Ravi S. Naik And Sanjay Bandekar vs Union Of India And Others on 9 February, 1994

Equivalent citations: AIR1994SC1558, JT1994(1)SC551, 1993(2)SCALE992, 1994SUPP(2)SCC641, [1994]1SCR754, AIR 1994 SUPREME COURT 1558, 1994 AIR SCW 1214, (1994) 1 SCR 754 (SC), 1994 (2) SCC(SUPP) 641, (1994) 1 JT 551 (SC), 1994 (1) SCR 754, 1994 (1) JT 551, (1994) 2 SCJ 21

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Bench: M.N. Venkatachaliah, S.C. Agrawal

ORDER

S.C. Agrawal, J.

1. These appeals are directed against the judgment of the High Court of Bombay, Panaji Bench dated May 14, 1993 in Writ Petitions Nos. 48 of 1991 and 321 of 1990. They raise questions relating to disqualification of a Member of the State Legislature under Article 191(2) read with Tenth Schedule to the Constitution.

2. Elections for the Goa Legislative Assemble were held in November, 1989. The Assembly is composed of 40 members. After the elections the position of the parties was as under :

Congress (I) - 20 Maharashtrawadi Gomantak Party (MGP) - 18 Independents - 2

3. With the support of one independent member, the Congress (I) formed the Government. After a short time seven Members left the Congress (I) and formed the Goan People's Party (GPP). GPP and MGP formed a coalition Government under the manner of Progressive Democratic Front (PDF). At first Churchill Alemao became the Chief Minister but later on Dr. Luis Proto Barbosa was sworn in as the Chief Minister. On December 4, 1990, MGP withdrew its support to the PDF Government and thereupon on December 6, 1990, a notification was issued summoning the Assembly on December 10, 1990 and the Chief Minister, Dr. Barbosa, was required to seek a vote of Confidence. Before the Assembly could meet Dr. Barbosa tendered his resignation as the Chief Minister on December 10, 1990 and the same was accepted. On December 10, 1990, Dr. Wilford D'Souza, leader of the Congress (I) Legislature party staked his claim to form the Government. He claimed the support of 20 Members consisting of 13 Members of the Congress (I), 4 Members of GPP and 2 members of MGP, who would form a common front known as the Congress Democratic Front (CDF). Two

Members of MGP, who were included in the CDF, were Sanjay Bandekar and Ratnakar Chopdekar, appellants in C.A.No. 3309 of 1993. Ramakant Khalap, who was the leader of the PDF claimed support of 16 Members of MGP and three Members who were formerly with GPP. The Governor submitted his report dated December 11, 1990 and taking into consideration the said report as well as other information received by him, the President of India issued a Proclamation dated December 14, 1990 under Article 356 of the Constitution whereby the President's Rule was imposed in the State and the Legislative Assembly was suspended.

4. In the meanwhile, on December 10, 1990, Ramakant Khalap filed two separate petitions under Article 191(2) the Constitution before the Speaker of the State Legislative Assembly whereby he sought that both Bandekar and Chopdekar be disqualified as Members of the State Legislature on the ground of defection under Article 191(2) read with paragraph 2(i)(a) and 2(i)(b) of the Tenth Schedule to the Constitution. By order dated December 13, 1990, the Speaker Shri Surendra Vir Sirsat, declared both these appellants as disqualified from being members of the Goa Legislative Assembly under Article 191(2) of the Constitution on the ground of defection as set out in Paragraph 2(i)(a) and 2(i)(b) of the Tenth Schedule to the Constitution. Both these Members filed a writ petition (Writ Petition No. 321 of 1990) in the High Court on December 13, 1990. The said writ Petition was amended on December 14, 1990 to incorporate a challenge to the order dated December 13, 1990 passed by the Speaker. In the said petition an interim order was passed by the High Court staying the operation of the order dated December 13, 1990 with regard to disqualification of the said Members.

5. On January 25, 1991, the Proclamation with regard to the President's Rule was revoked and Ravi S. Naik, appellant in C.A. No. 2904 of 1993, was sworn in as the Chief Minister. On January 25, 1991 one Dr. Kashinath G. Jhalmi belonging to the MGP filed a petition before the Speaker for disqualification of Naik on the ground of defection under Article 191(2) read with Para 2(i)(a) of the Tenth Schedule to the Constitution. On the said petition the Speaker, Shri Sirsat, passed an order dated February 15, 1991 declaring Naik as disqualified from being a Member of the Goa Legislative Assembly under Article 191(2) of the Constitution on the ground of defection as set out in Paragraph 2(i)(a) of the Tenth Schedule to the Constitution. Naik filed a writ petition (Writ Petition No. 48 of 1991) in the Bombay High Court, Panaji Bench to challenge the said order disqualification dated February 15, 1991.

6. While the aforesaid writ petitions were pending in the High Court Shri Sirsat was removed from the office of Speaker and the Dy. Speaker begun functioning as the Speaker in his place. Bandekar and Chopdekar filed applications for review of the order dated December 13, 1990 with regard to their disqualification and the said review applications were allowed by the Dy. Speaker functioning as Speaker by his order dated March 7, 1991 and order dated December 13,1990 disqualifying Bandekar and Chopdekar was set aside. Ramakant D. Khalap filed a writ petition (Writ Petition No. 8 of 1992) before the High Court of Bombay, Panaji Bench, Goa challenging the said order of review dated March 7, 1991. The said writ petition was dismissed on the ground of laches by the High Court on February 4, 1992. C.A. No. 1095 of 1991 was filed in this Court against the said judgment of the High Court. Similarly Naik filed an application for review of the order dated February 15, 1991 which was allowed by the Dy. Speaker functioning as Speaker by order dated March 8, 1991. Writ Petition

