibal's case i.e. the judgment in **Rajendra Singh Rana** (supra) by stating that the facts

there were completely different and that ultimately judicial review took place only because there was a final decision of the Speaker in that case. Further, because of the fact that the life of the Assembly was about to end, this Court using its powers under Article 142 of the Constitution of India in an extra-ordinary situation decided the petition for disqualification itself. Both these features are absent in the present case. Thus, according to her, while the ultimate conclusion in the High Court judgment is correct, all the findings in favor of the Appellant fly in the face of judgments of this Court.

10. Having heard learned counsel for both the parties, it is important to first set out the reference order of this Court dated 08.11.2016 in **S.A. Sampath Kumar v. Kale Yadaiah and Ors.** SLP(C) No. 33677/2015. A Division Bench of this Court after referring to **Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors.** (2015) 12 SCC 381, and **Speaker, Orissa Legislative Assembly v. Utkal Keshari Parida** (2013) 11 SCC 794, then held:

> "We have considered the aforesaid submissions of both the learned Attorney General and the learned counsel appearing on behalf of the petitioner. We feel that a substantial question as to the interpretation of the Constitution arises on the facts of the present case. It is true that this Court in Kihoto Hollohan's case laid down that a quia timet action would not be permissible and Shri Jayant Bhushan, learned senior counsel appearing on behalf of some of the respondents has pointed out to us

> that in P. Ramanatha Aiyar's Advanced Law Lexicon a quia timet action is the right to be protected against anticipated future injury that cannot be prevented by the present action. Nevertheless, we are of the view that it needs to be authoritatively decided by a Bench of five learned Judges of this Court, as to whether the High Court, exercising power under Article 226 of the Constitution, can direct a Speaker of a legislative assembly (acting in quasi judicial capacity under the Tenth Schedule) to decide a disqualification petition within a certain time, and whether such a direction would not fall foul of the quia timet action doctrine mentioned in paragraph 110 of Kihoto Hollohan's case. We cannot be mindful of the fact that just as a decision of a Speaker can be corrected by judicial review by the High Court exercising jurisdiction under Article 226, so prima facie should indecision by a Speaker be correctable by judicial review so as not to frustrate the laudable object and purpose of the Tenth Schedule, which has been referred to in both the majority and minority judgments in Kihoto Hollohan's case. The facts of the present case demonstrate that disqualification petitions had been referred to the Hon'ble Speaker of the Telangana State Legislative Assembly on 23rd August, 2014, and despite the hopes and aspirations expressed by the impugned judgment, the Speaker has chosen not to render any decision on the said petitions till date. We, therefore, place the papers before the Hon'ble Chief Justice of India to constitute an appropriate Bench to decide this question as early as possible."

11. We would have acceded to Mrs. Madhavi Divan's plea that in view of this order of a Division Bench of this Court, the hearing of this case ought to be deferred until the pronouncement by a Five Judge Bench of this Court on the issues raised in the present petition. However, we find that this very issue was addressed by a Five Judge Bench judgment in **Rajendra Singh Rana** (supra) and has already been answered. Unfortunately, the decision contained in

the aforesaid judgment was not brought to the notice of the Division Bench which referred the matter to Five Hon'ble Judges of this Court, though **Rajendra Singh Rana** (supra) was sought to be distinguished in **Kuldeep Bishnoi** (supra), which was brought to the notice of the Division Bench of this Court.

12. Backtracking a little, it is important to first set out what was decided in the majority decision in **Kihoto Hollohan** (supra). A Bench of 3 learned Judges of this Court set out, in paragraph 24 of the judgment, several questions that required decision in that case. We are directly concerned with questions (E) and (F), which are so set out and which read as follows:

> "**24.** On the contentions raised and urged at the hearing the questions that fall for consideration are the following:
>
> xxx xxx xxx
>
> *(E)* That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts the immunity under Articles 122 and 212. The Speaker and the Chairman in relation to the exercise of the powers under the Tenth Schedule shall not be subjected to the jurisdiction of any Court.
>
> The Tenth Schedule seeks to and does create a new and non-justiciable area of rights, obligations and remedies to be resolved in the exclusive manner envisaged by the Constitution and is not amenable to, but constitutionally immune from, curial adjudicative processes.
>
> (*F*) That even if Paragraph 7 erecting a bar on the jurisdiction of Courts is held inoperative, the Courts'

jurisdiction is, in any event, barred as Paragraph 6(1) which imparts a constitutional 'finality' to the decision of the Speaker or the Chairman, as the case may be, and that such concept of 'finality' bars examination of the matter by the Courts."

