Speaker Haryana Vidhan Sabha vs Kuldeep Bishnoi & Ors on 28 September, 2012

Equivalent citations: 2012 AIR SCW 6088, 2015 (12) SCC 381, (2012) 120 ALLINDCAS 6 (SC), (2012) 6 ALLMR 399 (SC), (2012) 2 CLR 1070 (SC), 2012 (9) SCALE 568, AIR 2013 SC (CIVIL) 105, 2012 (4) KER LT 47 SN, 2012 (120) ALLINDCAS 6 SOC, 2013 (97) ALL LR 44 SOC, (2012) 7 MAD LJ 392, (2012) 9 SCALE 568, (2012) 6 ALL WC 5704, (2013) 115 CALLT 452, 2013 (1) KCCR SN 36 (SC), AIR 2013 SUPREME COURT 120

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Bench: J. Chelameswar, Altamas Kabir

|REPORTABLE |

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7125 OF 2012
(Arising out of SLP(C)No.54 of 2012)

1 Speaker Haryana Vidhan Sabha … Appellant

Vs.

2 Kuldeep Bishnoi & Ors. … Respondents

WITH

CIVIL APPEAL NO.7126 OF 2012
(Arising out of SLP(C)No.55 of 2012)

1

2 Narendra Singh & Anr. … Appellants

Vs.

3 Kuldeep Bishnoi & Ors. … Respondents

AND

CIVIL APPEAL NO.7127 OF 2012
(Arising out of SLP(C)No.59 of 2012)

1 Dharam Singh & Anr. … Appellants

Vs.

4 Kuldeep Bishnoi & Ors. … Respondents

AND

CIVIL APPEAL NO.7128 OF 2012
(Arising out of SLP(C)No.72 of 2012)

1 Zile Ram Sharma … Appellant

Vs.

5 Kuldeep Bishnoi & Ors. … Respondents

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. The subject matter of challenge in these appeals is the final judgment and order dated 20th December, 2011, passed by the Punjab & Haryana High Court in the different Letters Patent Appeals filed by the Appellants herein.

3. The first Civil Appeal, arising out of SLP(C)No.54 of 2012, has been filed by the Speaker of the Haryana Vidhan Sabha against the judgment and order passed by the Punjab and Haryana High Court in his Letters Patent Appeal No.366 of 2011. By the said judgment, the Division Bench not only dismissed the appeal and did not choose to interfere with the directions given by the learned Single Judge to the Speaker to decide the petitions for disqualification of five MLAs within a period of four months, but in addition, directed that pending such decision, the five MLAs in question would stand disqualified from effectively functioning as members of the Haryana Vidhan Sabha. Aggrieved by the interim directions purportedly given under Order 41 Rule 33 of the Code of Civil Procedure (C.P.C.), the Speaker filed SLP(C)No.54 of 2012, challenging the same.

4. The other three Special Leave Petitions (now appeals) were filed by the five MLAs, who were prevented from performing their functions as Members of the Assembly by the directions contained in the impugned judgment and order dated 20th December, 2011. While SLP(C)No.55 of 2012 was filed by Narendra Singh and another, SLP(C)Nos.59 of 2012 and 72 of 2012 were filed by Dharam Singh and another and Zile Ram Sharma, being aggrieved by the impugned judgment and order for the same reasons as contained in the Special Leave Petition filed by Narendra Singh and another. The focal point of challenge in all these appeals, therefore, is the orders passed by the Division Bench of the Punjab and Haryana High Court on 20th December, 2011, while disposing of the Letters Patent Appeals preventing the five named MLAs, who are also Appellants before us, from effectively discharging their functions as Members of the Vidhan Sabha.

5. The facts narrated above give rise to the following substantial questions of law of public importance, namely :-

> (a) Whether the High Court in exercise of its powers under Articles 226 and 227 of the Constitution, has the jurisdiction to issue directions of an interim nature to a Member of the House while a disqualification petition of such Member is pending before the Speaker of a State Legislative Assembly under Article 191 read with the Tenth Schedule to the Constitution of India?

(b) Whether even in exercise of its powers of judicial review, the High Court, as a constitutional authority, can issue mandatory directions to the Speaker of a State Assembly, who is himself a constitutional authority, to dispose of a disqualification petition within a specified time?

(c) Can the High Court, in its writ jurisdiction, interfere with the disqualification proceedings pending before the Speaker and pass an order temporarily disqualifying a Member of the State Legislative Assembly, despite the law laid down by this Court in Raja Soap Factory vs. V. Shantharaj & Ors. [(1965(2) SCR 800] and in L. Chandra Kumar vs. Union of India [(1997) 3 SCC 261], to the contrary?