No. 11/92 was filed by Dr. Jhalmi and Ramakant Khalap in the High Court challenging the said order of review dated March 8, 1991 passed by the Acting Speaker and the said writ petition was dismissed by the High Court on the ground of laches by order dated February 4, 1992. C.A. No. 1094 of 1992 was filed in this Court against the said order of the High Court. Another writ petition (No. 70 of 1992) was filed by Churcill Alemao against the said order of the Acting Speaker dated March 8, 1991 which was also dismissed by the High Court by order dated February 15, 1991 on the ground of laches and C.A. No. 1096 of 1992 was filed by Churchill Alemao in this Court against the said order of the High Court. All the three appeals (C.A. No. 1094-96 of 1992) were allowed by this Court by judgment dated March 31, 1993 Dr. Kashinath G. Jalmi and Anr. v. Speaker and Ors. . By the said judgment, this Court set aside the impugned orders of the High Court dated February 4, 1992, dismissing Writ Petitions Nos. 11 and 8 of 1992 and the order of the High Court dated February 24, 1992, dismissing Writ Petition No.70 of 1992 and allowing the said writ petitions this Court has declared that orders dated March 7, 1992 and March 8, 1992 made by the Acting Speaker in purported exercise of the power of review are nullity and liable to be ignored. It was held that the orders dated December 13, 1990 passed by the Speaker disqualifying Chopdekar and Bandekar and the order dated February 15, 1991 passed by the Speaker disqualifying Naik continue to operate and that writ petition No. 321 of 1990 filed by Bandekar and Chopdekar and writ petition No. 48 of 1991 filed by Naik would stand revived and the same would be disposed of by the High Court on merits. Thereafter the High Court heard the two writ petitions on merits and by judgment dated May 14, 1993 both the writ petitions have been dismissed. Hence these appeals.

7. We propose to deal with the appeals separately because the questions involved are not identical, but before we do so, we will briefly refer to the provisions of the Tenth Schedule to the Constitution and the decision of this Court in Kihoto Hollohan v. Zachillhu and Ors. [1992] Supp. 2 SCC 651. The Tenth Schedule was introduced in the Constitution by the Constitution (Fifty-second Amendment) Act, 1985. As stated in the Statement of Objects and Reasons, the said amendment was introduced to combat the evil of political defections. It has been stated :

> The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.

8. The provisions of the Tenth Schedule apply to members of either House of Parliament or the State Legislative Assembly or, as the case may be, either House of the Legislature of a State. Paragraph 2 of the Tenth Schedule makes provision for disqualification on the ground of defection. Sub-paragraph (1) deals with a member belonging to a political party. It provides for disqualification in two situations, viz., (i) if he has voluntarily given up his membership of such political party; and (ii) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and such voting or abstention has not been condoned by such political party, person or authority within

fifteen days from the date of such voting or abstention. Paragraph 3 removes the bar of disqualification in case of split in a political party provided the group representing a faction which has arisen as a result of split consists of not less than one third of the members of such legislature party. Paragraph 4 removes the bar of disqualification on the ground of defection in a case of merger of a political party with another political party. In sub-paragraph (1) of paragraph 6 the question as to whether a member of a House has become subject to disqualification under the Schedule is required to be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final. Under sub-paragraph (2) of paragraph 6, all proceedings under sub-paragraph (1) of paragraph 6 in relation to any question as to disqualification of a member of a House under the Schedule are to be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212. Paragraph 7 bars the jurisdiction of all courts in respect of any matter connected with the disqualification of a member of a House under the Schedule. Paragraph 8 empowers the Chairman or the Speaker of a House to make rules for giving effect to the provisions of the Schedule and such Rules may provide for matters specified in Clauses (a) to (d) of sub-paragraph (1).

9. The constitutional validity of the provisions contained in the Tenth Schedule came up for consideration before a Constitution Bench of this Court in Kihoto Hollohan v. Zachillhu and Ors., (supra). The Court was unanimous in holding that paragraph 7 completely excludes jurisdiction of all courts including the Supreme Court under Article 136 and High Courts under Articles 226 and 227 in respect of any matter connected with the disqualification of the member of a House and the Bill introducing the said amendment required ratification by the State Legislatures under the poviso to Article 368(2) of the Constitution and that no such ratification was obtained for the Bill. There was, however, difference of opinion on the effect of such non-ratification of the Bill. The majority view was that paragraph 7 alone attracts the proviso to Article 368 and the rest of the provisions of the Bill do not require such ratification and since paragraph 7 is severable from the rest of the provisions, paragraph 7 only was unconstitutional and that the rest of the provisions of the Tenth Schedule cannot be struck down as unconstitutional on the ground that the Bill had not been ratified by one-half of the State Legislatures before it was presented to the President for his assent. The minority view, however, was that the entire Bill required prior ratification by State Legislatures without which the assent of the president became non-est and that the question of severability of paragraph 7 from the rest of the provisions does not arise and further that paragraph 7 was not severable from the rest of the provisions of the Bill. Since the validity of the rest of the provisions, excluding paragraph 7, have been upheld by the majority, the provisions of paragraph 6 have been construed in the majority judgment and it has been held:

> 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.
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> 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 36, 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 [1965] 1 SCR 413, case 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 ad-judicatory 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. (pp.711-712) We would now proceed to deal with the appeals.

C.A. No. 3309/1993 :

10. This appeal has been filed by Bandekar and Chopdekar who were elected to the Goa Legislative Assembly under the ticket of MGP. They have been disqualified from membership of the Assembly under order of the Speaker dated December 13, 1992 on the ground of defection under Paragraph 2(1)(a) and 2(1)(b) of the Tenth Schedule. From the judgment of the High Court it appears that disqualification on the ground of Paragraph 2(1)(b) was not pressed on behalf of the contesting respondent and disqualification was sought on the ground of Paragraph 2(1)(a) only. The said Paragraph provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given up his membership of such political party". The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

11. The petitions that were filed by Ramakant D. Khalap for disqualification of both these appellants are identical. The following averments were made with regard to disqualification on ground of defection under paragraph 2(1)(a) of the Tenth Schedule as contained in paragraph 11 of the Said

petitions :

> The petitioner says and submits that both before the Assembly Session and also after the Assembly Session, the respondent has voluntarily accompanied Dr. Luis Proto Barbosa to the Governor and has told the Governor that he does not support the MGP any longer. He had also made it known to the public that he has voluntarily resigned from the membership of the MGP. The respondent has thereby voluntarily given up the membership of the MGP. He has in the circumstances for that reason also incurred disqualification under Article 191(2) read with para 2(1)(a) of the 10th Schedule of the Constitution of India.

