# Mayawati vs Markandeya Chand & Ors on 9 October, 1998

## Equivalent citations: AIR 1998 SUPREME COURT 3340, 1998 (7) SCC 517, 1998 AIR SCW 3281, 1998 ALL. L. J. 2550, 1998 (7) ADSC 533, (1998) 7 JT 36 (SC), 1998 ADSC 7 533, 1998 (7) JT 36, (1999) 2 SCJ 82, (1998) 5 SCALE 517, (1998) 8 SUPREME 16

## Author: K.T. Thomas

## Bench: K.T. Thomas

PETITIONER:
MAYAWATI

Vs.

RESPONDENT:
MARKANDEYA CHAND & ORS.

DATE OF JUDGMENT: 09/10/1998

BENCH:
HON'BLE THE CHIEF JUSTICE,HON'BLE MR. JUSTICE K.T. THOMAS, ANDHON'BLE MR JUSTICE M. S

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENTS The following Judgments of the Court were delivered:

PUNCHHI, CJI:

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I have bestowed great care in reading the two elaborate but sharply cleaving draft Judgments prepared by my learned brethren, K.T. Thomas, J. and M. Srinivasan, J. resting on the provisions contained in the Tenth Schedule of the Constitution. I need to emphasis at the outset, in the context above, the importance of recording of events

> which take place in the House, which means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of State, because Clause
>
> (b) of Paragraph 3 provides that from the time of such split, such faction shall deemingly become the political party...

The Speaker/Chairman in the nature of his role when informed of a spilt is administratively the time keeper and he has to be definite in respect of the time of such split. Or is there any scope for procrastination? He is the Tribunal undoubtedly for quasi-judicial purpose. In Kihoto Hollohan V. Zacnillnu & Others, 1992 Supp. (2) SCC, the majority, in Paragraph 109, has summed up the nature of the function exercised by the Speaker/Chairman under Paragraph 6(1) to be that of a Tribunal and the scope of judicial review under Articles 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 to be confining to jurisdictional errors only vix., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity. The question however as to whether a Member of the house has become subject to disqualification must arise for decision under Paragraph 6(1) of the Tenth Schedule only on its being referred for decision of the Speaker/Chairman and not on his own, whose decision shall be final. The defence against disqualification incurred on ground of defection under Paragraph 2 is separately provided in Paragraph 3 to say that such disqualification is not to apply to a case of split. Is not the cognition of the Speaker/Chairman of the occurrence of split not administrative in nature, unconnected with decision making on disqualification is it an adjunct thereto? Kihoto Hollohan is silent on this aspect. If the act of cognoscing the time of such split is the administrative function of the Speaker/Chairman, the scope of judicial review of the said administrative act would, to my mind, be qualitatively different than what it is when testing his quasi-judicial order as a Tribunal. Kihoto Hollohan, as is evident from Paragraph 111 the report, apparently confines to decision making by the Speaker/Chairman in Paragraph 6(1) on reference of the question of disqualification, inviting his decision, and leaves his role under Paragraph 3 untouched. These determinations of importance, in my view, are necessary to be made before the matter can be examined as to the perversity or otherwise of the Speaker's decision, obligating him at a point of time to record categorically when the split took place thereby pinning the time of such split. I opine therefore that the matter be referred to the Constitution Bench for decision.

SRINIVASAN J.

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Leave granted.

I have had the advantage of perusing the draft judgment prepared by learned brother Thomas, J. I am unable to agree with the same. My judgment in this case is as follows:

A. PRELUDE

> 1.Though the Anti-defection law contained in Articles 101,102, 190 and 191 and the 10th schedule of the constitution was born after a very long period of gestation (from 1967 to 1985), it has not had the desired effect. The need for scrapping it and ushering in a new law has been realized. It is hoped that before a new law is enacted regard will be had to the following passage in Chawla's Election Law and Practice (6th Edn.) p.1.589 :
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> "Looked at from a more fundamental angle, inasmuch as the point of reference for every case of defection is a political party, no reforms in the Anti Defecting Law would be meaningful without a deep analysis of the conception, structure, functioning and role perception of political parties in our polity. Parties as they exist and operate today hardly deserve any protection against defection by their members. If parties are not based on any principles, ideologies or programmes and if they are not democratically run, there can be no question of any principles being involved in either defecting or staying with a party.

2.The events in the Legislative Assembly of the State of Uttar Pradesh after the general elections in 1996 justify the above view. While expressing my concurrence with the above view, I wish to point out with great dismay that those days of statesmen who rendered selfless service to the country are gone and alas! these are days of politicians who want the country to serve them. But the issues in this case have to be resolved by constitutional measurement, free of any predilection.

B. Chronology.

3.In the general elections to the U.P. Legislative Assembly which took place in 1996 no political party obtained absolute majority. There was an agreement between the Bhartiya Janata Party ('BJP' for short) and the Bahujan Samaj Party ("BJP' for short) to support each other for running the Government. The BSP had 67 MLAs who were elected on its fold. Pursuant to the agreement the appellant belonging to BSP became the Chief Minister of the State on 21.3.97 On 21.9.97 Kalyan Singh belonging to the BJP became the Chief Minister. On 19.10.97 the appellant announced withdrawal of participation and support of BSP to the coalition government. All the BSP Ministers resigned from the Government. Immediately the Governor of the State convened a special Session of Assembly at 11.00 A.M. on 21.10.97 and told Kalyan Singh to prove his majority on the Floor of the House. On 20.10.97 the appellant issued a whip directing all BSP MLAs to remain present in the House throughout the proceedings on the next day and vote against the Motion of Confidence to be moved by the Chief Minister.

4. On 21.10.97 there was pandemonium and violence in the Assembly and several MLAs went out of the House. In the proceedings which followed, 222 Members of the Assembly voted in favour of the Government. There was no vote opposing the Motion.

5.In the speeches which followed, Mr. Sardar Singh congratulated the speaker for being able to preside over the Assembly without getting hurt. He narrated as to how instructions were given by the appellant to the members of BSP to indulge in violence and cause confusion including causing

hurt to the Speaker. Markandeya Chand another member told the Speaker that along with him 23 others had quit the BSP and supported the Government. Respondents 1 to 12 had voted in support of the Motion.

6.On 24.10.97, 13 petitions were filed by respondents 1 to 12 as well as one Hari Krishan on the ground of violation of whip issued by her on 20.10.97. The petitions invoked only clause 2(1)(b) of the Tenth Schedule to the Constitution. On 27.10.97 respondents 1 to 12 became Ministers and joined the Cabinet. On 11.11.97 another set of 13 petitions similar to those filed by the appellant were filed by one Mr. R.K. Chowdhary claiming the same relief on the same ground. After removal of defects by amendments, the petitions were taken on file and notice was ordered. In these proceedings we are not concerned with the petition against Hari Krishan which was later dismissed as withdrawn. On 25.11.97 respondents 1 to 12 filed written statement in which is was inter alia pleaded that a split took place between the Members of the BSP on 21.10.97 and more than 1/3rd Legislators of the BSP got separated. It was averred that the appellant had instructed the members of her Legislature Party to disturb the proceedings of the Assembly and cause hurt to the Speaker. On the very next day i.e. 26.11.97 the appellant filed a replication statement in answer to the written statement of the respondents. there was no denial whatever of the split referred to in the written statement. The only plea in that replication pertained to the whip issued on 20.10.97 and the non-withdrawal of the same by the appellant on 21.10.97.

7. On 5.12.97 the appellant filed an application for amendment of the petition in which disqualification of the respondents was sought under clause 2(1)(a) or the Tenth Schedule. The relevant part of the pleading was as follows:

> "That it is clear from the perusal of the reply of the respondent filed on this petition on 25.11.97 that the respondent has voluntarily given up the membership of Bahujan Samaj Vidhan Dal. That the respondent had contested and won the elections of Vidhan Sabha on the ticket of BSP and in this manner he is disqualified from the membership of the Vidhan Sabha.
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> There was also a denial of the correctness of the Statement made by Markandeya Chand on the Floor of the Assembly on 21.10.97 that 23 Legislators of BSP were supporting him.

8. Inspect of opposition by the respondents the amendment was allowed by the Speaker. That order was challenged by the respondents in W.P. No. 348 of 1998 on the file of the High Court of Allahabad, Lucknow Bench. That writ petition is said to be pending after notice. Thereafter an additional written statement was filed by Vansh Narain Singh on 2.2.1998. These was a narration of the split in BSP and formation of new group named as Jantantrik BSP ('JBSP' for short). The reasons for such a split were set out in detail. It was further stated that the members of JBSP were not less than 1/3rd of the total number of BSP MLAs. It was also averred that the appellant and a few other members of the BSP started terrorizing and threatening the members of the JBSP with attack on their lives and also prevented their coming to and going from Lucknow. There was also an allegation that signatures of some of those persons who had become members of JBSP were taken

on blank papers by coercion. The appellant did not file any reply statement.

9.On 24.2.98 the hearing of the matter started. It continued on 25.2.98. During the course of the hearing respondents 1 to 12 filed two affidavits containing a list of 26 names who formed part of the group on 21.10.97. An explanation was given in the affidavits as to why there was delay in furnishing the names of those MLAs. Some of the members mentioned in the list were present before the Speaker along with the respondents. the appellant filed nine affidavits on the same day around 7.40 P.M. The hearing concluded on 25.2.98 and order were reserved.

10.Thereafter on 4.3.98 and 10.3.98 the respondents filed another set of affidavits repeating almost the case already put forward. On 16.3.98 R.K. Chaudhary applied for certified copies of those affidavits. When the said certified copies were furnished he was informed that if he had any submissions to be made in regard to those affidavits he could present the same on 19.3.98 at 1.00 P.M. No further affidavits were filed by the appellant or R K Chaudhary. The speaker pronounced the judgment on 23.3.98 dismissing the petitions for disqualification. He recognized 19 MLAs as forming a separate political party by the name JBSP.

11.It is that judgment of the Speaker which is challenged in this appeal. Originally S.L.P. was filed against respondents 1 to 12 only. When the matter came before Court in 10.8.98, on the request of the appellant's counsel the Speaker was added as a party (13th respondent) and the matter was adjourned to 25.8.98. On the latter date the following order was passed:

> "Mr. Sibal, learned senior counsel for the petitioner states that the Speaker was got impleaded as a party because of the first respondent having raised an objection in his counter that the Speaker should have been made a party. Mr. Sibal further states that the Speaker, otherwise, is a proforma party and he need not file a counter."