(d) When a disqualification petition filed under Article 191 read with the Tenth Schedule to the Constitution of India is pending consideration before the Speaker, can a parallel Writ Petition, seeking the same relief, be proceeded with simultaneously? And

(e) Did the High Court have jurisdiction to give directions under Order 41 Rule 33 of the Code of Civil Procedure, despite the express bar contained in the Explanation to Section 141 of the Code of Civil Procedure, in proceedings under Article 226 of the Constitution?

6. In order to provide the peg on which the above questions are to be hung, it is necessary to understand the background in which such substantial questions of law have arisen.

7. The 12th Legislative Assembly Elections in Haryana were held on 13th October, 2009. After the results of the elections were declared on 22nd October, 2009, the Indian National Congress Party, hereinafter referred to as 'the INC', emerged as the single largest party having won in 40 out of the 90 seats in the Assembly. Since it was short of an absolute majority, the INC formed the Government in collaboration with seven independents and one MLA from the Bahujan Samaj Party. Subsequently, on 9th November, 2009, four Legislative Members of the Haryana Janhit Congress (BL) Party, hereinafter referred to as 'the HJC (BL)', wrote to the Speaker of their intention to merge the HJC (BL) with the INC in terms of the provisions of paragraph 4 of the Tenth Schedule to the Constitution of India. The Speaker was requested to accept the merger and to recognize the applicant legislators as Members of the INC in the Haryana Vidhan Sabha.

8. On hearing the four legislators, namely, Shri Satpal Sangwan, Shri Vinod Bhayana, Shri Narendra Singh and Shri Zile Ram Sharma, who appeared before him, the Speaker by his order dated 9th November, 2009, accepted the merger with immediate effect, purportedly in terms of paragraph 4 of the Tenth Schedule to the Constitution and directed that from the date of his order the said four legislators would be recognized as legislators of the INC in the Haryana Vidhan Sabha. Thereafter, a similar request was made to the Speaker by Shri Dharam Singh, another Member of the Vidhan Sabha elected as a candidate of the HJC (BL) to recognize the merger of the HJC (BL) with the INC and to also recognize him, along with the other four legislators, as Members of the INC in the Haryana Vidhan Sabha. Subsequently, another application was filed by Shri Dharam Singh before the Speaker on 10th November, 2009, requesting him to be recognized as a part of the INC in the Haryana Vidhan Sabha. The Speaker by a separate order dated 10th November, 2009, allowed the said application upon holding that the same was in consonance with paragraph 4(1) of the Tenth Schedule to the Constitution.

9. Challenging the aforesaid orders, the Respondent No.1, Shri Kuldeep Bishnoi, filed five separate petitions before the Speaker under Article 191 read with the Tenth Schedule to the Constitution of

India and the Haryana Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, on the ground that they had voluntarily given up the membership of their original political party and had joined the INC in violation of the provisions of paragraph 4(1) of the Tenth Schedule.

10. On receipt of the said petitions, the Speaker on 22nd December, 2009, forwarded copies thereof to the concerned MLAs, asking them to submit their comments within a period of three weeks. On 7th April, 2010, applications were received by the Speaker from the concerned MLAs praying for time to file their written statement. The matter was accordingly adjourned and further time was granted to the concerned MLAs to file their explanation. The Respondent No.1, Shri Kuldeep Bishnoi, however, filed a Writ Petition, being C.W.P. No.14194 of 2010, in the Punjab & Haryana High Court, seeking quashing of the orders passed by the Speaker on 9th and 10th November, 2009, and also for a declaration that the five MLAs in question were disqualified from the membership of the Haryana Vidhan Sabha, and, in the alternative, for a direction on the Speaker to dispose of the disqualification petitions within a period of three months. Notice of motion was issued to the Respondents on 16th August, 2010, directing them to enter appearance and to file their written statements, within three days before the next date of hearing fixed on 1st September, 2010, either in person or through a duly-instructed Advocate.

11. On receipt of notice from the High Court, the Speaker by his order dated 30th August, 2010, adjourned the hearing of the disqualification petitions sine die. On 20th December, 2010, the learned Single Judge of the High Court allowed the Writ Petition and directed the Speaker to finally decide the disqualification petitions pending before him within a period of four months from the date of receipt of the certified copy of the order, which direction has given rise to the question as to whether the High Court in its jurisdiction under Articles 226 and 227 of the Constitution was competent to issue such a direction to the Speaker who was himself a constitutional authority.