12. The replies that were filed by both the appellants were also identical. In the said replies it was stated :

> Factually I have not given up the membership of the MGP voluntarily or otherwise. I still continue to be a member of the said party and in fact no document has been produced by the complainant and nothing has been disclosed to show that I have resigned from the membership of the party.

13. The reply to para 11 is as follows :

> ...the mere fact that I am accompanying Mr. Barbosa does not entail my disqualification, which I do not accept that I told His Excellency the Governor that I do not support the Maharashtrawadi Gomantak Party and perhaps much more devoted than Mr. Khalap. I also deny emphatically that I made it know to any body that I had voluntarily resigned from the membership of the Maharashtrawadi Gomantak Party. You know very well Sir, that I have been allotted a meeting as a member of the Maharashtrawadi Gomantak party and I have not asked any change in the seating on account of the fact that I have resigned from the party. In fact the complainant has not produced as he could not produce any documents to establish the facts that I have resigned, resignation from the membership could only be evidenced by a written document. The burden is on the part of the complainant to establish that fact. In the absence of it the complaint should be summarily dismissed. Contents of para 11 which are not specifically admitted are denied.

14. The Speaker, in his order dated December 13, 1990, has observed:

> Dr. Zalmi produced before me copies of several newspapers showing photos of the two MLAs with Congress (I) MLA and Dr. Barbosa etc. when they had met the Governor, with Dr. Wilfred D'Souza who had taken them to show that he had the support of 20 MLAs. This fact is well known in Goa and the Governor himself has admitted it. Dr. Zalmi said that both the MLAs have given up the membership of their political party and have said so openly to him and others.

> The reply filed by the two MLAs does not deny the fact that they went to the Governor against the Maharashtra-wadi Gomantak Party.
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> The Advocate appearing for the MLAs said that he wanted to lead evidence. But, although both the MLAs were present before me, their Advocate did not make them give evidence. They did not deny that they supported Dr. Wilfred D'Souza in his effort to form Congress (I) Govt. and went with him to the Governor as part of the 20 MLAs. They could not do so because it is a fact of common knowledge all over Goa that these two MLAs have left their political party.
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> I am satisfied that by their conduct, actions and speech they have voluntarily given up the membership of the MGP.

15. The High Court was of the view that in view of their conduct the appellants were not entitled to invoke the discretionary remedy of writ of certiorari. In this regard the High Court has pointed out that the assertion by the appellants in the writ petition that they were in Bombay on December 9, 1990 is a brazen lie since the report of the Governor dated December 11, 1990 made to the President of India (which has been placed on record by Khalap with his affidavit) refers to the formation of the Congress Democratic Front by resolution adopted at Panaji on December 9 1990 and the said resolution which was Annexed I to the said report contained the signatures of the appellants. The High Court has also observed that the statement in the petition that the appellants are still members of the parent party is false and suppression of truth inasmuch as they allowed this assertion to continue when, in effect, as from January, 1991, they joined the faction of Naik and became ministers in his Cabinet and they continue to be the ministers.

16. The High Court has also examined the matter on merits and has found that the order dated December 13, 1990 passed by the Speaker does not suffer from any infirmity which may justify limited judicial review in accordance with the decision in Kihoto Hollohan's case (supra). The High Court has rejected the contention that the said order was passed in breach of the constitutional mandate for the reason that there was contravention of the Goa Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1956, hereinafter referred to as 'the Disqualification Rules', made by the Speaker under paragraph 8 of the Tenth Schedule. The High Court was also of the view that the Disqualification Rules made by the Speaker could not be held to be part of Constitutional mandate and that they are only to regulate the procedure and that the substantive power or authority is given in paragraph 6 of the Tenth Schedule. According to the High Court violation of Disqualification Rules would only constitute an irregularity in procedure which is protected by paragraph 6(2) of the Tenth Schedule. The High Court also rejected the contention that there was violation of the principles of natural justice on account of extraneous materials or circumstances, namely, the newspapers showing photographs of the appellants with Congress (I) MLAs and Dr. Barbosa when they had met the Governor with Dr. Wilfred D'Souza who had taken them to show that he had the support of 20 MLAs and the observation in the order passed by the Speaker that the Governor had told the Speaker that the appellants belonging to the MGP had approached him under the leadership of Dr. Wilfred D'Souza for staking claim to form Government on December 10, 1990, being considered by the Speaker in the impugned order. The High Court has

observed that the Speaker has only relied upon the photos of the MLAs published in the newspaper reports which fact was undeniable inasmuch as the appellants have nowhere in their replies and even in the writ petition denied that they had met the Governor in the company of 18 other MLAs under the leadership of Dr. Wilfred D'Souza representing the Congress (I) and splinter group of GPP led by Dr. Barbosa. According to the High Court, when, as a fact, the appellants have admitted of having gone to the Governor to stake the claim in the afternoon of December 10, 1990, it was impossible to hold that the order be held as suffering from the vice of the order being based upon extraneous material and circumstances. Dealing with the grievance of the appellants that no opportunity was given to them to lead evidence, the High Court has held that the said submission was baseless since the Speaker in his order had recorded that although both the appellants were present before him their Advocate did not make them give evidence. The High Court has observed that nothing prevented the appellants from leading their own evidence when it was their case that they wanted to lead evidence. In this context the High Court also pointed out that neither in their reply nor in the arguments before the Speaker the appellants had indicated whose evidence they wanted to lead and record or what sort of evidence they wanted to bring. The High Court has also mentioned that when Dr. Jhalmi made a statement before the Speaker that the appellants had given up their membership of their political party and had said so openly to him and to others, neither the appellants nor their advocate sought to cross-examine Dr. Jhalmi on this statement.

17. Shri A.K. Sen, the learned Senior Counsel appearing for the appellants in support of the appeal, has assailed the order of the Speaker dated December 13, 1990 on the same grounds which were urged on behalf of the appellants before the High Court. He has invited our attention to Sub-rules (5) and (6) of Rule 6 and Sub-rules (2) and (3) of Rule 7 of the Disqualification Rules which provide as under :

6. Reference to be by petitions. -

xxx xxx xxx (5) Every petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such persons and the list of such information as furnished by each such person.

(6) Every petition shall be signed by the petitioner and verified in the manner laid down in the CPC, 1908 (Central Act 5 of 1908), for the verification of pleadings.

7. Procedure. - xxx xxx xxx (2) It the petition does not comply with the requirements of Rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly.