The matter was directed to be listed for final disposal on 8.9.98 and liberty was given to the counsel for respondents to file additional affidavits if necessary. The case was heard on 8th to 10th, the afternoon of 11th and the afternoon of 14th.

C. FINDINGS OF THE SPEAKER

12.(i) The direction/whip dated 20.10.97 by the appellant was not issued in accordance with paragraph 2 (1) of the Xth Schedule of the Constitution and as such it was unconstitutional and illegal with the result the respondents are not liable to be disqualified under that paragraph for voting contrary to it.

(ii) The petitions filed by the appellant did not fulfill the requirements of 'The Members of Uttar Pradesh Legislative Assembly (Disqualification on grounds of Defection) Rules, 1987' (hereinafter referred to as the Rules) in as much as they did not contain a statement of material facts and consequently the petitions where liable to be dismissed under Rule 8 (ii) of the said rule.

(iii) The appellant had in fact issued a direction on 21.10.97 to the B.S.P. M.L.As for creating disturbances and committing violence in the House on that date and therefore the direction issued by her earlier on 20.10.97 was superseded/withdrawn/waived and made ineffective. As such, the respondents could not be disqualified for having voted contrary to the direction dated 20.10.97.

(iv) there was a split in the B.S.P. on 21.10.97 as a result of which there arose a faction and 26 M.L.As mentioned in annexures 1 and 2 of Chowdhary Narender Singh's affidavit dated 24.2.98 who were more than 1/3rd members of the BSP Legislature Party constituted a group representing the said faction. Constituted a group became the 'original political party' known as JBSP. The members of the said group where entitled to protection of para 3 of the Xth Schedule of the Constitution. Further, after the split of the BSP and formation of the group of 26 MLAs on 20.10.97, there was a further split in the JBSP on 15.1.98 as a result of which 19 MLAs continued to remain members of JBSP Legislature Party.

(v) As a result of the aforesaid findings the petitions filed by the appellant and the petitions filed by R.K.Chaudhary were dismissed. The 19 persons set out in the order were dismissed. The 19 persons set out in the order were declared as members of JBSP in the Assembly.

13. Mr Kapil Sibal who appeared for the appellant submitted that the order of the Speaker suffers from jurisdictional errors based on violation of the constitutional mandates, non-compliance with rules of Natural Justice and perversity. He stated expressly that he was not attacking the order on grounds of bias or mala fides though they were raised in the S.L.P.

14.Dr. L.M. Singhvi argued on behalf of the first respondent while Mr. Ashok Desai represented respondents 2 and 3. Mr. R.K. Jain argued for respondents 4,5 and 6 and Mr. K.N. Balgopal represented the 7th respondent. The substance of the contentions urged on behalf of the respondents is as follows:

> The order of the Speaker is a well structured one. The findings of facts rendered by him are based on the evidence on record. The order does not suffer from any perversity. Nor is it vitiated by violation of Constitutional mandates or principles of Natural Justice. Even if the order is set aside, the matter has to go back to the Speaker for a fresh decision in accordance with the judgment of this Court. E. ARTICLE 145(3) OF THE CONSTITUTION

15. In the midst of his arguments Dr. Singhvi invited our attention to Article 145(3) of the Constitution of India and submitted that as the case involves several substantial questions of law as to the interpretation of the Constitution it should be heard by minimum number of five Judges. When the said submission was made, arguments had already been heard for two days. The Hon'ble the Chief Justice observed that there is an 'Interpretation Clause' in the Xth Schedule and every question of law is not a substantial question of law. Dr. Singhvi did not persist the matter further. However Mr. Ashok Desai who argued on the last day of the hearing handed over a paper setting out proposed substantial questions of law/questions as to interpretation of Constitution. He has mentioned 9 questions therein. In my view question numbers 4 and 9 therein fall within the ambit

of Article 145(3). They read as follows:

> "4. The manner, authority, and other requirements of a valid whip for disqualification under Clause 2 (1) (b) of the Xth Schedule, especially the meaning of expressions "political party' and of 'any person or authority authorised".
>
> "9. Whether order of speaker refusing to disqualify members of house be substituted by disqualification in course or judicial review".

F. DISCUSSION

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16. The contentions of the appellant's counsel can be classified under three main heads (i) violation of constitutional Mandates (ii) violation of principles of Natural Justice; (iii) Perversity.

(i) Violation of Constitutional Mandates. This can be sub divided into two:

> (a) violation of para 2 (1) (b);
>
> (b) violation of para 2 (1) (a) of the Xth Schedule of the Constitution.

A common defence to grounds under both sub paras (a) & (b), is available in para 3. If the situation contemplated in para 3 is proved, neither para (a) nor para (b) will help the appellant. Para 2(1) is in the following terms:

> "2. Disqualification on ground of defection - (1) Subject to the provisions of paragraphs 3,4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House, -
>
> (a) if he has voluntarily given up his membership of such political party; or
>
> (b) 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 authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.
>
> Explanation - For the purposes of this sub-paragraph,
>
> (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;
>
> (b) a nominated member of a House shall, -

(i) Where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188".

Para 3 reads as follows:-

3. Disqualification on ground of defection not to apply in case of split - Where a member of a House makes a claim that he and any other members of his Legislature party constitute the group representing a faction which has arisen as a result of the split in his original political party and such group consists of not less than one-third of the members of such Legislature party,

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground -

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph."

(a) Violation of para 2 (1) (b)

17. Apart from the defence under para 3, an additional defence relating to para 2 (1) (b) has been raised in this case. That has been accepted by the Speaker and findings have been rendered accordingly. Though it is a question involving interpretation of a provision in the constitution and requires to be decided by a Bench of at least five Judges, I am bound to express my opinion here as the case has been heard fully by this Bench. Both parties argued the question at length before the Speaker and invited his findings. Before us also, the appellant's counsel argued it at length and the respondents' counsel replied. Hence it is necessary to express an opinion.

18. The argument of the appellant is that the expression 'political party' in sub-para (b) means 'political party in the House', in other words, the 'Legislature Party'. This argument runs counter to the definition contained in para 1(c). According to that definition, 'original political party' in relation

to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2. The expression 'original political party' is used in para 3 only. Para 2, does not at all use the expression 'original political party' . The said expression in para 3 is equated to the expression 'political party' in para 2(1). The definition clause in para 1 (c) does not make any distinction between sub para (a) and sub para (b) of para 2. But the appellant's counsel wants to make such a distinction. According to him 'political party' in sub para (a) would refer to 'original political party' but the same expression in sub para (b) would refer only to the 'Legislature Party'. The term 'Legislature Party' having been defined in para 1(b) could well have been used in para 2 (1) (b) instead of the term 'political party' if the intention of the Parliament was to refer only to the Legislature Party.

19. There is another feature in Para 3 (b) which negatives the appellant's argument. According to para 3(b), from the time of split in the original political party such as the one referred to in the first part of the para, the faction referred to therein shall be deemed to be the political party to which the concerned member belongs for the purposes of sub-para (1) of para 2 and to be his original political party for the purposes of paragraph 3. The entire sub-paragraph (1) of para 2 is referred to therein meaning thereby both clauses (a) and (b) of the sub-para 1 and no distinction is made between the two clauses. Hence for the purposes of clause 'a' as well as clause 'b' the faction referred to in the first part of para 3 shall be deemed to be the original 'political party' mentioned in para 3. It is thus clear that 'political party' in clause (b) of sub-para (1) of para 2 is none other than 'original political party' mentioned in para

3.

20. The argument that the context in para 2 (1) (b) requires to equate 'political party' with 'legislature party' even though the definition clause reads differently is not acceptable. A reading of sub para (b) the Explanation in para 2 (1) places the matter beyond doubt that the 'political party' in sub para (b) refers to the 'original political party' only and not to the Legislature Party. According to the explanation, for the purpose of the entire sub para, an elected member of the House shall be deemed to belong to the political party. if any, by which he was set up as a candidate for election as such member. Certainly, the Legislature Party could not have set up the concerned member as a candidate for election.

21.According to learned counsel for the appellant, the Legislature Party may have to take decisions on urgent matter in the House and as it represents the original political party in the House, whatever direction is issued by the Leader of such Legislature Party must be regarded as a direction issued by the political party. There is no merit in this contention. When the provision in the constitution has taken care to make a distinction between the Legislature Party and the original Political party and prescribe that the direction should be one issued by the political party or by any person or authority authorised in this behalf, there is no meaning in saying that whatever the Leader of the Legislature Party directs must be regarded as that of the original political party.

22. The reason is not far to seek. Disqualification of a member elected by the people is a very serious action and before that extreme step is taken, it should be proved that he acted contrary to the

direction issued by the party which set him up as a candidate for election.

23. In 'Hollohan' 1992 Supp (2) 651, the majority dealt with the expression 'any direction' in Para 2(1) (b) and held that the objects and purposes of the Xth Schedule define and limit the contours of the meaning of the said expression. It is advantageous to extract para 122 of the judgment which reads as follows:-

> "While construing Paragraph 2(1) (b) it cannot be ignored that under the Constitution Members of Parliament as well as of the State legislature enjoy freedom of speech in the House though this freedom is subject to the provisions of the constitution and the rules and standing orders regulating the Procedure of the House [Article 105 (1) and Article 194 (1)]. The disqualification imposed by paragraph 2(1)(b) must be so construed as not to unduly impinge on the said freedom of speech of a Member. This would be possible if Paragraph 2(1)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political party to which the Member belongs went to the polls. For this purpose the direction given by the political party to a Member belonging to it, the violation of which may ential disqualification under Paragraph 2(1)(b), would have to be limited to a vote on motion of confidence or no confidence in the government or where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a Member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate".

24. If the direction referred to in para 2 (1)(b) is to be restricted to the two kinds referred to in the said passage, there is no doubt that 'political party' in para 2(1)(b) refers only to the 'original political party' as it is only such party which could issue such direction. In such matters, the members of the House would certainly be given sufficient notice in advance and original political party would have sufficient time to take decisions and issue directions.