12. In terms of the order passed by the learned Single Judge, the date of hearing of the five disqualification petitions was fixed for 20th January, 2011, by the Speaker. On the said date, Dharam Singh, one of the Appellants before us, filed his reply before the Speaker along with an application for striking out “the scandalous, frivolous and vexatious” averments made in the disqualification petition. The matters had to be adjourned on the said date till 4th February, 2011, to enable the Writ Petitioner to file his reply to the said application and for further consideration.

13. On the very next day, Letters Patent Appeal No.366 of 2011 was filed by the Speaker, challenging the order passed by the learned Single Judge of the High Court on 20th December, 2010. On 1st March, 2011, the said LPA was listed before the Division Bench which stayed the operation of the judgment of the learned Single Judge. A submission was also made by the learned Solicitor General of India, appearing on behalf of the Speaker, that every attempt would be made to dispose of the disqualification petitions as expeditiously as possible.

14. Thereafter, the disqualification petitions were taken up for hearing by the Speaker on 1st April, 2011, and the case was adjourned till 20th April, 2011, for further arguments. On 20th April, 2011, counsel for the parties were heard and order was reserved on the application under Order 6 Rules 2

and 16 of the Code of Civil Procedure, which had been filed by Shri Dharam Singh. By his order dated 27th April, 2011, the Speaker dismissed the said application filed by Dharam Singh and Shri Kuldeep Bishnoi was directed to file his list of witnesses along with their affidavits within 15 days from the date of the order. It was also mentioned in the order that counsel for the Respondents would be given an opportunity to cross-examine the Writ Petitioner's witnesses. Thereafter, the Speaker fixed 25th May, 2011, for examination/cross-examination of Shri Kuldeep Bishnoi, MLA, and his witnesses, and on the said date Shri Bishnoi's evidence was tendered and recorded. However, his cross- examination could not be completed and the next date for further cross-examination of Shri Kuldeep Bishnoi was fixed for 6th June, 2011. In between, on 2nd June, 2011, the matter came up before the Division Bench of the High Court when directions were given for hearing of the petitions at least every week i.e. at least four times in a month. However, on account of the sudden demise of Chaudhary Bhajan Lal, M.P. and former Chief Minister of Haryana, and also the father of Shri Kuldeep Bishnoi, the disqualification petitions were adjourned by the Speaker till 20th June, 2011. On 21st June, 2011, the Speaker fixed all disqualification petitions for hearing on 24th June, 2011 and for further cross-examination of Shri Kuldeep Bishnoi. The cross-examination of Shri Kuldeep Bishnoi was concluded before the Speaker on 7th July, 2011, and 5th August, 2011, was fixed for recording the evidence of the MLAs. On 18th July, 2011, Letters Patent Appeal No.366 of 2011 and other connected matters were listed before the Division Bench of the High Court. The said Appeal was heard on three consecutive days when judgment was reserved.

15. In the meantime, proceedings before the Speaker continued and since the same were not being concluded in terms of the assurances given, the Division Bench of the High Court directed the Speaker to file an affidavit on or before 11th November, 2011. Finally, being dissatisfied with the progress of the pending disqualification petitions before the Speaker, the Division Bench took up the Letters Patent Appeals on 2nd December, 2011, when directions were given for production of the entire records of the matter pending before the Speaker. On 7th December, 2011, the relevant records of the proceedings before the Speaker were submitted to the High Court which adjourned the matter till 19th December, 2011, for further consideration. However, as alleged on behalf of the Appellants, the Bench was not constituted on 19th December, 2011, and without any further hearing or giving an opportunity to the Speaker's counsel to make submissions on the status report, the High Court proceeded to pronounce its judgment on the Letters Patent Appeals. By its judgment which has been impugned in these proceedings, the Division Bench upheld the directions of the learned Single Judge directing the Speaker to decide the disqualification petitions within a period of four months. However, while disposing of the matter, the Division Bench stayed the operation of the orders passed by the Speaker on the merger of the HJC (BL) with the INC dated 9th November, 2009 and 10th November, 2009. It also declared the five MLAs, who have filed separate appeals before this Court, as being unattached members of the Assembly with the right to attend the Sessions only. It was directed that they would not be treated either as a part of the INC or the HJC(BL) Party, with a further direction that they would not hold any office either. It is the aforesaid directions and orders which have resulted in the filing of the several Special Leave Petitions (now Civil Appeals) before this Court by the Speaker and the five concerned MLAs. As a consequence of the order passed by the Division Bench of the High Court, the five independent Appellants before us have been prevented from discharging their functions as Members of the Haryana Vidhan Sabha, even before the disqualification petitions filed against them by Shri Kuldeep Bishnoi could be heard

and decided.