(3) It the petition complies with the requirements of Rule 6, the Speaker shall cause copies of the petition and of the annexures thereto to be forwarded,-

(a) to the member in relation to whom the petition has been made; and

(a) where such member belongs to any legislature party and such petition has not been made by the leader thereof, also to such leader, and such member or leader shall within seven days of the receipt of such copies, or within such further period as the Speaker may for sufficient cause allow, forward his comments in writing thereon to the Speaker.

18. The submission of Shri Sen is that the petition that were filed by Khalap before the Speaker did not fulfil the requirements of Clause (a) of Sub-rule (5) of Rule 6 inasmuch as the said petition did not contain a concise statement of the material facts on which the petitioner (Khalap) was relying and further that the provisions of Clause (b) of Sub-rule (5) of Rule 6 were also not complied with inasmuch as the petitions were not accompanied by copies of the documentary evidence on which the petitioner was relying and the names and addresses of the persons and the list of such information as furnished by each such person. It was also submitted that the petitions were also not verified in the manner laid down in the CPC for the verification of pleadings and thus there was non-compliance of Sub-rule (6) of Rule 6 also and that in view of the said infirmities the petitions were liable to be dismissed in view of Sub-rule (2) of Rule 7. We are unable to accept the said contention of Shri Sen. The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in Kihoto Hollohan's case (supra). Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in Kihoto Hollohan's case (supra) is confined to breaches of the constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the Rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in Kihoto Hollohan case (supra).

19. Shri Sen has next contended that there has been violation of principles of natural justice inasmuch as in disregard of the provisions of Rule 7(3)(b) of the Disqualification Rules which provides for the comments being forwarded by the member concerned to the Speaker within a period of seven days of the receipt of the copy of the petition and annexures thereto; the appellants were given only two days time to file their reply to the petition. Shri Sen has urged that there has been violation of the principles of natural justice also for the reason that in the impugned order justice also for the reason that in the impugned order the Speaker has referred to certain extraneous materials and circumstances, namely, the copies of the newspapers that were produced by Dr.

Jhalmi at the time of hearing and the talks which the Speaker had with the Governor. Another grievance raised by Shri Sen was that the appellants were denied the opportunity to adduce their evidence before the Speaker passed the impugned order.

20. Principles of natural justice have an important place in modern Administrative Law. They have been defined to mean "fair play in action." (See: Smt. Maneka Gandhi v. Union of India, , Bhagwati, J.). As laid down by this Court "they constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men" Union of India v. Tulsi Ram, [1985] Supp. 2 S.C.R. 131 at p. 225. An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non- compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.

21. The approach of the English Courts has been thus summed up by Prof. Wade:

> The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that 'it is not possible to lay down rigid rules as to when the principles of natural justice are to apply : nor as the their scope and extent. Everything depends on the subject-matter. The so-called rules of natural justice are not engraved on tablets of stone. Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. 'In the application of the concept of fair play there must be real flexibilty. There must also have been some real prejudice to the complainant : there is no such thing as a merely technical infringement of natural justice.
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> [H.W.R. Wade : Administrative Law, 6th Edn., p. 530] Similarly Clive Lewis has stated:
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> The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the courts may decide that the breach has caused no injustice or prejudice and there is no need to grant relief. The courts may, for example, refuse relief if there has been a breach of natural justice but where the breach has in fact not prevented the individual from having a fair hearing. [Clive Lewis: Judicial Remedies in Public Law (1992) p. 290] In the words of Lord Wilberforce:

> A breach of procedure, whether called a failure of natural justice, or an essential administrative fault, cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.[Malloch v. Aberdeen Corporation, [1971] 2 All E.R. 1278 at p. 1294]

22. The approach of the Courts in India is no different. In A.M. Allison v. B.L. Sen, [1957] S.C.R. 359, it has been laid down that while exercising the jurisdiction under Article 226 of the Constitution the High Court has the power to refuse the writs if it was satisfied that there has no failure of justice.

23. The grievance of the appellants regarding violation of the principles of natural justice has to be considered in this light.

24. It is no doubt true that under Rule 7(3)(b) of the Disqualification Rules, it has been provided that the members concerned can forward his comments in writing on the petitions within seven days of the receipt of the copies of the petition and the annexures thereto and in the instant case the appellants were given only two days time for submitting their replies. The appellants, however, did submit their replies to the petitions within the said period and the said replies were quite detailed. Having regard to the fact that there was no denial by the appellants of the allegation in para graph 11 of the petitions about their having met the Governor on December 10, 1990 in the company of Dr. Barbosa and Dr. Wilfred D'Souza and other Congress (I) MLAs and the only dispute was whether from the said conduct of the appellants an inference could be drawn that the appellants had voluntarily given up their leadership of the MGP, it cannot be said that the insufficient time given for submitting the reply has resulted in denial of adequate opportunity to the appellants to controvert the allegations contained in the petitions seeking disqualification of the appellants.

25. As regards the reference to the newspapers in the impugned order passed by the Speaker it appears that the Speaker, in his order, has only referred to the photographs as printed in the newspapers showing the appellants with Congress (I) MLAs and Dr. Barbosa, etc. when they had met the Governor with Dr. Wilfred D'Souza who had taken them to show that he had the support of 20 MLAs. The High Court has rightly pointed out that the Speaker, in referring to the photographs was drawing" an inference about a fact which had not been denied by the appellants themselves, viz., that they had met the Governor along with Dr. Wilfred D'Souza and Dr. Barbosa on December 10, 1990 in the company of Congress (I) MLAs, etc. The talk between the Speaker and the Governor also refers to the same fact. In view of the absence of a denial by the appellants of the averment that they had met the Governor on December 10, 1990 accompanied by Dr. Barbosa and Dr. Wilfred D'Souza and Congress MLAs the controversy was confined to the question whether from the said conduct of the appellants an inference could be drawn that they had voluntarily given up the membership of the MGP. The reference to the newspapers reports and to the talk which Speaker had with the Governor, in the impugned order of disqualification does not, in these circumstances, introduce an infirmity which would vitiate the said order as being passed in violation of the principles of natural justice.