13. The majority judgment noticed that before the Constitution (Fifty Second Amendment) Act, 1985 inserting the Tenth Schedule into the Constitution of India, two abortive attempts were made in view of the recommendations of the Committee on Defections to enact an anti-defection law. The first was the Constitution (Thirty Second Amendment) Bill, 1973, which lapsed on account of dissolution of the House; and the second was the Constitution (Forty Eighth Amendment) Bill, 1979 which also so lapsed. The Court in paragraphs 9 and 13 referred to the object of the Constitution (Fifty Second Amendment) Act, 1985 as follows:

"**9.** This brings to the fore the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule.

xxx xxx xxx

13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the

election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(*a*) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election."

14. The Court dealt with contentions (E) and (F) together as follows:

"**95.** In the present case, the power to decide disputed disqualification under Paragraph 6(1) is pre-eminently of a judicial complexion.

96. The fiction in Paragraph 6(2), indeed, places it in the first clause of Article 122 or 212, as the case may be. The words "proceedings in Parliament" or "proceedings in the legislature of a State" in Paragraph 6(2) have their corresponding expression in Articles 122(1) and 212(1) respectively. This attracts an immunity from mere irregularities of procedures.

97. That apart, even after 1986 when the Tenth Schedule was introduced, the Constitution did not evince any intention to invoke Article 122 or 212 in the conduct of resolution of disputes as to the disqualification of members under Articles 191(1) and 102(1). The very deeming provision implies that the proceedings of disqualification are, in fact, not before the House; but only before the Speaker as a specially designated authority. The decision under Paragraph 6(1) is not the decision of the House, nor is it subject to the approval by the House. The decision operates independently of the House. A deeming provision cannot by its creation transcend its own power. There is, therefore, no immunity under Articles 122 and 212 from

judicial scrutiny of the decision of the Speaker or Chairman exercising power under Paragraph 6(1) of the Tenth Schedule.

xxx xxx xxx

100. By these well known and accepted tests of what constitute a Tribunal, the Speaker or the Chairman, acting under Paragraph 6(1) of the Tenth Schedule is a Tribunal.

xxx xxx xxx

109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

110. In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a *quia timet* action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence.

111. In the result, we hold on contentions (E) and (F):

That the Tenth Schedule does not, in providing for an additional grant (*sic* ground) for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the speakers/Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in *Keshav Singh case* [(1965) 1 SCR 413 : AIR 1965 SC 745] to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words ‘be deemed to be proceedings in Parliament’ or ‘proceedings in the legislature of a State’ confines the scope of the fiction accordingly.

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. Having regard to the constitutional

intendment and the status of the repository of the adjudicatory power, no *quia timet* actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence."

15. In **Rajendra Singh Rana** (supra), this Court dealt with an order made by the Speaker of the Uttar Pradesh Legislative Assembly dated 06.09.2003. On the facts in that case, the 14th Legislative Assembly Election for the State of U.P. was held in February, 2002 and since none of the political parties secured the requisite majority, a coalition government was formed headed by Ms. Mayawati, leader of the Bahujan Samaj Party (hereinafter referred to as "BSP"). On 25.08.2003, the Cabinet took a unanimous decision for recommending dissolution of the Assembly, after which, on 27.08.2003, 13 members of the Legislative Assembly elected to the Assembly on tickets of the BSP met the Governor and requested him to invite the leader of the Samajwadi Party, namely, Shri Mulayam Singh Yadav, to form the Government. On 29.08.2003, the Governor invited the leader of the Samajwadi Party to form the Government and gave him a time of two weeks to prove his majority in the Assembly. On 04.09.2003, Mr. S.P. Maurya, leader of the BSP filed a petition before the Speaker under the Tenth Schedule praying that the 13 BSP MLAs who had proclaimed support to Shri Mulayam