16. Appearing for the Speaker of the Vidhan Sabha, who is the Appellant in the appeal arising out of SLP(C)No.54 of 2012, Mr. Rohington F. Nariman, Solicitor General of India, contended that this was not a case where the survival of the Government depended upon allegiance of the five MLAs under consideration, since the Government was formed with the support of seven Independents and one MLA from the Bahujan Samaj Party. In fact, the five MLAs, against whom disqualification petitions are pending consideration before the Speaker, were not part of the Government when it was initially formed.

17. Mr. Nariman contended that the learned Single Judge decided the issue of merger in terms of paragraph 4 of the Tenth Schedule to the Constitution by holding that the two orders dated 9th and 10th November, 2009, were not final or conclusive and that, in any event, when the disqualification petitions came to be decided, it would be open for the Speaker to reconsider the issue of merger. The learned Solicitor General emphasized the fact that there was neither any appeal nor any cross-objection in respect of the aforesaid decision of the learned Single Judge and even if the same fell within one of the exceptions indicated in Banarsi Vs. Ram Phal [(2003) 9 SCC 606], the judgment must still be held to have become final between the parties. The learned Solicitor General urged that all the decisions which had been cited on behalf of the Respondent No.1, were decisions rendered prior to the judgment in Banarsi's case (supra). It was, therefore, submitted that the decision in Banarsi's case (supra) is the final view in regard to the provisions of Order 41 Rule 33 of the Code of Civil Procedure.

18. The learned Solicitor General then challenged the orders of the Division Bench of the High Court on the ground of violation of the principles of natural justice. It was contended that while the High Court had concluded the hearing and reserved judgment on 20th July, 2011, by order dated 12th October, 2011, it directed the Speaker to place on record the status of the proceedings relating to the disqualification petitions. Although, the same were duly filed, without giving the parties further opportunity of hearing with regard to the said records, the Division Bench directed the matter to be listed for further consideration on 19th December, 2011. It was submitted that though the Bench did not assemble on 19th December, 2011, the Division Bench delivered the impugned judgment on 20th December, 2011, without any further opportunity of hearing to the parties.

19. The learned Solicitor General submitted that the procedure adopted was contrary to the law laid down in Kihoto Hollohan vs. Zachillhu [(1992) Supp. (2) SCC 651], wherein it was stated as under:-

> "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."

20. The learned Solicitor General sought to reemphasize the fact that the present case is not a case involving disqualification or suspension of a Member of the House by the Speaker during the pendency of the proceedings, but relates to disqualification proceedings pending before the Speaker, which were not being disposed of for one reason or the other. It was submitted that the fact that the Speaker had not finalized the disqualification petitions for almost a period of two years, could not and did not vest the High Court with power to usurp the jurisdiction of the Speaker and to pass interim orders effectively disqualifying the five MLAs in question from functioning effectively as Members of the House. The learned Solicitor General urged that the facts of this case would not, therefore, attract the exceptions carved out in Kihoto Hollohan's case (supra).

21. The learned Solicitor General lastly urged that the single-most important error in the impugned judgment is that it sought to foreclose the right of the Speaker to decide the disqualification petitions under paragraph 4 of the Tenth Schedule. The said decision was also wrong since the Division Bench chose to follow judgments which related to the concept of "split" under paragraph 3 of the Tenth Schedule, which today stands deleted therefrom. The learned Solicitor General submitted that there was a clear difference between matters relating to the erstwhile paragraph 3 of the Tenth Schedule and paragraph 4 thereof. While paragraph 3 of the Tenth Schedule required proof of two splits, paragraph 4(2) requires proof of only one deemed merger. The learned Solicitor General submitted that there was no concept of deemed split in paragraph 3. It was submitted that paragraph 4(2) is meant only as a defence to a petition for disqualification and the same would succeed or fail depending on whether there was a deemed merger or not.

22. It was further submitted that under paragraph 4 of the Tenth Schedule, the Speaker was not the deciding authority on whether a merger of two political parties had taken place or not. It was urged that the expression used in paragraph 4(2) of the Tenth Schedule "for the purpose of paragraph 4(1)" clearly indicates that the deeming provision is not in addition to, but for the purpose of paragraph 4(1), which is entirely different from the scheme of paragraph 3 which uses the expression "and", thereby indicating that a split takes place only if there is a split in the original political party and at least one-third of the members of the legislature party also joined in. It was further submitted that the use of the expression "if and only if" in paragraph 4 of the Tenth Schedule is to re-emphasize the fact that the Speaker cannot decide whether merger of the original party had taken place, as he is only required to decide whether merger was a defence in a disqualification petition filed under paragraph 6 of the Tenth Schedule.