25. In 'The Journal of Parliamentary Information'. 1993 (Vol.39). Article 19. Anti - Defection Law - Split In parties by D. Sripada Rao @ p.p. 104 and 105, it is stated as follows:-

> "It is not as though the schedule does not take into its fold the outside events and organisation. The Schedule mentions the direction of the political parties. etc. in

Clause (b) of sub-para (1) or para

2. The direction of a member of the House can be from a functionary of a political party outside the House according to the constitution of the respective parties. The label which a member carries and ultimately goes to constitute his Legislature Party under rule 4(2) is an agency outside the House. A member is disqualified for giving up that label and not the membership of the Legislature Party. The operation of the Schedule is not exclusively intramural or confined to the four walls of the House, where the Speaker's writ runs. If the intention of the Parliament in enacting the schedule is to confine the Speaker merely to count the members of the Legislature Party there is no need to mention 'the original political party' in paras 3 and 4 in connection with split or merger. A party split outside the House without the support of 1/3rd members inside the House renders it to wipe out its identity in the House and the House and the Members who engineer a split in Legislature Party without there being a corresponding split in the party outside make themselves vulnerable to forego their seat in the House albeit their command over 1/3rd legislature party".

The above passage shows that no distinction can be made between sub para (a) and sub para (b) vis a vis the meaning of the term 'political party' and that it means only the original political party.

26. It has been rightly held by the Speaker that there is no material whatever to hold that the direction issued on 20.10.97 was issued by the B.S.P. or that the appellant was authorized by the BSP to issue such a direction. Neither before the speaker non before us any such plea was even raised.

27. There is also no difficulty in accepting the finding of the Speaker that the direction dated 20.10.97 was not in accordance with the law laid down by this court in 'Hollohna'

- In para 123, it is said:

"Keeping in view the consequences of the disqualification i.e., termination of the membership of a House; it would be appropriate that the direction or whip which results in such disqualification under Paragraph 2(1)(b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under Paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction".

Mr. Sibal's contention that such a warning as mentioned in the above passage is necessary only when whips are issued on unimportant matters and that the above passage in 'Hollohan' is misunderstood by the Speaker is unsustainable. A reading of paras 122 and 123 in 'Hollohan' clearly shows that no meaning can be given to para 123 other than that given by the Speaker.

28. Hence I hold that the Speaker has not violated para 2(1)(b) of the Tenth Schedule.

(b) Violation of Para 2(1)(a)

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29. The attack of the appellant on the factual findings of the Speaker could be more conveniently and appropriately considered when I discuss violation of principles of Natural Justice and perversity. Under this head, I would discuss the question of law raised by Mr. Sibal.

30. The meaning to be given to the work 'split' in Para 3 is left open in 'Hollohan'. In Para 124, it is said:

> "There are some submissions as to the exact import of a "split" - whether it is to be understood an instantaneous, one time event or whether a 'split' can be said to occur over a period of time. The hypothetical poser was that if one-third of the members of a political party in the legislature broke away from it on a particular day and a few more members joined the splinter group a couple of days later, would the latter also be a part of the 'split' group. This question of construction issues. The meaning to be given to "split" must necessarily be examined in a case in which the question arises in the context of its particular facts. No hypothetical predications can or need be made. We, accordingly, leave this question to be decided in an appropriate case".

31. Issue No. 6 framed by the Speaker is as follows:-

> "Whether on 21.10.97 a group was formed in Bahujan Samaj Party Legislature Party under paragraph 3 of Tenth Schedule of the constitution representing the group which had arisen as a result of split in Bahujan Samaj Party and whether there were at least one-third members of Bahujan Samaj Party Legislature Party in such group? If yes, its effect. There is no dispute before us as to the correctness of the issue as framed. There is also no difference of opinion among the two sides as to the meaning of para 3.

32. The only question of law raised by Mr. Sibal relates to the maintainability of the plea of split in default of compliance with Rule 3 of the Rules. According to the learned counsel, the Rules, having been framed in exercise of the powers conferred by para 8 of the Tenth Schedule for giving effect to the provisions of the schedule, have the same force as constitutional mandates and non-compliance thereof would disentitle the concerned party from invoking the provisions of the constitution. Rule 3(1) of the Rules reads thus:

> "3. (i) The leader of each legislature party, other than a legislature party consisting of only one member shall within thirty days from the date of the first sitting of the House, or, where such legislature party is formed after such date, within thirty days from the date of its formation, and in either case within such further period as the Speaker may for sufficient cause allow, furnish the following to the Speaker, namely:-

(a) a statement in writing in Form I containing the names of members and other particulars of such legislature party:

(b) names and designations of each such member of the legislature party who has been chosen as leader of that party or authorized for the purposes referred to in clause (f) of rule 2, to act as, or to discharge the functions of, such leader;

(c) names and designations of such members of the legislature party who have been authorised for the purposes of these rules to correspond with the Speaker;

(d) a copy of the constitution and rules (by whatever name called) of such legislature party and of the political party to which its members are affiliated".

33. Learned counsel submits that in the present case though the split was alleged to have taken place on 21.10.97. Markandeya Chand, the leader of JBSP did not within thirty days from the said date or for that matter till 25.2.98, the day on which the arguments before the Speaker were concluded furnish the statement etc. as set out in thee Rule. Hence according to him the respondents were not entitled to raise the plea of split in this case.

34. According to him the decision of this Court in Ravi S. Naik Versus Union of India and Another etc. 1994 Supp (2) S.C.C. 641 is not correct and it requires reconsideration. It is therefore argued that thee order of the Speaker placing reliance on the said ruling is erroneous and has to be seat aside.

35. Before referring to Ravi S. Naik (supra) I would consider the question on first principles. Para 3 of the Tenth Schedule excludes the operation of para 2 (1)(a) and

(b) where a member of a House makes a claim that he and any other member of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one third of the members of such legislature party. The following are the conditions for satisfying the requirements of the para:

(i) A split in the original political party giving rise to a faction.

(ii) The faction is represented by a group of MLAs in the House.

(iii) Such group consists not less than one third of the members of legislature party to which they belong. For the purpose of that para all the three conditions must be fulfilled. It is not sufficient if more than 1/3rd members of a legislature party form a separate group and give to itself a different name without there being a split in the original political party. Thus the factum of split in the original party and the number of members in the 'group' exceeding 1/3rd of the members of the legislature party are the conditions to be proved.

36. Rule 3 provides for furnishing of information to the speaker. Rule 6 provides for recording of such information in a register to be maintained by the Secretary. Will the recording of information in the register conclude the issue relating to the two requirements of para 3 of the Tenth Schedule? There is not even a provision for presumption as to the correctness of the entries in the register maintained under Rule 6. The entries would at best only show that such and such information was furnished by such and such member. The entries in the register cannot have any other effect whatever.

37. Rule 10 enables the Speaker to issue from time to time such directions as he may consider necessary in regard to the detailed working of the rules. Will such directions also be considered as constitutional mandates?

38. Rules 7,8 and 9 set out the procedure for seeking disqualification of a member. In this case the petitions for disqualifications were filed even on 24.10.97 long before the expiry of the period of 30 days specified in Rule 3. The question of disqualification had to be decided in those petitions. The power to decide disputed disqualification under Para 6(1) of the Tenth schedule is 'preeminently of a judicial complexion'. The Speaker or the Chairman acting under Para 6(1) is a Tribunal (See 'Hollohna' 1992 Supp. (2) S.C.C.651). Can the entries in the register maintained under rule 6 by the Secretary have the effect of establishing the two conditions required for para 3 of the Tenth Schedule? It can if at all be only a piece of evidence in support of the claim of one party. If as contended by the appellant's counsel, failure to comply with the rule will prevent the raising of a plea of split, the compliance of the rule must have the effect of conclusively proving the conditions required for para 3. That will lead to an anomalous situation. When a disqualification proceeding is initiated against the members who claim the benefit of para 3 they can defeat the proceeding by furnishing some information to the Speaker under Rule 3 and getting it recorded in the Register under rule 6. Thus a matter which has to be decided judicially under Para 6(1) of the Tenth schedule may get decided administratively by compliance of Rules 3 and 6. Undoubtedly such a status cannot be given to the rules which are only procedural. If the contention of Mr. Sibal is accepted, form will stand exalted over substance.

39. Now I shall advert to 'Ravi S. Naik' 1994 Supp. (2) S.C.C. 641. Both the learned Judges who decided the case were party to the majority Judgment in "Hollohan'. it is too much to say that they had not properly understood their own dictum in 'Hollohan', the Bench dealt with the facts of each appeal separately. The Bench observed in C.A. 3390 of 1993 as follows:

> "... 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 case. 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 case 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 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.

40. Again in Civil Appeal 2904 of 1993. the Bench dealt with Paras 2 and 3 of the 10th Schedule and said:

> " 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 paragraph 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, layon 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.

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 in the declaration, a copy of which was filed with the reply dated February 13, 1991. 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 1) 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 Maharashtrawadi Gomantak Party (Ravi Naik Group). A 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 thee 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."

[Emphasis supplied] With respect, I express my whole hearted agreement with the reasoning. The ruling does not at all require re-consideration. The contention of the appellant is therefore rejected. I hold that the Speaker has not violated any of the constitutional mandates.

(II) Violation of principles of Natural Justice

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41. Under this head, the argument of the appellant relates to two affidavits filed on 25.2.98 six on 4.3.98 and one on 10.3.98. The two affidavits filed on 25.2.98 were that of Narinder Singh and Markandeya Chand. They were presented when the arguments were proceeding. The same was objected to by the counsel who was appearing for the appellant before the Speaker on the ground that they had been filed after 9.2.98 which was the last day to produce evidence. In the copy of the proceedings dated 25.2.98, the following statement is found:

> "Whether the above affidavits be placed on record and be read in evidence or not will be considered presently during arguments".

According to the appellant, the Speaker did not pass any order thereafter to take the affidavits on record but he relied on them in his order and thus violated the principles of Natural Justice as the appellant had no opportunity to controvert the averments in the affidavits.