Singh Yadav before the Governor on 27.08.2003 had incurred the disqualification mentioned in paragraph 2(1)(a) of the Tenth Schedule. Meanwhile, a group of 37 MLAs, said to be on behalf of 40 MLAs elected on BSP tickets, requested the Speaker to recognize the split in the BSP on the basis that one-third of the members of BSP consisting of 109 legislators had separated from the BSP. On 06.09.2003, therefore, the Speaker did three things – first, he accepted that 37 out of 109 comprises one-third of the members of the BSP, which amounted to a split, this group being known as the Loktantrik Bahujan Dal. This Dal had merged with the Samajwadi Party which merger was then accepted by the very same order dated 06.09.2003. Third, the Speaker did not decide the application seeking disqualification of the 13 MLAs who were part of the 37 MLAs who appeared before the Speaker, and adjourned the disqualification petition. Meanwhile, since a writ petition was filed in the High Court of Judicature at Allahabad before the Lucknow Bench against this order, the Speaker passed another order on 14.11.2003, stating that the order adjourning the petition for disqualification would continue until after the High Court decided the writ petition. However, on 07.09.2005, even before the writ petition was disposed of by a Full Bench of the High Court, the Speaker passed an order rejecting the petition filed for disqualifying of 13 MLAs of the BSP.

16. On these facts, the Court noted in paragraph 17 of the judgment that the order dated 06.09.2003 is the subject matter of challenge in the writ petition filed before the High Court. In paragraph 30 of the judgment, this Court made it clear that the order of the Speaker dated 07.09.2005 would have no independent legs to stand on, stating as follows:

> "**30.** ...This last order is clearly inconsistent with the Speaker's earlier order dated 14-11-2003 and still leaves open the question whether the petition seeking disqualification should not have been decided first or at least simultaneously with the application claiming recognition of a split. If the order recognising the split goes, obviously this last order also cannot survive. It has perforce to go."
> [Emphasis Supplied]

17. After referring to this Court's decision in **Kihoto Hollohan** (supra) and **Ravi S. Naik** (supra) in para 22 of the judgment, the Court held:

> "**22.** …Suffice it to say that the decision of the Speaker rendered on 6-9-2003 was not immune from challenge before the High Court under Articles 226 and 227 of the Constitution of India."

18. The Court then went on to hold:

> "**25.** …On the scheme of Articles 102 and 191 and the Tenth Schedule, the determination of the question of split or merger cannot be divorced from the motion before the Speaker seeking a disqualification of a member or members concerned. It is therefore not possible to accede to the argument that under the Tenth Schedule to the Constitution, the Speaker has an independent power to decide that there has been a split or merger of a political

party as contemplated by paras 3 and 4 of the Tenth Schedule to the Constitution. The power to recognise a separate group in Parliament or Assembly may rest with the Speaker on the basis of the Rules of Business of the House. But that is different from saying that the power is available to him under the Tenth Schedule to the Constitution independent of a claim being determined by him that a member or a number of members had incurred disqualification by defection. To that extent, the decision of the Speaker in the case on hand cannot be considered to be an order in terms of the Tenth Schedule to the Constitution. The Speaker has failed to decide the question, he was called upon to decide, by postponing a decision thereon. There is therefore some merit in the contention of the learned counsel for BSP that the order of the Speaker may not enjoy the full immunity in terms of para 6(1) of the Tenth Schedule to the Constitution and that even if it did, the power of judicial review recognised by the Court in *Kihoto Hollohan* [1992 Supp (2) SCC 651 : AIR 1993 SC 412 : (1992) 1 SCR 686] is sufficient to warrant interference with the order in question."

[Emphasis Supplied]

19. The Court also hastened to add:

"**29.** In the case on hand, the Speaker had a petition moved before him for disqualification of 13 members of BSP. When that application was pending before him, certain members of BSP had made a claim before him that there has been a split in BSP. The Speaker, in the scheme of the Tenth Schedule and the rules framed in that behalf, had to decide the application for disqualification made and while deciding the same, had to decide whether in view of para 3 of the Tenth Schedule, the claim of disqualification had to be rejected. We have no doubt that the Speaker had totally misdirected himself in purporting to answer the claim of the 37 MLAs that there has been a split in the party even while leaving open the question of disqualification raised before