23. The learned Solicitor General then urged that the submission advanced on behalf of the Respondent No.1 that in view of the delay by the Speaker in disposing of the disqualification petitions, this Court should decide the same, was wholly misconceived, since it pre-supposes the vesting of power to decide such a question on the Court, though the same is clearly vested in the Speaker. Even otherwise, in the absence of any Special Leave Petition by the Respondent No.1, the most that could be done by this Court would be to dismiss the Special Leave Petition.

24. Distinguishing the various decisions cited before the Division Bench on behalf of the Respondent No.1, and, in particular, the decision in Rajendra Singh Rana vs. Swami Prasad Maurya [(2007) 4 SCC 270], the learned Solicitor General submitted that in the said case, the life of the Assembly was almost over, whereas in the present case the next election would be held only in October, 2014. Furthermore, the same was a judgment where the final orders passed by the Speaker on the disqualification petitions were under challenge, unlike in the present case where the disqualification petitions are still pending decision with the Speaker.

25. The learned Solicitor General submitted that if the decision in Rajendra Singh Rana's case (supra) which, inter alia, dealt with the question relating to the Speaker's powers to decide a question in respect of paragraph 4 of the Tenth Schedule independent of any application under paragraph 6 thereof, is to be made applicable in the facts of this case, the same would be contrary to the decision of this Court in Raja Soap Factory vs. S.P. Shantharaj [(1965) 2 SCR 800]. The learned Solicitor General also made special reference to the decision of this Court in Mayawati vs. Markandeya Chand & Ors. [(1998) 7 SCC 517], wherein it was, inter alia, held that if the order of the Speaker disqualifying a Member was to be set aside, the matter had to go back to the Speaker for a fresh decision, since it was not the function of this Court to substitute itself in place of the Speaker and decide the question which had arisen in the case.

26. In addition to his aforesaid submissions, the learned Solicitor General also submitted that various substantial questions of law in regard to the interpretation of the Constitution, had arisen in the facts of the present case, namely,

a) Whether paragraph 4 of the Tenth Schedule to the Constitution, read as a whole, contemplates that when at least two-thirds of the members of the legislature party agree to a merger between one political party and another, only then there is a "deemed merger" of one original political party with another?

b) Whether in view of the difference in language between paragraphs 3 and 4 of the Tenth Schedule, a deemed merger is the only thing to be looked at as opposed to a "split" which must be in an original political party cumulatively with a group consisting of not less than one third of the members of the legislature party?

c) Whether post-merger, those who do not accept the merger are subject to the anti-defection law prescribed in the Tenth Scheudle?

d) Whether there is a conflict between the five-judge Benches in Rajendra Singh Rana v Swami Prasad Maurya, (2007) 4 SCC 270 as against Kihoto Hollohan, 1992 Supp (2) SCC 651 and Supreme Court Advocate-on-Record Association case, (1988) 4 SCC 409?

e) What is the status of an 'unattached' Member in either House of Parliament or in the State Legislature? [already under reference to a larger Bench in Amar Singh v Union of India, (2011) 1 SCC 210]?

f) Whether in view of Article 212(2) of the Constitution of India, if a Speaker of a State Legislature fails to decide a Petition for disqualification, he would not be subject to the jurisdiction of any Court?

g) Whether the Speaker, while exercising original jurisdiction/powers in a disqualification petition under Para 6(1) of the Tenth Schedule to the Constitution of India, has power to pass interim orders?

27. According to the learned Solicitor General, the aforesaid questions, which involved interpretation of the Constitution, were required to be decided by a Bench of not less than 5 Judges in view of the constitutional mandate in Article 145(3) of the Constitution, before a final decision was taken in these appeals.

28. Appearing for Shri Kuldeep Bishnoi, the Respondent No.1 in the appeals preferred by the Speaker, Haryana Vidhan Sabha, and the five MLAs, against whom disqualification proceedings were pending, Mr. Nidhesh Gupta, learned Senior Advocate, at the very threshold of his arguments submitted that this was a case which clearly demonstrated how the process of law was being misapplied and misused by the Speaker of the Haryana Vidhan Sabha, so as to defeat the very purpose and objective of the anti-defection law as contained in the Tenth Schedule to the Constitution. Mr. Gupta emphasized in great detail the manner in which the Speaker had deferred the hearing of the disqualification petitions filed by the Respondent No.1 against the five MLAs, on one pretext or the other, despite the fact that the applications for disqualification under paragraph 4(2) of the Tenth Schedule to the Constitution had been made as far back as on 9th December, 2009.