42. In his order, the Speaker has stated as follows:

> "When we resumed the hearing at 6.00 P.M. on 25.2.98 the respondents' counsel Shri A Kumar made a request that the presence of 6 MLAs who were in the division of the BSP on 21.10.97 be noted and the affidavits of Chaudhary Narendra Singh and Shri Markandeya Chand be read in evidence. These six MLAs were Sarvasri Munna Lal Maurya, Rajendra Singh Patel, Jai Narain Tewari, Ved Prakash, Shiv Ganesh Lodhi and Qasim Hasan. The names of all these MLAs are mentioned in Annexure I to the aforesaid affidavits.
>
> Similarly, the petitioners also produced Sarvasri Haji Akbar Husain, Ram Ratan Yadav, Vibhuti Prasad Nishad, Shiv Charan Prajapati, Ram Kripal Singh, Chootey Lal Rajbhar and Matesh Chandra Sonkar MLAs and requested that their presence on the petitioners' side be also noted. The names of these persons also find place in Annexure I to the said affidavits.
>
> The presence of all the adovementioned MLAs presented by both sides was accordingly noted. So far as the affidavits of Chaudhary Narendra Singh and Markandeya Chand are concerned, the petitioners counsel strongly objected to the same on the ground that the respondents were given last opportunity of file affidavit by 9.2.1998 which date has expired and hence the affidavits should not be taken or record.
>
> On being asked whether the petitioners would like to file reply to the said affidavit in case the same is placed on record, the petitioners' counsel Shri Umesh Chandra stated that he would not file any reply but would object to taking the same on record. During the course of arguments Shri Umesh Chandra referred to some paragraphs of this affidavit also to contend that there was no division of the BSP. (Underlining mine) I find that for determining the controversy completely and finally it is in the interest of justice to place the affidavits on record and particularly when the petitioners do not want to file any reply to the same.
>
> Again in another place, it is stated as follows:
>
> The various applications, pleadings and affidavits filed after the petition was amended on 5.12.97, have already been stated earlier in this order and they need not be repeated here. Reference to the relevant applications, pleadings and affidavits

shall made where considered necessary. Suffice it to say that in order to finally and completely adjudicate upon the controversy, and in the interest of justice, and particularly keeping in view the serious consequences flowing from disqualification of a member of the Assembly. I have taken on record all the applications and affidavits filed even after 9.2.1998. Parties have been afforded sufficient opportunity to meet the case of each other.

43. In the S.L.P. a ground is raised that the averment in the order that the appellant's counsel said that he would not file any reply to the affidavits is factually incorrect. But there is no denial whatever in the SLP of the averment that during the course of arguments Shri Umesh Chandra referred to some paragraphs of that affidavit also to contend that there was no division of the BSP. No. argument was also advanced before us challenging the correctness of that averment. When the appellant's counsel had himself relied on portions of the affidavits filed on 25.2.98, there is no substance in the contention that the Speaker had taken them on record behind the back of the appellant. There is also no substance in the contention that the appellant had no opportunity to controvert the contents of those affidavits. On the very same day (25.2.98) the appellant filed an application and affidavits of nine MLAs at 7.40 P.M. She could have then said whatever she wanted to say about the contents of the affidavits filed by the respondents. It is not the case of the appellant that Speaker did not permit her to file any affidavit in reply to the said affidavits of the respondents. the only objection to the reception of the affidavits in question was that it was filed after the expiry of the time granted earlier to file a list of members of BSP. The appellant was represented by practising lawyers who knew very well that the Speaker had ample powers to condone the delay in filing the affidavits. In the Proceedings of 25.2.98 it is stated towards the end that "learned counsel for the two sides had made their submissions on factual and legal aspects". It is not the case of the appellant that any argument with reference to the said affidavits was shut out. Moreover the contents of the affidavits filed on 25.2.98 are almost a repetition of the contents of the Additional Written Statement filed on 2.2.98 plus the two annexures containing the names of 26 members who formed the group of JBSP on 21.10.97 and 18 members who continued in the group till then besides a plea of split within split. I do not find any violation of the principles of Natural Justice in the Speaker's taking on record the two affidavits filed by the respondent on 25.2.98.

44. The other affidavits said to have been taken on record without notice to the appellant were filed on 4.3.98 and 10.3.98. According to the respondents those affidavits were filed in reply to the nine affidavits filed by the appellant on 25.2.98 at 7.40 P.M. According to them the appellant filed them without serving copies on the and they had to obtain copies from the office of the Speaker on 27.2.98. It is stated by the appellant that the affidavits filed on her behalf were presented before the Speaker in the course of arguments in the presence of counsel for the parties. The proceedings of the Speaker dated 25.2.98 do not make any reference to the said affidavits. The endorsement on the margin of the application of the appellant dated 25.2.98 and the affidavits filed therewith prove that they were filed in the office of the Secretary to the Speaker at 7.40 P.M. and on the same day, thee Speaker has made an endorsement in the margin directing the placing of the application and affidavits on record. Whatever it may be, it is not the case of the appellant that copies of those affidavits were served on the respondents or their counsel. There is no record to prove such service.

45. The Speaker has dealt with this matter in his order as follows:-

> "The petitioners themselves had filed 9 affidavits at 7.40 P.M. on 25.2.1998 while hearing on the petitions was going on. Copies of these affidavits were not served on respondents on 25.2.1998. Their counsel obtained it on 27.2.1998 i.e. after the orders were reserved on the case on 25.2.1998. The respondents filed 6 affidavits dated 25.2.1998 and 27.2.1998 by means of an application dated 4.3.1998 which specifically stated that these affidavits were being filed in reply to the said 9 affidavits. The affidavit of Shri Ram Ratan Yadav filed on 10.3.1998 is almost entirely the same as the affidavits filed by the petitioners on 25.2.1998.
>
> One more fact needs to be stated at this stage. Shri R.K. Chaudhary, petitioner, sent an application/letter dated 16.3.1998 asking for copies of the affidavits filed on behalf of the respondents after the order was reserved on 25.2.1998. The copies of these affidavits were sent to Shri R.K. Chaudhary along with a letter dated 17.3.1998 in which he was informed that copies of the affidavits filed by the petitioner on 25.2.1998 were received by the respondents counsel on 27.2.1998 and the affidavits filed alongwith the application dated 4.3.1998 were filed in reply thereof. Along with the said letter, a copy of the affidavit filed by Shri Ram Ratan Yadav dated 10.3.98 was also sent to Shri R.K. Chaudhary. It was specifically mentioned in the letter of 17.3.98 that in case he wanted to submit anything he may appear before me on 19.3.98 at 1.00 P.M. Information of this date was sent to the respondents also. On 19.3.98 the respondents Chaudhary Narendra Singh and Markandeya Chand appeared along with their counsel Shri A Kumar and Sri N.K. Pandey. On behalf of the petitioners Shri Daya Ram Pal, President of the U.P. BSP handed over a letter of Shri R.K. Chaudhary that the purpose of the letter dated 17.3.98 was not clear and as such the same be made clear. In reply to this letter of Shri R.K. Chaudhary, a letter was sent to him on 19.3.98 informing him that if he wanted to file any reply to the said affidavit or submit anything in his favour or to file anything, he may do the same on that date i.e. 19.3.98. Nobody appeared thereafter on behalf of the petitioner Shri R.K. Chaudhary nor filed any document. The aforesaid letters have been placed on the records. In my view, in the particular circumstances of the case no prejudice has been caused to any of the parties by admitting the aforesaid affidavits on record".

46. Again the Speaker has stated thus in his order:-

> "Since the facts stated about the split and threat etc. in the affidavits of Sri Vans Narain Singh and others filed on 2.2.1998 and the affidavits dated 25.2.1998 of Shri Markandeya Chand and Chaudhary Narendra Singh, (including the allegations of split within split) and the facts stated in the six affidavits filed through the application dated 4.3.1998 have not been controverted despite opportunity having been given to the petitioner Shri R.K. Chaudhary (who was also looking after the petitions of Ms Mayawati), I prefer to place reliance on them and hold that there was a split in the Bahujan Samaj Party on 21.10.1997 and a faction had risen as a result of

> this split in the BSP and a group of BSP MLAs consisting of 26 BSP MLAs (whose names are mentioned in Annexure I to the affidavits of Chaudhary Narendra Singh and Shri Markandeya Chand, filed on 25.2.1998) was constituted on 21.10.97 itself representing the faction which thus arose and that this group known as Jantantrik BSP".

47. An objection is taken before us in the course of arguments that R K Chaudhary never represented the appellant in the proceedings before the speaker and notice to him will not amount to notice to the appellant. No such ground has been taken in the S.L.P. There is no denial in the S.L.P. of the averment found in the order of the Speaker that R.K. Chaudhary was looking after the petitions of the appellant. Without challenging the correctness of the statement in the S.L.P. it is not open to counsel for the appellant to raise the contention for thee first time in the course of his arguments. In the order of the Speaker dated 7.11.97 it is stated that R.K. Chaudhary MLA and D.R. Verma, Ex Chairman Legislative Assembly came and produced two letters of the appellant before the Speaker which shows that R.K. Chaudhary did represent the appellant in these proceedings. In fact he filed petitions for disqualification only on 11.11.97 and those petitions were nothing but repetition of the petitions filed by the appellant. In the circumstances it is not possible for this Court to say that the averment made by the Speaker in his order that R.K. Chaudhary was looking after the petitions filed by the appellant is not correct.

48. While I am unable to accept the factual contention that the appellant had no opportunity to controvert the affidavits filed before the Speaker on 25.2.98, 4.3.98 and 10.3.98, I am of the opinion that even so there is no violation of the principles of natural justice. This court has in The Chairman, Board of Mining Examination and Chief Inspector of Mines of Mining Examination and Chief Inspector of Mines and Another versus Ramjee (1977) 2 S.C.C. 256 discussed the principles of natural justice and said:

> "Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter"
>
> "But then we cannot look at law in the abstract or natural justice as a mere artifact. Nor can we fit into a rigid mould the concept of reasonable opportunity"
>
> "These general observations must be tested on the concrete facts of each case and every minuscule violation does not spell illegality. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical

> as if the rules of natural justice were sacred scriptures".

49. It has not been proved by the appellant that there is a failure of substantial justice. In the absence of bias and malafides, the contention that the order of the Speaker is vitiated by violation of principles of natural justice has to fail.

(III) PERVERSITY

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50. One of the contentions urged under this head is that speaker has by unduly delaying the proceedings acted perversely. Though learned senior counsel stated expressly in the course of his arguments that he is not alleging bias or personal mala fides against the Speaker, in the written submissions given by him, it is stated as follows:

> "The Hon'ble Speaker by not deciding the petitioners expeditiously and by allowing the BJP time to garner support for the purposes of the defence of the respondents under paragraph 3 has acted contrary to the constitutional mandate".