26. The grievance that the appellants have been denied the opportunity to adduce the evidence is also without substance. The appellants were the best persons who could refute the allegations made in the petitions. In the impugned order the Speaker has mentioned that the appellants were present before him but they did not come forward to give evidence. Moreover, they could have sought permission to cross-examine Dr. Jhalmi in respect of the statement was made by him before the Speaker that the appellants had given up their membership of their political party and had said so openly to him and to others, in order to refute the correctness of the said statement. They, however, failed to do so.

27. In the light of the aforesaid facts and circumstances we are unable to hold that the impugned order of disqualification was passed by the Speaker in violation of the principles of natural justice. Since we are of the view that the appellants have failed to make out a case for interference with order dated December 13, 1990 passed by the Speaker disqualifying the appellants, we do not consider it necessary to go into the question about the appellants having disentitled themselves from invoking the jurisdiction of the High Court under Article 226 of the Constitution. The judgment of the High Court dismissing the writ petition of the appellants must be upheld and C.A. No. 3309 of 1993 filed by the said appellants must be dismissed.

28. This appeal relates to the disqualification of Ravi Naik under order of the Speaker dated February 15, 1991. As mentioned earlier, Naik was sworn in as Chief Minister of Goa on January 25, 1991. On the same day Dr. Kashinath Jhalmi filed a petition before the Speaker of the Goa Legislative Assembly under Article 191(2) read with Para 2(a) of the Tenth Schedule to the Constitution wherein it was stated that Naik was elected to the Goa Legislative Assembly on the ticket and symbol of MGP at the last Assembly election and he had also given a Declaration in accordance with the Disqualification Rules that he belongs to MGP. In the said petition, it was further stated that Naik had sworn himself as Chief Minister of Goa by voluntarily giving up the membership of MGP and that he has claimed that he has given up membership of his original party, the MGP, and that by his said action Naik has incurred disqualification for being a Member of the House under the provision of Article 191(2) of the Constitution of India read with paragraph 2(a) of the Tenth Schedule of the Constitution. After receipt of the said petition, the Speaker issued a notice on January 29, 1991, which was received by Naik on the same day, whereby Naik was required to submit his reply to the said petition by February 5, 1991. After receipt of the said Notice Naik submitted an application dated February 5, 1991 whereby he sought time of one month to file his reply to the petition on the ground that he has been advised bed-rest in hospital for fifteen days and he was unable to apply his mind to give instructions to his lawyers. In the said application Naik further indicated that his case was going to be that he and several others members of Legislative Assembly belonging to MGP alongwith him constitute a group which has arisen on account of the split in the original political party. The Speaker, by his letter dated February 6, 1991, granted extension of time till February 11, 1991, for Naik to forward his comments. On February 11, 1991, Naik sent another letter requesting for further time for three weeks to forward his comments. The said request of Naik was refused by the Speaker and on February 11, 1991 he sent a letter informing Naik to appear before him for personal hearing on February 13, 1991 at 4.00 P.M. On February 13, 1991, Naik did not appear but an advocate appeared on his behalf and submitted his reply in writting. In the said reply Naik stated :

(i) On the 24 December, 1990, in the meeting held at Ponda, Goa, there was a split in the original Maharashtra-wadi Gomontak Party. The meeting was attended, among others, by Office bearers namely Executive President, Shri Gurudas Malik, Joint Secretary, Shri Avinash Bhonsla, various executive members and workers of Maharashtra-wadi Gomantak Party. It was decided that M.G.P. (Ravi Naik Group) under my leadership to constituted. A resolution to that effect was passed.

(ii) Consequent upon the split, the following members of the Legislative Assembly of the original M.G. Party have joined the group representing the M.G.P. (Ravi Naik Group) and constitute the group representing the faction which this arisen as a result of the said split in the original M.G. Party and they are signatures to the declaration to that effect :

1. Shri Ravi S. Naik

2. Shri Ashok T.N. Salgaonkar

3. Shri Shankar Salagaonkar

4. Shri Pandurang Raut

5. Shii Vinaykumar Usagaonkar

6. Shri Ratnakar Chopdekar

7. Shri Sanjay Bendekar

8. Shri Dharma Chidabjar

29. Alongwith the said reply Naik submitted Xerox copies of the Resolution referred to above as well as the declaration bearing signatures of eight MLAs. In the said reply Naik stated that given time he would procure the necessary evidence to be adduced to substantiate the aver ments contained in the reply. He prayed for fifteen days time to produce his affidavit and witnesses. In the Writ Petition filed in the High Court, it has been stated by Naik that the original resolution as well as the declaration bearing signatures of eight MLAs were shown to the Speaker at the time of hearing by the advocate for Naik on February 13, 1991.

30. The Speaker, in his order dated February 15, 1991, has posed two questions - (1) Whether the alleged split is proved; and (2) Whether the group of MLAs who have disassociated from the party constitute 1/3rd of MLAs of original party. Both the questions were answered in the negative. The Speaker has observed that if there was really a split in the party and a separate group of MLAs' of old MGP was formed, it was incumbent upon the leader of the group to give information of the split to the Speaker as required by Rule 3 of the Disqualification Rules in Form-I but no such information had been furnished till the date of the order and that under Rule 4 of the Disqualification Rules each

of the members of the group had to give a certificate to that effect by filing Form-Ill and this also had not been done till date of the order. The Speaker, in his order, has also mentioned that two MLAs of the alleged group had already been disqualified by him. Referring to the contention urged by the advocate appearing for Naik that there was a stay by the High Court against the disqualification of these two MLAs, the Speaker has observed :

> This argument cannot help the disqualified MLAs as stay from the court came after the order of disqualification was issued by me. Besides recently the Parliament has held that the Speaker's order cannot be a subject matter of court proceedings and his decision is final as far as Tenth Schedule of Constitution of India is concerned.