29. Mr. Gupta submitted that till today, the said disqualification applications are pending decision before the Speaker and since such delay in the disqualification proceedings was against the very grain and object of the Tenth Schedule to the Constitution, the Division Bench of the High Court had no other option but to pass appropriate orders by invoking jurisdiction under Order 41 Rule 33 of the Code of Civil Procedure. In effect, the entire burden of Mr. Gupta's submissions was directed against the prejudice caused to the Respondent No.1 on account of the inaction on the part of the Speaker in disposing of the pending disqualification petitions within a reasonable time. Mr. Gupta sought to justify the impugned order passed by the Division Bench of the High Court on the ground that on account of the deliberate delay on the part of the Speaker in allowing the five dissident MLAs from continuing to function as Members of the House despite their violation of the provisions of paragraph 4(4) of the Tenth Schedule to the Constitution, the High Court in exercise of its appellate powers under Order 41 Rule 33 of the Code of Civil Procedure gave interim directions so as to ensure that the Petitioner before the Speaker was non-suited on account of the Speaker's attempts to delay the disqualification of the said five MLAs.

30. Mr. Gupta submitted that by virtue of the interim order passed by the Division Bench of the High Court under Order 41 Rule 33 of the Code of Civil Procedure, hereinafter referred to as "CPC", the High Court merely suspended the said Members from discharging all their functions as Members of the House, without touching their membership. He submitted that such a course of

action was the only remedy available to the High Court to correct the deliberate and willful attempt by the Speaker to subvert the very essence of the Tenth Schedule to the Constitution.

31. For all the submissions advanced by Mr. Gupta, the main weapon in his armoury is Order 41 Rule 33 CPC. The same is only to be expected, since no final order had been passed by the Speaker on the disqualification petitions, which would have entitled the High Court to pass interim orders in exercise of its powers under Article 226 and 227 of the Constitution, since it is only the Speaker, who under paragraph 6 of Tenth Schedule to the Constitution, is entitled to decide questions in regard to disqualification of a Member of the House on the ground of defection. Furthermore, all the different cases cited by Mr. Gupta relate to proceedings taken against final orders passed by the respective Speakers and the width of the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

32. Mr. Gupta dealt separately with the law relating to Order 41 Rule 33 CPC in support of his contention that under the said provision, the High Court was competent to pass interim orders effectively disqualifying a Member of the House, notwithstanding the provisions of paragraph 6 of Tenth Schedule to the Constitution. Mr. Gupta has relied heavily on the decision of this Court in Mahant Dhangir & Anr. vs. Madan Mohan & Ors. [(1987) Supp. SCC 528] wherein, while considering the width of Order 41 Rule 33 CPC, this Court was of the view that a litigant should not be left without remedy against the judgment of a learned Single Judge and that if a cross- objection under Rule 22 of Order 41 CPC was not maintainable against the co- respondent, the Court could consider it under Rule 33 of Order 41 CPC. This Court held that Rules 22 and 33 are not mutually exclusive, but are closely related to each other. If objection could not be taken under Rule 22 against the co-respondent, Rule 33 could come to the rescue of the objector. It was also observed that "the sweep of the power under Rule 33 is wide enough to determine any question, not only between the appellant and respondent, but also between the respondent and co-respondents. The appellate court could pass any decree or order which ought to have been passed in the circumstances of the case."

33. Mr. Gupta urged that the law, as declared by this Court, indicates that under Order 41 Rule 33 CPC, this Court as an appellate Court, has power to pass any decree or make any order which ought to have been passed or make such further decree or order as the case may require.

34. Mr. Gupta also referred to the Constitution Bench decision of this Court in L. Chandra Kumar vs. Union of India [(1997) 3 SCC 261], in which the Bench was considering the question as to whether under clause 2(d) of Article 323-A, the jurisdiction of all Courts, except the jurisdiction of this Court under Article 136 of the Constitution, was excluded.

35. The very foundation of Mr. Gupta's submissions is based upon Order 41 Rule 33 CPC which ordinarily empowers the Civil Court to pass any interim order in appeal. What we are, however, required to consider in these appeals is whether such jurisdiction could at all have been invoked by the High Court when no final order had been passed by the Speaker on the disqualification petitions.

36. Mr. Gupta lastly urged that the ground relating to the mala fides of the Speaker's inaction in delaying the final decision in the disqualification proceedings, had not been given up finally, as the

very conduct of the Speaker revealed such mala fides at almost every stage of the pending proceedings.

37. While adopting the submissions made by the Solicitor General, Mr. K.K. Venugopal and Mr. Mukul Rohatgi, learned senior counsel, appearing for the Appellants in the other appeals, submitted that the order of the Division Bench would have far-reaching consequences since the power to decide all matters relating to disqualification of Members of the Legislative Assembly were vested in the Speaker under paragraph 6 of the Tenth Schedule to the Constitution.