him by way of an application that was already pending before him. This failure on the part of the Speaker to decide the application seeking a disqualification cannot be said to be merely in the realm of procedure. It goes against the very constitutional scheme of adjudication contemplated by the Tenth Schedule read in the context of Articles 102 and 191 of the Constitution. It also goes against the rules framed in that behalf and the procedure that he was expected to follow. It is therefore not possible to accept the argument on behalf of the 37 MLAs that the failure of the Speaker to decide the petition for disqualification at least simultaneously with the petition for recognition of a split filed by them, is a mere procedural irregularity. We have no hesitation in finding that the same is a jurisdictional illegality, an illegality that goes to the root of the so-called decision by the Speaker on the question of split put forward before him. Even within the parameters of judicial review laid down in *Kihoto Hollohan* [1992 Supp (2) SCC 651 : AIR 1993 SC 412 : (1992) 1 SCR 686] and in *Jagjit Singh* v. *State of Haryana* [(2006) 11 SCC 1 : (2006) 13 Scale 335] it has to be found that the decision of the Speaker impugned is liable to be set aside in exercise of the power of judicial review."

[Emphasis Supplied]

20. The Court then adverted to the scope of judicial review being limited as decided in **Kihoto Hollohan** (supra) as follows:

"**39.** On the side of the 37 MLAs, the scope of judicial review being limited was repeatedly stressed to contend that the majority of the High Court had exceeded its jurisdiction. Dealing with the ambit of judicial review of an order of the Speaker under the Tenth Schedule, it was held in *Kihoto Hollohan* [1992 Supp (2) SCC 651 : AIR 1993 SC 412 : (1992) 1 SCR 686] : (SCC p. 706, paras 95-97)

"*95*. In the present case, the power to decide disputed disqualification under para 6(1) is pre-eminently of a judicial complexion.

96. The fiction in para 6(2), indeed, places it in the first clause of Article 122 or 212, as the case may be. The words 'proceedings in Parliament' or 'proceedings in the legislature of a State' in para 6(2) have their corresponding expression in Articles 122(1) and 212(1) respectively. This attracts an immunity from mere irregularities of procedures.

97. That apart, even after 1986 when the Tenth Schedule was introduced, the Constitution did not evince any intention to invoke Article 122 or 212 in the conduct of resolution of disputes as to the disqualification of Members under Articles 191(1) and 102(1). The very deeming provision implies that the proceedings of disqualification are, in fact, not before the House; but only before the Speaker as a specially designated authority. The decision under para 6(1) is not the decision of the House, nor is it subject to the approval by the House. The decision operates independently of the House. A deeming provision cannot by its creation transcend its own power. There is, therefore, no immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power under para 6(1) of the Tenth Schedule."

After referring to the relevant aspects, it was held: (SCC p. 707, para 100)

"*100*. By these well known and accepted tests of what constitute a Tribunal, the Speaker or the Chairman, acting under para 6(1) of the Tenth Schedule is a Tribunal."

It was concluded: (SCC p. 710, para 109)

"*109*. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under para 6, the scope of judicial review under Articles 136 and 226 and 227 of the Constitution in respect of an order passed by the

Speaker/Chairman under para 6 would be confined to jurisdictional errors only viz. infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

The position was reiterated by the Constitution Bench in *Raja Ram Pal* v. *Hon'ble Speaker, Lok Sabha* [(2007) 3 SCC 184 : JT (2007) 2 SC 1] . We are of the view that contours of interference have been well drawn by *Kihoto Hollohan* [1992 Supp (2) SCC 651 : AIR 1993 SC 412 : (1992) 1 SCR 686] and what is involved here is only its application.

40. Coming to the case on hand, it is clear that the Speaker, in the original order, left the question of disqualification undecided. Thereby he has failed to exercise the jurisdiction conferred on him by para 6 of the Tenth Schedule. Such a failure to exercise jurisdiction cannot be held to be covered by the shield of para 6 of the Schedule. He has also proceeded to accept the case of a split based merely on a claim in that behalf. He has entered no finding whether a split in the original political party was prima facie proved or not. This action of his, is apparently based on his understanding of the ratio of the decision in *Ravi S. Naik case* [1994 Supp (2) SCC 641 : (1994) 1 SCR 754] . He has misunderstood the ratio therein. Now that we have approved the reasoning and the approach in *Jagjit Singh case* [(2006) 11 SCC 1 : (2006) 13 Scale 335] and the ratio therein is clear, it has to be held that the Speaker has committed an error that goes to the root of the matter or an error that is so fundamental, that even under a limited judicial review the order of the Speaker has to be interfered with. We have, therefore, no hesitation in agreeing with the majority of the High Court in quashing the decisions of the Speaker.