31. The speaker has also mentioned that Dharma Chodankar had intimated to him on January 14, 1991 that Naik and others had obtained his signatures forcibly without his consent and against his will on a paper and that even on February 13, 1991 he had addressed a letter to the Speaker regarding sitting arrangements that he had no connection whatsoever with the Naik group and that he continues to be with the original political party. As regards the Resolution and the declaration on which reliance was placed by Naik, the Speaker has observed that on the reverse of the typed sheet of paper which purports to be a resolution passed on December 24,1990 there are some signatures and that in the typed portion there are six names of which four are of MLAs including Naik and two are disqualified MLAs and that the name of Dharma Chodankar is not there. The Speaker has also observed that if he had been shown the Notice calling the meeting at Ponda showing its exact venue and the time, and the signatures of the persons who attended that meeting and minutes of that meeting there could be some evidence to show that such meeting had been actually held and that in the absence of any such proof the holding of the meeting cannot be accepted. The Speaker was also of the view that not only the split has to be proved but it has to be proved by conforming to the Rules and in the face of the doubtful evidence represented by a typed sheet Resolution it could not be accepted and as no information as prescribed by the Rules was given, the split in the party was not proved. In his order the Speaker has further stated that he had suggested that Naik should produce the affidavits or the members in person to support his case and he could have brought the six members in person or six affidavits of the erstwhile MGP MLAs who had joined his group after the so called split but he did not produce a single affidavit nor the persons and that out of eight signatures supposed to have been taken by Naik at Ponda on December 24, 1990, two were already disqualified and one Dharma Chodankar has stated in clear terms that he does not belong to the group. The Speaker, therefore, held that there was no group of one-third erstwhile MGP MLAs including Naik, and he declared Naik as disqualified from being a member of Goa Legislative Assembly under Article 191(2) read with para 2(a) of the Tenth Schedule to the Constitution.

32. Before the High Court it has urged on behalf of Naik that in view of the stay order passed by the High Court on December 14, 1990 in Writ Petition No. 321 of 1990 filed by Bandekar and Chopdekar whereby the operation of the order dated December 13, 1990 regarding disqualification of Bandekar and Chopdekar had been stayed, the Speaker was not right in excluding the said two members from the group of Naik, on the ground that they were disqualified members of Goa Legislative Assembly. Rejecting the said contention the High Court has observed:

> It is true that the Speaker in the impugned order held that he is not bound by the stay order granted by the High Court as he had already made the disqualification orders earlier to the stay order granted by the High Court. The Speaker indeed further mentioned that recently the Parliament has held that the Speaker's orders cannot be subject-matter of Court proceedings and his decision is final so far as the Tenth Schedule of the Constitution of India is concerned. The fact remains that when the Speaker made the orders of disqualification on 13th December, 1990 the Division Bench had stayed the same on 14th December, 1990 in the petition filed by Bandekar and Chopdekar. The conclusions in Kihota's case were pronounced by the Supreme Court in November, 1992 whereby Para 7 of the Tenth Schedule ousting the jurisdiction of the Courts were held to be invalid and ultra vires the Constitution. The Speaker clearly mentioned that the decision rendered by the Speaker under the Tenth Schedule disqualifying a Member cannot be a subject-matter of Court proceedings. Admittedly on the date on which he made the present impugned order, Para 7 of the Tenth Schedule was not held invalid by the Apex Court and the invalidity came much later. On his interpretation of Paras 6 and 7 of the Tenth Schedule, the Speaker hold that the stay order granted by a Division Bench of this Court is not binding upon him. In such circumstances, it cannot be held that the action of the Speaker was perverse or malafide. Had it been a fact that the Speaker was to make such order after the pronouncement or the conclusion in Kihoto's case, i.e., after November, 1991, the story would have been different. We do agree with Shri Ashok Desai, learned Counsel, that propriety demanded that the Speaker should have respected the order of the High Court but nothing turns on the same as by this Judgment the disqualification of Bandekar and Chopdekar is upheld which takes effect as from November, 1990.

33. Another contention that was urged before the High Court on behalf of Naik was that the Speaker in his order dated February 15, 1991, has referred to letters dated January 14, 1991 and February 13, 1991 received by him from Dharma Chodankar and that the said letters were not disclosed to Naik earlier and Naik had no opportunity of producing in rebuttal. The High Court has rejected the said contention with the observation:

> It must be seen that when for the first time the Legislative Assembly was met on 13th February, 1991 Dharma Chodankar admittedly sat in the Assembly at the sitting arrangement allotted to the original Maharashtrawadi Gomantak Party and Chodankar was not allotted a seat in the House with the so-called breakaway group under the leadership of Ravi Naik. Though Ravi Naik, at some stage, had informed the Speaker of allotment of sitting arrangement for his group separately from the original Maharashtrawadi Gomantak Party, the Speaker did not accede to that request in so far as M.L.A. Dharma Chodankar is concerned. Ravi Naik remained content with such sitting arrangement with Dharma Chodankar sitting with the original party and it is not possible to accept that Ravi Naik had not noticed it when the Assembly session had taken place in the morning of that day. The inference that can be drawn from this is that Ravi Naik knew that Chodankar was not with him

much before the hearing took place before the Speaker. In the circumstances, in our view, even the non-disclosure of letters of Chodankar cannot be said to have made any difference and that way caused any prejudice to the petitioner Ravi. Upon reading the impugned order it also does not give an impression to this Court that the order of disqualification had been based solely upon this so-called extraneous material. On the contrary, the order of disqualification is solely and mainly based upon the failure of Ravi Naik to adduce evidence to prove the split as required under Para 3 of Tenth Schedule.

34. The High Court has laid emphasis on the point that in Para 3 of the Tenth Schedule the burden of proof is on the member who claims that he and other members of his Legislature Party constitute a group representing a faction which has arisen as a result of a split in his original political party and such a group consists not less then one third of the members of such Legislature Party. According to the High Court since Naik had made a claim that there had been a split, the burden of proof to establish that there was a split was on Naik.

35. Shri Soli Sorabjee, learned Senior Counsel appearing for Naik, assailing the findings recorded by the High Court, has, in the first place, contended that in view of the stay order passed by the High Court on December 14, 1990 in Writ Petition No. 321 of 1990 filed by Bandekar and Chopdekar the Speaker could not have proceeded on the basis that Ban- dekar and Chopdekar stood disqualified as members of the Legislative Assembly on December 24, 1990, when there was a split, as claimed by Naik. As regards letters dated January 14, 1991 and February 13, 1991 received by the Speaker from Dharma Chodankar, Shri Sorabjee has urged that the said letters were never disclosed to Naik earlier and that the said documents could not be relied upon by the Speaker without affording an opportunity to Naik to adduce evidence in rebuttal and, moreover, in these letters Dharma Chodankar has not denied his signatures on the declaration dated December 24, 1990 which has been produced by the appellant and has only claimed that his signatures had been obtained forcibly which means that he had actually signed the said declaration. Shri Sorabjee has urged that the question whether the signatures of Dharma Giodankar had been obtained forcibly on the said Declaration could only be proved by evidence prudence in the presence of the parties and that no evidence was adduced in support of the said allegation and in that view of the matter the Speaker could not ignore the signatures of Dharma Chodankar on the declaration dated December 24, 1990 and it could not be held that the members in the group formed by Naik was less than one third of the members of the Legislature Party of Naik, namely, MGP.