38. During the pendency of the Special Leave Petitions, I.A. Nos.2 and 3 were filed in Special Leave Petition (Civil) No.54 of 2012 by S/Shri Ajay Singh Chautala and Sher Singh Barshami, both MLAs in the Haryana Vidhan Sabha. A further application, being I.A. No.4 of 2012, was filed by one Shri Ashok Kumar Arora, who is also an MLA of the Haryana Vidhan Sabha. The prayer in all the said applications was for leave to intervene in the Special Leave Petition filed by the Speaker of the Haryana Vidhan Sabha. The same were allowed by Order dated 28th February, 2012.

39. Pursuant to the said order, Dr. Rajeev Dhawan, learned senior counsel, appeared for Shri Ajay Singh Chautala and the other interveners and urged that the orders passed by the Speaker on 9th and 10th November, 2009, were void ab-initio and in excess of jurisdiction. However, in the lengthy submissions advanced by Dr. Dhawan in relation to the provisions of erstwhile paragraph 3 and paragraph 4 of the Tenth Schedule to the Constitution, reference was made to various decisions of this Court, including that in Rajendra Singh Rana's case (supra). The same are, however, all based on decisions taken by the Speaker on the question of "split" or "merger", while in the instant case we are concerned with the inaction of the Speaker in disposing of the disqualification petitions filed by the Respondent No.1 and the jurisdiction of the High Court to issue interim orders restraining a Member of the House from discharging his functions as an elected representative of his constituents despite the provisions of paragraph 6 of the Tenth Schedule to the Constitution.

40. Most of the questions raised by Mr. Nidhesh Gupta and Dr. Rajeev Dhawan contemplate a situation where the Speaker had taken a final decision on a disqualification petition. However, in the instant case we are really required to consider whether the High Court was competent to pass interim orders under its powers of judicial review under Articles 226 and 227 of the Constitution when the disqualification proceedings were pending before the Speaker. In fact, even in Kihoto Hollohan's case (supra), which has been referred to in extenso by Dr. Dhawan, the scope of judicial review has been confined to violation of constitutional mandates, mala fides, non- compliance with rules of natural justice and perversity, but it was also very clearly indicated that having regard to the constitutional scheme in the Tenth Schedule, normally judicial review could not cover any stage prior to the making of the decision by the Speaker or the Chairman of the House, nor any quia timet action was contemplated or permissible.

41. From the submissions made on behalf of the respective parties, certain important issues emerge for consideration. One of the said issues raised by Mr. Nidhesh Gupta concerns the competence of the High Court to assume jurisdiction under Order 41 Rule 33 CPC when disqualification petitions were pending before the Speaker and were yet to be disposed of. Another important issue which

arises, de hors the submissions made on behalf of the respective parties, is whether the question of disqualification on account of merger, which had been accepted by the Speaker, could have been entertained by the Speaker under paragraph 4 of The Tenth Schedule, when such powers were vested exclusively in the Speaker under paragraph 6 thereof.

42. Relying on the decisions of this Court in Kihoto Hollohan's case (supra), Jagjit Singh Vs. State of Haryana [(2006) 11 SCC 1] and Mayawati's case (supra), the learned Single Judge came to the conclusion that while passing an order under paragraph 4 of the Tenth Schedule to the Constitution, the Speaker does not act as a quasi-judicial authority and that such order would necessarily be subject to adjudication under paragraph 6.

43. Accordingly, the main challenge to the impugned decision of the Division Bench of the Punjab & Haryana High Court is with regard to the competence of the Speaker of the Assembly to decide the question of disqualification of the Members of the Haryana Janhit Congress (BL) Party on their joining the Indian National Congress Party on the basis of the letters written by the five Members of the former legislature party. Incidentally, the learned Single Judge held that the issue would have to be decided by the Speaker himself while considering the disqualification petitions under paragraph 6 of the Tenth Schedule to the Constitution. What is important, however, is the question as to whether such a decision could be arrived at under paragraph 4 of the Tenth Schedule to the Constitution whereunder the Speaker has not been given any authority to decide such an issue. Paragraph 4 merely indicates the circumstances in which a Member of a House shall not be disqualified under Sub-paragraph (1) of Paragraph 2. One of the circumstances indicated is where the original political party merges with another political party and the Member claims that he and any other Member of his original political party have become Members of such other political party, or, as the case may be, of a new political party formed by such merger. As stressed by the learned Solicitor General, for the purpose of sub-paragraph (1), the merger of the original political party of a Member of the House, shall be deemed to have taken place if, and only if, not less than two-thirds of the Members of the legislature party concerned agreed to such merger. In other words, a formula has been laid down in paragraph 4 of the Tenth Schedule to the Constitution, whereby such Members as came within such formula could not be disqualified on ground of defection in case of the merger of his original political party with another political party in the circumstances indicated in paragraph 4(1) of the Tenth Schedule to the Constitution.