41. In view of our conclusions as above, nothing turns on the arguments urged on what were described as significant facts and on the alleged belatedness of the amendment to

the writ petition. It is indisputable that in the order that was originally subjected to challenge in the writ petition, the Speaker specifically refrained from deciding the petition seeking disqualification of the 13 MLAs. On our reasoning as above, clearly, there was an error which attracted the jurisdiction of the High Court in exercise of its power of judicial review."

[Emphasis Supplied]

21. Finding that the life of the Assembly was about to end and that if the 13 members were found to be disqualified their continuance in the Assembly even for a day would be illegal and unconstitutional, and that their holding of office as Ministers would also be illegal, the Court stated that it was bound to protect the Constitution and its values, and the principles of democracy, which is a basic feature of the Constitution, and then went on to declare that the writ petition will stand allowed with a declaration that the 13 members who met the Governor on 27.08.2003 stand disqualified from the U.P Legislative Assembly w.e.f. 27.08.2003 on the ground contained in paragraph 2(1)(a) of the Tenth Schedule.

22. It is clear from a reading of the judgment in **Rajendra Singh Rana** (supra) and, in particular, the underlined portions of paragraphs 40 and 41 that the very question referred by the Two Judge Bench in **S.A. Sampath Kumar** (supra) has clearly been answered stating that a failure to exercise jurisdiction vested in a

Speaker cannot be covered by the shield contained in paragraph 6 of the Tenth Schedule, and that when a Speaker refrains from deciding a petition within a reasonable time, there was clearly an error which attracted jurisdiction of the High Court in exercise of the power of judicial review.

23. Indeed, the same result would ensue on a proper reading of **Kihoto Hollohan** (supra). Paragraphs 110 and 111 of the said judgment when read together would make it clear that what the finality clause in paragraph 6 of the Tenth Schedule protects is the exclusive jurisdiction that vests in the Speaker to decide disqualification petitions so that nothing should come in the way of deciding such petitions. The exception that is made is also of importance in that interlocutory interference with decisions of the Speaker can only be qua interlocutory disqualifications or suspensions, which may have grave, immediate, and irreversible repercussions. Indeed, the Court made it clear that judicial review is not available at a stage prior to the making of a decision by the Speaker either by a way of *quia timet* action or by other interlocutory orders.

24. A *quia timet* action has been described in Black's Law Dictionary as follows:

> "**Quia Timet**. Because he fears or apprehends. In equity practice, the technical name of a bill filed by a party who seeks the aid of a court of equity, *because he fears* some future probable injury to his rights or interests, and relief granted must depend on circumstances."

25. The leading judgment referred to insofar as *quia timet* actions are concerned is the judgment in **Fletcher v. Bealey** (1884) 28 Ch. D. 688. In this case, a *quia timet* action was asked for to interdict the tort of nuisance in order to prevent noxious liquid from flowing into a river. Pearson, J. after referring to earlier judgments on *quia time*t action then held at page 698:

> "I do not think, therefore, that I shall be very far wrong if I lay it down that there are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed, the damage will be suffered, I think it must be shewn that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the Plaintiff to protect himself against it if relief is denied to him in a *quia timet* action."

26. This statement of the law has subsequently been followed by recent English decisions reported as **London Borough of Islington v. Margaret Elliott** [2012] EWCA Civ. 56 (See paragraph 30) and **Vastint Leeds BV v. Persons Unknown** [2018] EWHC 2456 (Ch.) in which a *quia timet* injunction was described in the following terms:

> "**26.** Gee describes a quia timet injunction in the following terms [Gee, Commercial Injunctions, 6th ed (2016) at [2-035]]:
>
> "A quia timet (since he fears) injunction is an injunction granted where no actionable wrong has been committed, to prevent the occurrence of an actionable wrong, or to prevent repetition of an actionable wrong.""

The decision in **Fletcher** (supra) was referred to in approval in paragraph 30 of the aforesaid judgment.

27. The decision in **Fletcher** (supra) was also referred to by this Court in **Kuldip Singh v. Subhash Chander Jain** (2000) 4 SCC 50 as follows:

> "**6.** A *quia timet* action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process. In *Fletcher* v. *Bealey* [(1885) 28 Ch D 688 : 54 LJ Ch 424 : 52 LT 541] , Mr Justice Pearson explained the law as to actions *quia timet* as follows:
>
> "There are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action"."