36. As noticed earlier paragraph 2 of the Tenth Schedule provides for disqualification on the ground of defection if the conditions laid down therein are fulfilled and paragraph 3 of the said Schedule avoids such disqualification in case of split. Paragraph 3 proceeds on the assumption that but for the applicability of the said provision the disqualification under paragraph 2 would be attracted. The burden to prove the requirements of paragraph 2 is on the person who claims that a member has incurred the disqualification and the burden to prove the requirements of paragraph 3 is on the member who claims that there has been a split in his original political party and by virtue of said split the disqualification under para graph 2 is not attracted. In the present case Naik has not disputed that he has given up his membership of his original political party but he has claimed that

there has been a split in the said party. The burden, therefore, lay on Naik to prove that the alleged split satisfies the requirements of paragraph 3. The said requirements are:

> (i) The member of a House should make a claim that he and other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original party; and
>
> (ii) Such group must consist of not less than one-third of the members of such legislature party.

37. In the present case the first requirement was satisfied because Naik has made such a claim. The only question is whether the second requirement was fulfilled. The total number of members in the legislature party of the MGP (the original political party) was eighteen. In order to fulfil the requirements of paragraph 3 Naik's group should consist of not less than 6 members of the legislature party of the MGP. Naik has claimed that at the time of split on December 24, 1990 his group consisted of eight members whose signatures are contained the Declaration, a copy of which was filed with the reply dated February 13, 1991.

38. The Speaker has held that the split had not been proved because no intimation about the split has been given to him in accordance with Rules 3 and 4 of the Disqualification Rules. We find it difficult to endorse this view. Rule 3 requires the information in respect of matters specified in Clauses (a), (b) and (c) of Sub-rule (1) to be furnished in the prescribed form (Form I) to the Speaker by the leader of the legislature party within 30 days after the first sitting of the House or where such legislature is formed after the first sitting, within 30 days after its formation. Rule 4 relates to information to be furnished by every member to the Secretary of the Assembly in the prescribed form (Form III). In respect of a member who has taken his seat in the House before the date of commencement of the Disqualification Rules, the information is required to be furnished within 30 days from such date. In respect of a member who takes his seat in the House after the commencement of the Disqualification Rules such information has to be furnished before making and subscribing an oath or affirmation under Article 188 of the Constitution and taking his seat in the House. Rule 4 has no application in the present case because the stage for furnishing the required information had passed long back when the members made and subscribed to oath and affirmation after their election in 1989. Rule 3 also comes into play after the split and the failure on the part of the leader of the group that has been constituted as a result of the split does not mean that there has been no split. As to whether there was a split or not has to be determined by the Speaker on the basis of the material placed before him. In the present case the split was sought to be proved by the Declaration dated December 24, 1990 whereby eight MLAs belonging to the MGP declared that they had constituted themselves into a group known as Maharastrawadi Gomantak Party (Ravi Naik Group). A Xerox copy of the said declaration was submitted along with the reply filed by Naik on February 13, 1991 and the original declaration bearing the signatures of the eight MLAs was produced by the advocate for Naik during the course of the hearing before the Speaker on February 13, 1991. The genuineness of the signatures on the said declaration was not disputed before the Speaker. One of the signatories of the Declaration, namely, Dharma Chodankar, had written to the Speaker that his signatures were obtained forcibly. That may have a bearing on the

number of members constituting the group. But the fact that a group was constituted is established by the said Declaration.

39. The question that requires consideration is whether as a result of the said group being constituted there was a split in the MGP as con template by paragraph 3 of the Tenth Schedule. The Speaker has held that the requirements of paragraph 3 were not fulfilled for the reason that the number of members of the group was less than one-third of the members of the legislature party of the MGP. For coming to the conclusion the Speaker has excluded Bandekar and Chopdekar on the ground that they stood disqualified under order dated December 13, 1990 passed by him and Dharma Chodankar was excluded on the ground that he had disowned his signatures on the Declaration. The said view of the Speaker has been assailed before us.

40. We will first examine whether Bandekar and Chopdekar could be excluded from the group on the basis of order dated December 13, 1990 holding that they stood disqualified as members of the Goa Legislative Assembly. The said two members had filed Writ Petition No. 321 of 1990 in the Bombay High Court wherein they challenged the validity of the said order of disqualification and by order dated December 14, 1990 passed in the said writ petition the High Court had stayed the operation of the said order of disqualification dated December 13, 1990 passed by the Speaker. The effect of the stay of the operation of the order of disqualification dated December 13, 1990 was that with effect from December 14, 1990 the Declaration that Bandekar and Chopdekar were disqualified from being members of Goa Legislative Assembly under order dated December 13, 1991 was not operative and on December 24, 1990, the date of the alleged split, it could not be said that they were not member of Goa Legislative Assembly. One of the reasons given by the Speaker for not giving effect to the stay order passed by the High Court on December 14, 1990, was that the said order came after the order of disqualification was issued by him. We are unable to appreciate this reason. Since the said order was passed in a writ petition challenging the validity of the order dated December 13, 1990 passed by the Speaker it, obviouly, had to come after the order of disqualification was issued by the Speaker. The other reason given by the Speaker was that Parliament had held that the Speaker's order cannot be a subject-matter of court proceedings and his decision is final as far as Tenth Schedule of the Constitution is concerned. The said reason is also unsustainable in law. As to whether the order of the Speaker could be a subject matter of court proceedings and whether his decision was final were questions involving the interpretation of the provisions contained in Tenth Schedule to the Constitution. On the date of he passing of the stay order dated December 14, 1990, the said questions were pending consideration before this Court. In the absence of an authoritative pronouncement by this Court the stay order passed by the High Court could not be ignored by the Speaker on the view that his order could not be a subject-matter of court proceedings and his decision was final. It is settled law that an order, even though interim in nature, is binding till it is set aside by a competent could and it cannot be ignored on the ground that the Court which passed the order had no jurisdiction to pass the same. Moreover the stay order was passed by the High Court which is a Superior Court of Record and "in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction." (See: Special Reference No. 1 of 1964, [1965] 1 S.C.R. 413 at p. 499).