The said submission is not permissible in view of the statement expressly made and referred to above. In any event, merely because there is a delay in concluding the hearing, the order cannot be said to be perverse. The Speaker has framed the question properly as to whether a split as alleged by the respondents had taken place on 21.10.97 and whether it was supported by acceptable evidence. This Court in exercise of its power of limited judicial review has only to see whether the findings arrived at by the Speaker are perverse in the sense in which the expression "perversity" has been understood by this court in several decisions. I am unable to accept that as a matter of law, delay in the completion of proceedings would by itself vitiate the order passed by him.

51. But I wish to add that it is absolutely necessary for every Speaker to fix a time schedule in the relevant rules for disposal of the proceedings for disqualification of MLAs or MPs. In my opinion all such proceedings shall be concluded and orders should be passed within a period of three weeks from the date on which the petitions are taken on file.

52. Before considering the relevant findings of the Speaker which are said to be perverse by the appellant, it is better to refer to the rulings which define perversity.

53. As pointed out already in Kihoto Hollahan versus Zachillhu and others 1992 Supp. (2) S.C.C. 651 the constitution Bench has laid down that the power of judicial review vis-a-vis the order of the speaker under paragraph 6(1) of the Tenth schedule is confined to jurisdictional errors only based on violation of constitutional mandate, mala fides, non compliance of rules of natural justice and perversity.

54. In Associated Provincial Picture Houses, Ltd. Versus Wednesbury Corporation 1947 Vol 2 All England Reports 680 Lord Greene, M.R. dealt with a case where the proprietors of a Cinema theatre

sought a declaration that a condition imposed by the Wednesbury Corporation on grant of permission for Sunday performances to be held in that cinema was ultra vires. The Court dismissed the action. The relevant passage in the judgment reads as follows:

> "In the present case we have heard a great deal about the meaning of the word "Unreasonable". It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "Unreasonably".

Similarly, you may have something so abuser that no sensible person could ever dream that it lay within the powers of the authority...."

After referring to a judgment of Theatre de Luxe (Halifax) Ltd. versus Gledhill (5) (1915) 2 K.B. 49 the learned Judge observed:

> " I do not find in any of the language that he used any justification for thinking that it is for the court to decide the question of any justification for thinking that it is for the court to decide the question of reasonableness rather than the local authority. I do not read him as in any way dissenting from the view which I have ventured to express, that the task of the court is not to decide what it thinks is reasonable, but to decide whether the condition imposed by the local authority is one which no reasonable authority, acting within the four corners of their jurisdiction, could have decided to impose".

55. In "Judicial Review of Administrative Action" 5th ed. at P.549 it is stated as follows:

> "Unreasonableness" is sometimes used to denote particularly extreme behavior, such as acting in bad faith, or a decision which is "perverse" or "absurd"

- implying that the decision-maker has taken leave of his senses".

56. In CCSU versus Minister for Civil Service (1984) 3 All E.R. 935 Lord Diplock observed:

> "By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (see Accociated Provincial Picture Houses Ltd. versus Wednesbury Corporation 1947 Vol. 2 All E.R. 680, (1948) 1 K.B. 223). It applies to a decision which is so outrageous in its defence of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have

arrived at it".

57. In Nottinghamshire County Council versus Secretary of the Environment and another appeal 1986 Vol 1 All E.R. 199 Lord Scarman observed as follows:

> "Such an examination by a court would be justified only if a prima facie case were to be shown for holding that the Secretary of State had acted in bad faith or for an improper motive, or that the consequences of his guidance were so absurd that he must have taken leave of his senses".

58. In Tata Cellular versus Union of India (1994) 6 S.C.C. 651, a Three Judge Bench of this court to which one of us (M.M. Punchhi, J., as His Lordship then was) was a party, the law was stated thus:

> "...Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:
>
> (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it.
>
> (ii) Irrationality, namely, wednesbury unreasonableness.
>
> (iii) Procedural impropriety"

59. In Union of India and another versus G. Ganavutham (1997) 7 S.C.C. 463 this court has interpreted reasonableness and rationality which are two grounds for judicial review. The Court referred to the rule in Wednesbury (supra) and observed:

"Therefore to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the for corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view".

60. The order of the Speaker has to be tested in the light of the above principles only in order to decide whether it is perverse. The Speaker has taken note of the following circumstances for accepting the case of the respondents:

> (i) Markandeya Chand announced on the floor of the Assembly on 21.10.97 that under his leadership 23 MLAs got separated from BSP and they formed one group. This was not controverted by the appellant or the other members of BSP.
>
> (ii) In spite of such announcement, the petition filed by the appellant on 24.10.97 did not invoke paragraph 2(1)(a) of the Tenth Schedule for disqualifying the respondents.

There was no mention whatever about the split announced in the Assembly.

(iii) In the petitions filed by R.K. Chaudhary on 11.11.97 the position was the same. There was no reference to the split announced in the Assembly.

(iv) On 13.11.97 applications were filed for amendment of the petitions which were allowed by the speaker but there was no reference in these applications either to the split or to paragraph 2 (1)(a) of the Tenth Schedule.

(v) On 25.11.97 the respondents filed the written statement in which it was stated that a split had occurred as a result of which there was more than one third of the BSP legislators under the leadership of Markandeya Chand. On 26.11.97 appellant filed a reply/rejoinder. There was no denial of the split referred to in the written statement of the respondents.

(vi) On 5.12.97 applications for amendment of the petitions were filed in which there was only a denial of correctness of the statement made by Markandeya Chand in the Assembly that 23 legislators of BSP were with him. In Paragraph 7A and 7B of the petitions which were introduced by the said amendment there was no dispute of the factum of split pleaded by the respondents.

(vii) On 2.2.98 an additional written statement was filed by Vansh Narain Singh setting out the facts relating to the split and formation of JBSP. There was also a reference to the threat caused by the appellant to JBSP members and the fact that they were prevented from going to Lucknow. There was also an allegation that signatures were taken on blank papers from such members. The averments in the additional written statement were never controverted.

(viii) The affidavits filed by the appellant on 25.2.98 were sworn to in November, 1997. There was no explanation for the same. Three of the affidavits were contradicted and controverted by the dependents thereof. The stamp papers on which the affidavits had been prepared were issued on the same day and the names of the persons to whom the stamp papers were issued were not written by the stamp vendor.

(ix) The list of persons who joined JBSP on 21.10.97 was for the first time disclosed on 25.2.98 only but the appellant had obtained affidavits from 9 of the in November 1997 itself. That shows that the appellant knew that those 9 MLAs were at that time in the group led by Markandeya Chand.

(x) The video cassettes and other records filed in the case revealed that the appellant had instigated violence in the Assembly on 21.10.97 and disrupted the proceedings. That itself probablises the version that the MLAs who supported the respondents were kept under threat by the appellant and prevented from going to Lucknow for some time. The matter is one of oath against oath and the affidavits filed by the respondents and the other evidence produced by them were acceptable.

61. All the above circumstances referred to and relied on by the Speaker are quite relevant and germane for deciding the issue whether there was a split on 21.10.97 and whether the group led by Markandeya Chand had not less than one third members of the BSP legislature party.

62. Apart from this, the Speaker has considered the various facts relied on by the appellant and discussed the same. According to the appellant the following are the facts which would disprove the case of the respondents:

> (a) That a claim was made by Markandeya Chand in the Assembly that he had 23 BSP MLAs along with him who got separated but the respondents who are 12 in number were the only members of the BSP who had voted in support of the Motion of Confidence on that day.
>
> (b) Those 12 persons became Ministers on 27.10.97.
>
> (c) In spite of several opportunities having been given and inspite of expiry of the time finally granted till 9.2.98, the respondents did not disclose the names of the members of the JBSP who were said to be 26 in number.
>
> (d) When the list was given on 25.2.98 there were only 17 members in all in JBSP.
>
> (e) The respondents have not complied with the mandatory provisions of Rule 3 of the Rules inspite of extension of time granted by the Speaker.

63. All the above circumstances relied on by the appellant have been referred to and discussed in detail by the Speaker in his order. If any of them had been ignored, it could be said that his order is vitiated. But that is not the case here. When there is no bias or mala fide, the acceptance of one party's statement on facts and rejection of the other cannot be canvassed before this Court.

64. The appellant's counsel argued that the Speaker is in error in proceeding on the basis that the averments in the affidavits filed on 25.2.98 on behalf of the respondents were not controverted by the appellant and the Speaker has overlooked that in the application filed by the appellant on 25.2.98 along with nine affidavits they have been specifically controverted. It is also argued that the Speaker is in the wrong in rejecting the affidavits of the MLAs filed by the appellant on the ground that they were sworn in November 1997 on different dates. It is submitted by learned counsel that the appellant started collecting such affidavits from all the members of the BSP from 6.11.97 after the respondents claimed that they had 24 members in their group and that she could get them only when the concerned MLAs were available in LUCKNOW.

65. The above arguments are fallacious. The first of them negatives the other plea of the appellant that no opportunity was give to her to controvert the averments in the affidavits of the respondents filed on 25.2.98. It is already seen that the relevant averments were all made in the additional written statement filed on 2.2.98 and the appellant did not file any reply thereto. The averments setting out the reason for the split in the party on 21.10.97 and the averments describing the way in which the appellant kept the MLAs under threat and forced them to sign blank papers were never controverted. That is a crucial circumstance relied on by the Speaker and he cannot be faulted thereor. The Speaker has drawn an inference that the appellant knew that the 9 MLAs whose affidavits were filed by her on 25.2.98 were members of the group of the respondents when it was

formed on 21.10.97 and that is why she got affidavits from them in November 1997 by force. In the S.L.P. the said inference of the Speaker has not been traversed. There is no averment in the S.L.P. or any other record that the appellant got affidavits from November' 97 onwards of all the MLAs who continued to be in the BSP. In the absence of any such record, an argument advanced by counsel at the fag end of the arguments cannot be accepted.