44. The scheme of the Tenth Schedule to the Constitution indicates that the Speaker is not competent to take a decision with regard to disqualification on ground of defection, without a determination under paragraph 4, and paragraph 6 in no uncertain terms lays down that if any question arises as to whether a Member of the House has become subject to disqualification, the said question would be referred to the Speaker of such House whose decision would be final. The finality of the decisions of the Speaker was in regard to paragraph 6 since the Speaker was not competent to decide a question as to whether there has been a split or merger under paragraph 4. The said question was considered by the Constitution Bench in Rajendra Singh Rana's case (supra). While construing the provisions of the Tenth Schedule to the Constitution in relation to Articles 102 and 191 of the Constitution, the Constitution Bench observed that the whole proceedings under the Tenth Schedule gets initiated as a part of disqualification proceedings. Hence, determination of the

question of split or merger could not be divorced from the motion before the Speaker seeking a disqualification of the Member or Members concerned under paragraph 6 of the Tenth Schedule. Under the scheme of the Tenth Schedule the Speaker does not have an independent power to decide that there has been split or merger as contemplated by paragraphs 3 and 4 respectively and such a decision can be taken only when the question of disqualification arises in a proceeding under paragraph 6. It is only after a final decision is rendered by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution that the jurisdiction of the High Court under Article 226 of the Constitution can be invoked.

45. We have to keep in mind the fact that these appeals are being decided in the background of the complaint made to the effect that interim orders have been passed by the High Court in purported exercise of its powers to judicial review under Articles 226 and 227 of the Constitution, when the disqualification proceedings were pending before the Speaker. In that regard, we are of the view that since the decision of the Speaker on a petition under paragraph 4 of the Tenth Schedule concerns only a question of merger on which the Speaker is not entitled to adjudicate, the High Court could not have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution. It is in fact in a proceeding under paragraph 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order which is amenable to the writ jurisdiction of the High Court. It is in such proceedings that the question relating to the disqualification is to be considered and decided. Accordingly, restraining the Speaker from taking any decision under paragraph 6 of the Tenth Schedule is, in our view, beyond the jurisdiction of the High Court, since the Constitution itself has vested the Speaker with the power to take a decision under paragraph 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order.

46. The submissions made by Mr. Nidhesh Gupta relating to Order 41 Rule 33, in our view, are not of much relevance on account of what we have indicated hereinabove. Order 41 Rule 33 vests the Appellate Court with powers to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or the order, as the case may require. The said power is vested in the Appellate Court by the statute itself, but the principles thereof cannot be brought into play in a matter involving a decision under the constitutional provisions of the Tenth Schedule to the Constitution, and in particular paragraph 6 thereof.

47. The appeal filed by the Speaker, Haryana Vidhan Sabha, against the judgment of the Division Bench of the High Court, is not, therefore, capable of being sustained and the Appeal filed by the Speaker is accordingly dismissed. The other Appeals preferred by the five disqualified MLAs have, therefore, to be allowed to the extent of the directions given by the learned Single Judge and endorsed by the Division Bench that the five MLAs would stand disqualified from effectively functioning as Members of the Haryana Vidhan Sabha till the Speaker decided the petitions regarding their disqualification, within a period of four months.

48. In our view, the High Court had no jurisdiction to pass such an order, which was in the domain of the Speaker. The High Court assumed the jurisdiction which it never had in making the interim

order which had the effect of preventing the five MLAs in question from effectively functioning as Members of the Haryana Vidhan Sabha. The direction given by the learned Single Judge to the Speaker, as endorsed by the Division Bench, is, therefore, upheld to the extent that it directs the Speaker to decide the petitions for disqualification of the five MLAs within a period of four months. The said direction shall, therefore, be given effect to by Speaker. The remaining portion of the order disqualifying the five MLAs from effectively functioning as Members of the Haryana Vidhan Sabha is set aside. The said five MLAs would, therefore, be entitled to fully function as Members of the Haryana Vidhan Sabha without any restrictions, subject to the final decision that may be rendered by the Speaker in the disqualification petitions filed under paragraph 6 of the Tenth Schedule to the Constitution.

49. The Speaker shall dispose of the pending applications for disqualification of the five MLAs in question within a period of three months from the date of communication of this order.

50. Having regard to the peculiar facts of the case, the parties shall bear their own costs.

... ... J. (ALTAMAS KABIR)
.....J. (J. CHELAMESWAR) New Delhi Dated:28.09.2012.