28. A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in paragraph 110 of **Kihoto Hollohan** (supra) are *quia timet* actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. Paragraphs 110 and 111 of **Kihoto Hollohan** (supra) do not, therefore, in any manner, interdict judicial review in aid of the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a Tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period. What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided if the constitutional objective of disqualifying persons who have infracted the Tenth Schedule is to be adhered to. This period has been fixed keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is 5 years and the fact that persons who have incurred

such disqualification do not deserve to be MPs/MLAs even for a single day, as found in **Rajendra Singh Rana** (supra), if they have infracted the provisions of the Tenth Schedule.

29. In the years that have followed the enactment of the Tenth Schedule in 1985, this Court's experience of decisions made by Speakers generally leads us to believe that the fears of the minority judgment in **Kihoto Hollohan** (supra) have actually come home to roost. Verma, J. had held :

> "**181.** The Speaker being an authority within the House and his tenure being dependent on the will of the majority therein, likelihood of suspicion of bias could not be ruled out. The question as to disqualification of a Member has adjudicatory disposition and, therefore, requires the decision to be rendered in consonance with the scheme for adjudication of disputes. Rule of law has in it firmly entrenched, natural justice, of which, rule against bias is a necessary concomitant; and basic postulates of rule against bias are: *nemo judex in causa sua* — 'A Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased'; and 'it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.' This appears to be the underlying principle adopted by the framers of the Constitution in not designating the Speaker as the authority to decide election disputes and questions as to disqualification of members under Articles 103, 192 and 329 and opting for an independent authority outside the House. The framers of the Constitution had in this manner kept the office of the Speaker away from this controversy. There is nothing unusual in this scheme if we bear in mind that the final authority for removal of a Judge of the Supreme Court and High Court is outside the

judiciary in the Parliament under Article 124(4). On the same principle the authority to decide the question of disqualification of a Member of Legislature is outside the House as envisaged by Articles 103 and 192.

182. In the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such dispute with no provision for any appeal or revision against the Speaker's decision to any independent outside authority. This departure in the Tenth Schedule is a reverse trend and violates a basic feature of the Constitution since the Speaker cannot be treated as an authority contemplated for being entrusted with this function by the basic postulates of the Constitution, notwithstanding the great dignity attaching to that office with the attribute of impartiality."

30. It is time that Parliament have a rethink on whether disqualification petitions ought to be entrusted to a Speaker as a quasi-judicial authority when such Speaker continues to belong to a particular political party either de jure or de facto. Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as arbiter of disputes concerning disqualification which arise under the Tenth Schedule with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other outside independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the provisions contained in the Tenth Schedule, which are so vital in the proper functioning of our democracy.

31. It is not possible to accede to Shri Sibal's submission that this Court issue a writ of *quo warranto* quashing the appointment of the Respondent No.3 as a minister of a cabinet led by a BJP government. Mrs. Madhavi Divan is right in stating that a disqualification under the Tenth Schedule from being an MLA and consequently minister must first be decided by the exclusive authority in this behalf, namely, the Speaker of the Manipur Legislative Assembly. It is also not possible to accede to the argument of Shri Sibal that the disqualification petition be decided by this Court in these appeals given the inaction of the Speaker. It cannot be said that the facts in the present case are similar to the facts in **Rajinder Singh Rana** (supra). In the present case, the life of the legislative assembly comes to an end only in March, 2022 unlike in **Rajinder Singh Rana** (supra) where, but for this Court deciding the disqualification petition in effect, no relief could have been given to the petitioner in that case as the life of the legislative assembly was about to come to an end. The only relief that can be given in these appeals is that the Speaker of the Manipur Legislative Assembly be directed to decide the disqualification petitions pending before him within a period of four weeks from the date on which this judgment is intimated to him. In case no decision is forthcoming even after a period of four weeks, it will be open to any party to the

proceedings to apply to this Court for further directions/reliefs in the matter.

32. The impugned judgment of the High Court dated 23.07.2019 is set aside. The Civil Appeals arising out of SLP(C) No. 18659 of 2019 and SLP(C) No. 18763 of 2019 are partly allowed and the Civil Appeals arising out of SLP(C) No. 23703 of 2019 and SLP(C) No. 24146 of 2019 are dismissed in terms of this judgment. No order as to costs.

……J.
(R.F. Nariman)

……J.
(Aniruddha Bose)

……J.
(V. Ramasubramanian)

New Delhi;
January 21, 2020.