66. The reasoning of the Speaker is in the following passages:-

> "The affidavits of the respondents thus remain uncontroverted and there is nothing on the record to disbelieve them. On the other hand, the statements made on oath in the respondents' affidavits are corroborated by the following materials on the record:-
>
> (i) Statement of Shri Sardar Singh made on the floor of the House on 21.10.97 while speaking on the motion of confidence. The petitioners have not filed any evidence to controvert the statement of Shri Sardar Singh, which was made on the first available opportunity.
>
> (ii) Admission in Paragraph 3 of the 9 affidavits filed on behalf of the respondents that there was anarchy in the House on 21.10.97. These affidavits have been sworn in the month of November, 1997 and are totally silent on the points of Ms. Mayawati's direction given on 21.10.97.
>
> (iii) Video cassettes recording the proceedings dated 21.10.97 of the House unmistakably, and with prominence, show Ms. Mayawati instigating, exhorting and directing the BSP MLAs sitting behind her and on her side, to come to the well of the House and create disturbance. It may be noticed the Speaker was being attacked by BSP MLAs and other opposition MLAs by suing(sic) wooden loud speaker box, microphones etc. The video cassettes of Enadu, BI, Zee, ANITV channels may be referred to in this behalf. These cassettes are on the record. Still photographs taken from some of the video cassettes have also been placed on the record.

(iv) The fact that violence was committed, and disturbance created, in the House at the instance of Ms. Mayawati and some other opposition MLAs immediately after the recital of 'Vande Matram' was over and the Speaker was attacked. This is precisely what Ms. Mayawati had directed her MLAs to do on 21.10.97."

> "The video cassettes clearly show that Ms. Mayawati instigated and abetted the commission of violence in the House on 21.10.1997 in which microphones, table tops and sound boxes were pulled up from the legislators' and reporters' table and used for assaulting the Speaker and others. Their acts are criminal in nature. Apatment of these acts is also a crime. There is prima facie evidence in the present petitions to show that Ms. Mayawati is quilty of this offence".

"Now it is to be seen as to whether as matter of fact a faction had arisen as a result of split in the BSP and the respondents have made a claim that they and other members of the BSP Legislature party had constituted a group representing that faction. Paragraph 11 of the affidavits of Sarvsri Vans Narain Singh and other respondents filed on 2.2.98 clearly states that in the background of directions given by Ms. Mayawati to the BSP MLAs when they had sat in the cars for coming to the Assembly, these respondents and other MLAs of the BSP, whose number was not less than one-third of the total number of the BSP MLAs, sat in the lobby, discussed the matter and at that very moment there was a split amongst the BSP MLAs and these member of the BSP, who separated from the BSP, formed a separate group under the leadership of Shri Markandey Chand and that the number of such members was not less than one-third of the BSP members. It is further averred that it was not possible for them to remain members of the BSP any more and that the fact was stated by Shri Markandey Chand in the House on 21.10.97. Paragraph 12 of the said affidavits further state that as was apparent from the statement of Shri Markandey Chand there was a split in the BSP and there were 23 member (MLAs) after that split with him and this became a separate group. The timings of the split was given before the Speaker came to the sitting of the House on 21.10.1997.

The averments in these affidavits are corroborated by the statement of Shri Markandey Chand given on the floor of the House on 21.10.1997 which was read in evidence by agreement of parties.

The petitioners did not file any reply to the said affidavits".

"These is no sufficient reason to disbelieve the averments in these affidavits. They have been corroborated in material particulars by circumstance and other materials on record. The reason given for splitting the BSP has been found to be true as it is supported by the actual happening of violent events in the House on 21.10.1997 which took place at the active instigation exhortation and abetting of Ms. Mayawati herself. The video cassettes and the news reports of the proceedings of the House of 21.10.97 further support this. Then the statement of Shri Sardar Singh about the split and its cause and Shri Markandey Chand's statement about the split both made on the first available opportunity on the floor of thee House on 21.10.97 itself are there. Shri Markandey Chand informed the House of the fact of split in BSP by 23 BSP MLAs under his leadership.

Another fact which supports the case of the respondents is that, apart from the respondents, there were many BSP MLAs who did not participate in the disorder or violence in the House. The respondents say that they were those who were in the group of BSP MLAs causing split. This fact of non-participation of several BSP MLAs in disorder or violence is corroborated by the video cassettes".

> "Further, the petitioners counsel had stated on 26.11.97 that he did not propose to file any documentary evidence except those filed with the petitions. These affidavits have been suddenly produced on 25.2.98 when Chaudhary Narendra Singh and Shri Markandey Chand filed their affidavits disclosing the names of 26 MLAs and further setting up the case of split within split. The contents of these affidavits are not supported by the events of 21.10.1997. There is no reason why their recent affidavits were not filed. In fact they do create az suspicion in the mind that they had been obtained by the petitioners under threat as alleged by the respondents".

67. There is not even an attempt to explain any of the above features relied on by the Speaker for rejecting the nine affidavits filed by the appellant on 25.2.98. Nor is there any argument against the reliance placed by the Speaker on the video tapes showing how the appellant instigated the MLAs to resort to violence and disturb the proceedings in the Assembly on 21.10.97. The question before this Court is not whether on the facts and circumstances of the case there was a split as alleged by the respondents on 21.10.97 but the question is whether the conclusion arrived at by the Speaker after taking note of all the aforesaid circumstances for and against the respondents is so unreasonable or absurd or perverse that he must have taken leave of his senses. The speaker has not left out any relevant material from consideration; nor has he referred to any irrelevant matter. In the facts and circumstances of this case it can not be said that no reasonable or sensible person who had applied his mind to the question to be decided could have arrived at the findings given by the Speaker. It should not be forgotten while dealing with this question of perversity that according to the appellant's counsel there was no bias or mala fide on the part of the Speaker. If the materials on record are considered on that basis it can at best be said that, if at all, two conclusions were possible and the Speaker has chosen one of them. In the circumstances I do not find any perversity in the findings rendered by the Speaker. It is worth recalling the observations of Lord Fraser of Tullybelton in Re Amin (1983) 2 All E.R. 864 at page 868, that "Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made... Judicial review is entirely different from an ordinary appeal".

68. The Speaker has considered the question of split within split alleged to have taken place in JBSP. It is unnecessary for the purpose of this case to go into that question. Such a subsequent split in JBSP is referred to by the respondents only for the purpose of explaining how there were only 19 members in that group on 25.2.98. The only relevant question is whether there was a split on 21.10.97 and the group which got separated from the BSP consisted of not less than one third members of the BSP legislature party. That question having been answered in favour of the respondents, it is not necessary to go into the question whether there was a further split in JBSP and if so, the effect thereof. After considering the materials on record, I am of the opinion that the findings arrived at by the Speaker are not vitiated by perversity.

G. SEQUEL TO JUDICIAL REVIEW

69. In the view I have taken it is not necessary for me to consider the question whether this Court should decide the entire matter here in the event of setting aside the order of the Speaker or remand the matter for fresh disposal by the Speaker in accordance with the judgment of this Court. For the

sake of completion. I wish to express my opinion on that question too. If the order of the Speaker is to be set aside, I am of the view that the matter should go back to the Speaker for fresh decision. It is not the function of this Court to substitute itself in place of the Speaker and decide the questions which have arisen in the case. Learned counsel for the appellant placed reliance on the judgment of this court in Bengal Chemical & Pharmaceutical Works Ltd., Calcutta versus Their workmen1959 Supp. (2) S.C.R. 136. The law as stated in that case is as follows:

> ".....A free and liberal exercise of the power under Art. 136 may materially affect the fundamental basis of such decisions, namely, quick solution of such disputes to achieve industrial peace. Though Art. 136 is couched in widest terms, it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of the principles of natural justice, causing substantial and grave injustice to parties or raises an important principle of industrial law requiring elucidation and final decision by this court or discloses such other exceptional or special circumstances which merit the consideration of this Court".

I do not know how this passage would help the appellant. This Court has only said that interference under Article 136 is necessary (1) where awards are made in violation of the principles of natural justice causing substantial and grave injustice to parties (2) where the case raises an important principle of law requiring elucidation and final decision of this Court and (3) where the case discloses such other exceptional circumstances which merit the consideration of this Court. the passage cannot be interpreted to mean that after setting aside the order of thee Tribunal the factual questions could be decided by this Court. Learned counsel referred also to Hindustan Tin Works Pvt. Ltd. versus Employees of Hindustan Tin Works Pvt. Ltd. 1979 (1) S.C.R.

563. The Court relied upon the passage in Bengal Chemical & Pharmaceutical Work Ltd., (supra) extracted above and modified the award. That ruling also does not help the appellant in any manner.

70. In vice Chancellor, Utkal University versus S.K. Ghosh 1954 S.C.R. 883 the Constitution Bench held that it is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law.

71. When the Tenth Schedule has expressly constituted the Speaker or the Chairman as the case may be to decide the question of disqualification and attach finality thereto, it is not for this Court to consider the facts and decide the said question by substituting itself in the place of the Speaker. If the order of the Speaker is set aside on any of the grounds mentioned in 'Hollohan' (supra) by exercising the power of limited judicial review, the consequential course to be adopted is to leave the matter to the Speaker to decide afresh in accordance with law.

H. CONCLUSION

72. The Speaker has found on the basis of the records that the appellant instructed the members of the BSP to indulge in violence and disrupt the proceedings in the Assembly on 21.10.97. It is also found that the allegations made by the respondents that the members of the JBSP were kept under

threat by the appellant and prevented from entering Lucknow. In view of such finding also which is supported by records, the discretionary jurisdiction under Article 136 of the Constitution should not be exercised in favour of the appellant.

For all the above reasons this appeal deserves to be and is hereby dismissed.

THOMAS, J.

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Leave granted.

Twelve MLAs of Bahujan Samaj Party ("BSP" for short) crossed floor of the House in the Legislative Assembly of the State of Uttar Pradesh (UP) and voted in favour of a motion of confidence moved by the Chief Minister of the State. Soon thereafter all those twelve MLAs were made Ministers in the State cabinet headed by Chief Minister Shri Kalyan Singh. Appellant (MS Mayawati) who is the leader of BSP Legislature Party complained that the twelve MLAs who defected (they are arrayed as respondents in this appeal) have incurred disqualification for membership of the Assembly. the Speaker of the Assembly, by the impugned order exonerated the respondents from the tentacles of disqualification envisaged in the Xth schedule to the Constitution of India. Hence this appeal by special leave.