41. The said question relating to the jurisdiction of the High Court to entertain the writ petitions challenging the order of the Speaker now stands concluded by the judgment of this Court in Kihoto Hollohan case (supra) wherein the provisions of paragraph 7 of the Tenth Schedule have been held to be unconstitutional and paragraph 6 has been construed and it has been held that the Speaker, while passing an order in exercise of his powers under sub-paragraph (1) of paragraph 6 of the Tenth Schedule functions as a Tribunal and the order passed by him is subject to judicial review under Articles 32, 136, 226 and 227 of the Constitution.

42. In Mulraj v. Murti Raghonathji Maharaj, , this Court has dealt with effect of a stay order passed by a court and has laid down:

> In effect therefore a stay order is more of less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well settled that in such a case the party must have knowledge of the injunction order before it could be penalised for before disobeying it. Further it is equally well-settled that the injunction order not being addressed to the court, if the court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be nullity. That in our opinion is the only difference between an order of injunction to a party and an order of stay to a court.
>
> This would mean that the Speaker was bound by the stay order passed by the High Court on December 14, 1990 and any action taken by him in disregard of the said stay order was a nullity. In the instant case the Speaker, in passing the order dated February 15, 1991 relating to disqualification, treated Bandekar and Chopdekar as disqualified members. This action of the Speaker was in disregard of the stay order dated December 14, 1990 passed by the Bombay High Court.

43. The High Court has upheld the order of the Speaker, even though he had disregarded the stay order passed by the High Court, on the basis that on the date on which the Speaker had made the impugned order, Paragraph 7 of the Tenth Schedule had not been held to be invalid by this Court and the invalidity came much later. The High Court has observed that on his interpretation of paragraphs 6 and 7 of the Tenth Schedule, the Speaker held that the stay order by the Division Bench was binding upon him and in such circumstances it could not be held that the action taken by the Speaker was perverse or malafide. According to the High Court, the position would have been different if the Speaker was to make the order after the decision of the Court. We are unable to agree with this view of the High Court. The decision of this Court in Kihoto Hollohan case (supra) declares the law as it was on the date of the coming into force of the Constitution (Fifty Second) Amendment Act, 1985. The action of Speaker in ignoring the stay order passed by the High Court while passing the order dated February 15, 1991 cannot be condoned on the view that in the absence of the decision of this Court is was open for the Speaker to proceed on his own interpretation of

paragraphs 6 and 7 of the Tenth Schedule and ignore the stay order passed by the High Court.

44. Relying upon the decision in The State of Orissa v. Madan Gopal Rungta, [1952] S.C.R. 28, Shri R.K. Garg, learned Senior Counsel appearing for Respondent No. 5, has submitted that the interim order could only be issued in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding and not in derogation of the mam relief and that it was open to the High Court, to pass an appropriate order while finally disposing of the Writ Petiton. Shri Garg has contended that the High Court while finally disposing of the writ petition No. 321 of 1990 filed by Bandekar and Chopdekar upheld the order dated January 13, 1990 passed by the Speaker regarding disqualification of Bandekar and Chopdekar and in these circumstances it cannot be said that disregard of the interim order passed by the High Court on December 14, 1990 by the Speaker had the affect of rendering the subsequent order dated February 15,1991 illegal. We are unable to agree with this contention. It is true that an interim order is issued in aid of or ancillary to the main relief and not in derogation of the main relief. The stay order passed by the High Court on December 14, 1990 staying the operation of the order dated December 13, 1990 passed by the Speaker had been issued in aid of and ancillary to the main relief in the writ petition No. 321 of 1990 which was for quashing of the said order dated December 13, 1990. The fact that the writ petition was ultimately dismissed and the impugned order dated December 13, 1990 passed by the Speaker was upheld by the High Court does not mean that the High Court had committed any error in passing the interim order for stay of operation of the order under challenge in the writ petition on December 14, 1990. The dismissal of the Writ Petition at the final stage does not, in our view, confer validity on the action which was taken by the Speaker on February 15, 1991 in passing the order disqualifying Naik in disregard of the stay order passed by the High Court on December 14, 1990. In the circumstances, it must be held that in view of the stay order passed by the High Court on December 14, 1990 in Writ Petition No. 321 of 1990, the Speaker while passing the order dated February 15, 1991, could not have proceeded on the basis that Bandekar and Chopdekar stood disqualified under his order dated December 13, 1990 and they could not be included in the group of Naik for the purpose of ascertaining whether the said group consisted of one third members of the Legislature Party of MGP, the original political party. If the above two members are included within the group of Naik then it is not disputed that the number of member in the group was more than one third of the legislature party of MGP. This would be so even if Dharma Chodankar was excluded because the total number of member in the group of Naik would be seven and the number of members of the legislature party of MGP required for the purpose of a split under paragraph 3 of the Tenth Schedule was six. The order dated February 15, 1991, passed by the Speaker was, therefore, in violation of the constitutional mandate contained in paragraph 3 of the Tenth Schedule to the Constitution and is liable to be quashed on the basis of the law laid down by this Court in Kihoto Hollohan case (supra).

45. In that view of the matter we do not consider it necessary to deal with the submission of Shri Sorabjee that the action of the Speaker in excluding Dharma Chodankar from the group of Naik was in violation of the principles of natural justice.

46. In the result, while C.A. No. 3309 of 1993 filed by Bandekar and Chopdekar is dismissed, C.A. No. 2904 of 1993 filed by Naik is allowed. The order dated May 14, 1993 passed by the High Court in

Writ Petition No. 48 of 1991 is set aside and the said Writ Petition is allowed and the order dated February 15, 1991 passed by the Speaker, Goa Legislative Assembly declaring the Naik as disqualified for being a member of the Goa Legislative Assembly is quashed. There is no order to costs in both the appeals.