

Topic: Constitutionality of Anti-Defection Law

Name of the case: Kihota Hollohon v. Zachilhu, AIR 1993 SC 412

Bench: Justice L.M. Sharma, Justice M.V. Verma, Justice K.G. Reddy, Justice S. Agarwal

Fact of the case: The petitioner challenges 10th Schedule of the Constitution introduced by Constitution (52nd Amendment) Act, 1985 also known as anti-defection law.

Judgment: The Supreme Court while upholding the constitutional validity anti-defection law observed that the speaker's order under the law disqualifying a member of legislature on the ground of defection is subject to judicial review.

The majority has upheld the validity of para two of the 52nd Amendment. This provides for disqualification on defection of members from one political party to another. These provisions do not violate any rights or freedoms guaranteed to the legislature under Article 105 and 194 of the Constitution.

While rejecting the contention that the entire 10th Schedule, even after exclusion of Para 7, would be volitive of the basic structure of Constitution insofar as the provision in this schedule affect the democratic rights of elected members of the legislature and, therefore, of the principle of Parliamentary democracy, the majority judge has ruled that the Speaker acts as a tribunal adjudicating upon rights and obligations and his decision in a defection case would thus be open to judicial review under Article 136, 226 and 227, and that the penalty clause in para six of the schedule does not exclude adjudication of the course under these Articles of the Constitution. However, judicial review would not cover any stage prior to making of the decision by speaker. The only exception for any interlocutory interference being case of interlocutory disqualification or suspensions which may have grave, immediate and irreversible repercussion and consequences.