There is no need to elaborate on the facts as they, by themselves, are compendious. Elections held to the Uttar Pradesh Vidhan Sabha (Legislative Assembly) in 1996 resulted in a hung Assembly as no political party secured absolute majority. However, appellant Ms. Mayawati became Chief Minister of the State as her party consisting of 67 MLAs in the Assembly was supported by the MLAs belonging to Bhartiya Janata Party (BJP). But she demitted the office of Chief Minister on 29.9.1997 as per an understanding between the aforesaid two parties. On the next day Shri Kalyan Singh, leader of the BJP Legislature Party became Chief Minister on the assumption that BSP would support him. But contrary to the said assumption BSP withdrew support to Kalyan Singh Government on 17.10.1997. Kalyan Sing was thereupon directed by the Governor to prove that he enjoyed the support of majority MLAs in the Assembly. On 20.10.1997 the appellant Ms Mayawati issued a whip to all the MLAs of her party in the following terms.

> "You are hereby informed that you should be present in the Session of the UP Legislative Assembly on 21.10.1997 from 11 A.M. till the end of the sitting and vote against the Motion of Confidence moved by the BJP Government".

On 21.10.1997 twelve MLAs from BSP (respondents) voted in favour of the motion of confidence moved by Shri Kalyan Singh. A violent pandemonium broke out inside the House in which a number of MLAs were assaulted by some other members and consequently no business could be transacted. On 24.10.1997 appellant filed a petition before the Speaker under Rule 7 of The Members of Uttar Pradesh Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1987 which will hereinafter be referred to for convenience, as "Disqualification Rules" for a declaration that the

twelve respondents became disqualified as per Paragraph 2(1)(b) of the Xth Schedule of the Constitution. When respondents took up the plea that they, along with some more MLAs, the total of which reached 23 in number, have formed themselves into a new political party by name Janatantrik Bahujan Samaj Party (for short JTBSP). Appellant thereupon moved for amendment of the petition on 5.12.1997 seeking incorporation of an additional ground for disqualification which is envisaged in Paragraph 2(1)(a) of the Xth Schedule. Additional written statement was filed by the respondents to the amended petition.

As the names of all the 23 MLAs who allegedly formed the split have not been furnished, the Speaker directed the respondents to file a list of such names by 29.1.1998. As they failed to give names on that day also the Speaker gave another date as a last chance and posted it to 9.2.1998. But respondents failed to furnish the names of such MLAs even by that extended time, and instead again they pleaded for more time. On 25.2.1998 a list of 26 MLAs was furnished to the Speaker claiming that they were the MLAs who formed a split on 21.10.1997.

The speaker passed the impugned order holding that (1) respondents are not liable to be disqualified under Paragraph 2(1)(b) of the Xth Schedule on the syllogism that the person who issued the direction on 20-10-1997 is not proved to be an authorised person. (2) Such direction was superseded by another oral direction which was subsequently issued and hence on disqualification would visit on the ground of non-compliance with the former direction. (3) At any rate the whip issued on 20-10-1997 was ineffective since it was silent as to the consequences of its non-compliance. (4) Nor are the respondents liable to be disqualified under Paragraph 2(1)(a) of the Xth Schedule because they belong to a faction which came into being as sequel to a split which arose in the BSP on 21-10-1997 consisting of not less than 1/3rd of the total members of the Legislature Party of the BSP.

It would be advantageous to consider first whether the disqualification envisaged in sub-clause (a) of Paragraph 2(1) of the Xth Schedule should have visited the respondents because it is admitted by the respondents themselves that they ceased to be members of BSP from 21-10-1997 as they had formed a new political party (JTBSP). Such severance from BSP is sought to be protected from disqualification by seeking shelter under the umbrella of Paragraph 3 of the Xth Schedule which is extracted below:

> "3. Disqualification on ground of defection not to apply in case of split. Where a member of a House makes a claim that he and any other members of his Legislature party constitute the group representing a faction which has arisen as a result of the split in his original political party and such group consists of not less than one-third of the members of such Legislature party:-
>
> (a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground- (i) that he has voluntarily given up his membership of his original political party; or (ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority within fifteen days from the date of such voting or abstention; and (b) from the time

> of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph".

Two conditions are sine qua non for avoiding the disqualification when any member of the House voluntarily gives up membership of his original political party. First is that the member concerned should have made a claim that the split in the original Political Party has arisen resulting in the constitution of a group in its Legislature Party representing a faction thereof. Second is that such group should consist of not less than 1/3rd of the members of such Legislature Party.

In order to establish that the first condition has been fulfilled the first respondent (Shri Markandeya Chand) has made a statement in the House on 21-10-1997 that the split of BSP Legislature Party had arisen consisting of a group which represents a faction of not less than 1/3rd of the members thereof. It appears that the Speaker has proceeded on the assumption that a claim has been made as provided in the said Paragraph.

Regarding the second condition the Speaker held that "there was a split in the Bahujan Samaj Party on 21-10-1997 and a faction had arisen as a result of the split in the BSP and a group consisting of 26 BSP MLAs was constituted on 21-10-97 itself representing the faction which did arise and that group is known as Janatantrik BSP".

According to the respondents, the aforesaid finding being a finding of fact is not amenable to challenge as it was rendered by the Speaker of the Assembly on whom alone the jurisdiction is conferred to determine such disputed fact.

The scope of judicial scrutiny on matters pertaining to the decision of a Speaker passed under Paragraph 6 of the Xth Schedule has been elaborately considered by a Constitution Bench in support of the plea that Xth Schedule is liable to be struck down as violative of basic features of the Constitution was that: "the investiture of the determinative and adjudicative jurisdiction in the Speaker would, by itself, vitiate the provision on the ground of reasonable likelihood of bias and lack of impartiality and therefore denies the imperative of an independent adjudicatory machinery. The Speaker is elected and holds office on the support of the majority party and is not required to resign his membership of the political party after his election to the office of the Speaker".

Venkatachaliah, J (as the learned Chief Justice then was) has delved into the importance of the office of the Speaker and found that the Speaker holds a high, important and ceremonial office, he is the very embodiment of propriety and impartiality and he performs wide ranging functions including the performance of important functions of a judicial character, and observed thus:

> "It would, indeed, be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. The robes

of the Speaker do change and elevate the man inside."

Accordingly, the contention that vesting of adjudicatory functions in the Speaker would vitiate the provision on the ground of likelihood of political bias was rejected.

Paragraph 6 of the Xth Schedule renders the decision of the Speaker final. The Constitution Bench considered its validity in Kihoto Hollohan (supra). In the majority judgment it was held that the finally clause in Paragraph 6 does not completely exclude the jurisdiction of the court under articles 136, 226 and 227 of the Constitution. Ultimately the Constitution Bench upheld the validity of the Xth Schedule subject to the aforesaid rider. However, the Bench further held that the scope of judicial scrutiny is limited to ascertain whether the decision of the Speaker is vitiated by jurisdictional errors viz. "infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

Shri Kapil Sibal, learned senior counsel who argued for the appellant focussed on the contention that the decision of the Speaker that on 21.10.1997 a split has arisen in the BSP comprising of more than 23 MLAs is vitiated by perversity. Of course learned counsel also contended that there was violation of constitutional mandate, and non-compliance with rules of natural justice. But ultimately the stress of the attack was confined to the ground of perversity. According to the counsel no authority conferred with the jurisdiction would have come to such a conclusion on the facts of this case. In the above context it was submitted by the counsel that a split can be recognized by a Speaker only if it is followed up by the steps prescribed in Rule 3 of the Disqualification Rules, as per which the Leader of the split faction should have furnished to the Speaker with in thirty days from the date of its formation of the faction the following particulars: (a) a statement in writing in Form-I containing the names of the members and other particulars of the faction; (b) names and designations of such member of the faction who has been chosen its leader; (c) the names and designations of such members who have been authorised for the purposed of the Rules to correspond with the Speaker; (d) a copy of the Constitution and Rules of the new legislature party and of the political party to which its members are affiliated.

> "Legislature Party" is defined in Paragraph 1(b) of the Xth Schedule. It includes the group consisting of all members of the House for the time being belonging to that political party formed in accordance with Paragraph 3. Hence the faction consisting of not less than 1/3rd members of the parent legislature party which was constituted as a sequel to the split arisen therefrom is also deemed to be a legislature party. The leader of such newly formed legislature party is also obliged to comply with the requirements contained in Rule 3 of the Disqualification Rules.
>
> According to thee learned senior counsel, non-compliance with the Rules would lead to the inevitable consequence that respondents cannot be heard to contend that there was a split in BSP as envisaged in Paragraph 3 of Xth Schedule.
>
> Dr. L.M. Singhvi, learned senior counsel who argued for some of the respondents contended that non-compliance with the Rules would not by itself establish that the

split pleaded by the respondents did not take place. According to the learned counsel, Rules are only procedural and they cannot get the status of of constitutional provisions and cannot be equated therewith. He relied on the observations of a two Judge Bench of this Court in Ravi S Naik Vs Union of India (1994 Suppl(2) SCC 641) that Disqualification Rules are procedural in nature and any violation of the same would only amount to an irregularity in procedure which is immune from judicial scrutiny. Shri Ashok Desai and Shri RK Jain, the other two learrned senior counsel who also argued for some of the remaining respondents supported the aforesaid contention. As against the plea made by Shri Kapil Sibal that the observation in Ravi S.Naik needed re-consideration all the other senior counsel pointed that the two learned judges in Revi S.Naik have only adopted the reasoning of the Constitution Bench in Kihoto Hollohan on that aspect and hence it is not liable to be disturbed.

Learned judges who decided Ravi S.Naik were considering the contention that petitions filed before the Speaker did not fulfil the requirements of Rule 6(5)(a)(b) and (6) of the Disqualification rules inasmuch as those petitions were bereft of facts on which petitioner therein was relying and also for not appending copies of the documents and evidence in those petitions. It was hence contended before the Bench that such petitions were liable to be dismissed on that count alone. Learned Judges, while dealing with the above contention have observed thus:

"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 Xth 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 case."

In Kihoto Hollohan the Constitution Bench, while dealing with the deeming provision contained in Para 6(2) of the Xth Schedule, made the observation that the immunity adumbrated therein is only for the irregularities of the procedures. In this context is is worthwhile to refer to the next observations made by the Bench in the succeeding portion in Kihoto Hollohan:

"The very deeming provision implies that the proceedings of disqualification are, in fact, not before the house; but only before the Speaker as a specially designated authority. The decision under Paragraph 6(1) is not the decision of the House, nor is it subject to the approval by the House. The decision operates independently of the House. A deeming provision cannot by its creation transcend its own power. There is, therefore, no immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power under Paragraph 6(1) of the Tenth Schedule."

We will not say that rules of procedure are on par with the constitutional mandate incorporated in the Xth Schedule of the Constitution. Nonetheless, the procedure prescribed in the Disqualification Rules are meant to be followed for the purpose for which they are made. It is by virtue of the authority conferred by the Xth Schedule that Disqualification Rules are formulated "for giving effect to the provisions of this Schedule." What would have happened if the Rules have not been formulated as enjoined by Paragraph 8 of the Xth Schedule? The provisions of the Xth Schedule would remain ineffective. So the Rules cannot be read in isolation from the provisions of the Xth Schedule, in stead they must be read as part of it. Of course, mere violation of a Rule is not enough to constitute violation of the provisions of the Xth Schedule. When a certain procedure is required by the Rules to be adopted for giving effect to the provisions of the Constitution, the non-adopted of the procedure would very much help the authorities to decide whether there was violation of the constitutional provision envisaged in the Xth Schedule. Before a claim is made by a member of the House under Paragraph 3 of the Xth Schedule a split in the political party should have arisen. Such a split must have caused its reaction in the Legislature Party also by formation of a group consisting of not less than one third of the members of that Legislature party. We have to bear in mind that clause (b) of Paragraph 3 mandates that "for the purposes of this paragraph" such factions shall be deemed to be the original political party of the member concerned "from the time of such split." What is the overt act through which formation of such a group can be perceived by the Speaker? It is in this context that Rule 3 of the Disqualification Rules assumes relevance and importance. Unless the particulars required in the rule are furnished how would the Speaker know, authoritatively, of the formation of such a group? Ordinarily such information must be furnished as early as possible. But there can be rare cases in which it may not be possible, due to situational reasons, to furnish the particular soon after the formation of such a group. But the 30 days time provided in the Rule is not to be understood as any indication to dispense with the promptitude in furnishing those particulars. The time 30 days fixed in Rule 3 must be treated as the outer limit within which the Speaker should be informed of the particulars required. So the need for compliance with Rule 3 is not a bare formality. Insistence on compliance with the Rule is, therefore, to enable the Speaker to decide whether the protection envisaged in the 3rd Paragraph can be afforded to the members concerned.

We are of the opinion that a Speaker has to consider the repercussions of non-compliance of a particular rule in the Disqualification Rules to ascertain how far it has affected the credibility of the case of a claimant who seeks protection under Paragraph 3 of the Xth Schedule.

The Speaker has accepted the plea of the respondents that there was a split as envisaged in Paragraph 3 of the Xth Schedule. the said finding can be subjected to judicial scrutiny only in the limited sphere indicated in Kihoto Hollohan (supra) viz. whether "the infirmities are based on violation of constitutional mandate, mala fides, non-compliance with the rules of natural justice and perversity." This is a case where appellant did not succeed in showing a case of mala fides or non-compliance with the rules of natural justice as for the conclusion arrived at by the Speaker. As pointed out earlier the main endeavour of the learned counsel was to show that the finding of the Speaker is vitiated by perversity in the sense that the conclusion is so unreasonable that no tribunal would have arrived at it on the given facts.

It is suggested on behalf of the respondents that if the conclusion of the Speaker is based on some materials it is immune from judicial interference because of two broad restrictions. First is the extremely limited scope of judicial scrutiny which is permitted by law as indicated by the Constitution Bench in Kihoto Hollohan. Second is the positional height of the Speaker as a constitutional functionary upon whom the jurisdiction is conferred to determine the disputes under the Xth Schedule. Shri Ashok Desai, learned senior counsel contended for the extreme position that if the conclusion reached by the said functionary is a possible conclusion it stands insulated from any outside interference including by judicial exercise.

The said extreme proposition may lead to the situation that, no matter, however illegal the order may be, it cannot be touched if its author is the Speaker. I am unable to concede such an immunity to any constitutional functionary to be above law or to have unfettered jurisdiction to pass unreasonable orders with immunity. The test cannot be whether it is possible for the Speaker to record such a conclusion, because the very fact that the Speaker passed an order itself is the instance to show that it is possible. The test is whether the conclusion or the finding made by the Speaker is so unreasonable or so unconscionable that no tribunal should have arrived at it on the given materials. Parameters for scrutinising what is unreasonable are, of course, nebulous. What appears to be reasonable to one man may be unreasonable to another and vice versa. It was perhaps that approach which made Lord Hailsham to make his quaint comment that two reasonable persons can reach diametrically opposite conclusion on the same set of facts without either of them forfeiting the credential to be reasonable. However, the test of perversity has now bogged down to this: No conclusion can be dubbed as perverse unless the unreasonableness is of such a dimension that no authority vested with the jurisdiction would have come to such a conclusion. Even the oft quoted "Wednesbury principle of reasonableness" as propounded by Lord Greene MR (Picture House vs. Wednesbury Corporation - 1947 (2 all England Report 680) has not changed the said approach. Shri Ashok Desai, learned Senior Counsel made an endeavour to show that the aforesaid principle is a check on the courts from apperceiving a decision reached by an authority (vested with power to decide) as unreasonable. Learned Master of Rolls (Lord Greene) has observed thus:

> "In the present case we have heard a great deal about the meaning of the word "unreasonable." It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretion often use the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done..... Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of authority.....Theoretically it is true to say - and in practice it may operate in some cases - that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is right."

No departure from the said principle is warranted, more so because the Wednesbury ratio has gained approval of this Court in a number of decisions (vide Sitaram Sugar Company Limited vs. Union of India - 1990 (3) SCC 223; Tata Cellular vs. Union of India - 1994 (6) SCC 651; Union of

India vs. Ganayutham - 1997 (7) SCC 463.

The Speaker has, in the impugned order, adverted to the following facts to support his conclusion:

> (1) In the affidavit files by Shri Vansh Narain Patel (6th respondent) and others on 2.2.1998 it is mentioned that a split was formed on 21-10-1997 at the lobby of the House when "not less than 1/3rd of the total members of BSP MLAs discussed and decided to separate from BSP under the leadership of Shri Markandeya Chand (1st respondent). The number of such MLAs is mentioned in the affidavit as 23. (2) Appellant and her followers did not file any reply to the said affidavits.
>
> (3) On 21-10-1997 Shri Vansh Narain Patel (6th respondent) announced on the floor of the House that more than 1/3rd MLAs of the BSP have come out of the party.
>
> (4) Even though the respondents failed to mention the names of the 23 MLAs who formed such a faction in split of opportunities granted including the last opportunities granted on 9/2/1998, they disclosed the names of 26 MLAs of the BSP who formed the split, in the affidavit filed on 25-2-1998. (5) the facts stated in the said affidavits have not been controverted "despite opportunity having been given."

In substance the crucial circumstance which persuaded the Speaker to rely on the ipse dixit in the affidavit filed by Markandeya Chand and Vansh Narain Patel on 25-2-1998 is that appellant has not controverted it. It must be remembered that it is an undisputed fact that at no time the number of BSP MLAs who voted for Kalyan Singh's government had reached the number 23 (which is the minimum number necessary to constitute the required percentage for forming a split as envisaged under the 3rd Paragraph of the Xth Schedule). It must further be remembered that the number of individual MLAs who held out that they left BSP had never reached 23 either then or even now. (Of course appellant had admitted that in addition to 12 respondents who had defected on 21-10-1997 some more MLAs subsequently crossed the floor and their number was only 5 and thus the total number of defectors reached 17). It what the Speaker has pointed out is correct (that the assertion contained in the affidavit filed by R-1 and R-6 on 25-2-1998 have not been controverted despite granting opportunity to do so) it is not proper to question the conclusion arrived at by the speaker that there was a split as envisaged in the Third Paragraph of the Xth Schedule. If that is the position this Court will not probe into all other criticisms made against the order passed by the Speaker. But a scrutiny of the materials first shows that as a matter of fact no opportunity whatsoever was given to the appellant to controvert the assertions made in the affidavit of 25-2-1998. The evisceration of the Speaker to the contrary is without any foundation. The proceedings minuted by the Speaker himself on 25-2-1998 at 6.00 P.M. contained the following entries after referring to the two affidavits being filed by Shri Narendra Singh; and Markandeya Chand:

> "The same was objected to by Shri Umesh Chand learned counsel for the petitioner on the ground that those affidavits have been filed after 9-2-1998 which was the last date to produce evidence. Whether the above affidavits should be taken on record or not, or whether they should be read in evidence or not, will be considered presently

during argument."

The second glaring feature which has winched to the fore during judicial scrutiny is that the appellant had in fact strongly controverted the stand of the respondent regarding formation of a split. On the same day when 6th respondent filed the affidavit (i.e. 25.2.1998) specifying thee names of 26 MLAs, the appellant had, on her own initiative, filed a petition at 7.40 P.M. pointedly repudiating the above claim of the respondents. The relevant passage from the said petition is extracted below:

> "Today at about 4 P.M. I have been informed that Shri Narendra Singh submitted an additional list of 9 MLAs in addition to the above referred (2+5=17) MLAs before you, claiming that they were also with him and that they have not returned to the BSP.... I submit that the above referred claims of Shri Narendra Singh are totally false and baseless excepting the above referred 12 MLAs. Other MLAs belong to the BSP and they are continuing in the BSP."

Appellant had produced affidavits of 9 MLAs along with the said petition. All such affidavits contained averments forcefully repudiating the claim of the first respondent that on 21-10-1997 he got the support of 23 MLAs of BSP. All those affidavits are identically worded and hence the following passage from one alone need be extracted below:

> "That the dependent was present in the session of U.P. Legislative Assembly held on 21.10.1997 under the Leadership of Ms. Mayawati and he had to leave the House because of chaos/disorder in the House along with his Leader, otherwise he would have cast his vote against the Trust Motion moved by Sri kalyan Singh Ministry in accordance with the whip dated 20.10.1997 issued by the leader of said Legislative party.
>
> That the deponent has been continuously opposing the statement given by Sri Markandey Chandra on 21.10.1997 on the floor of the House and the statement of said Sri Markandey Chandra in the House that he enjoys the support of 23 Members of Bahujan Samaj Party in the U.P. Legislature is wholly incorrect."

Now the contention is that the said affidavits were procured in November 1997 and hence they cannot be answers to the affidavits of the 1st respondent dated 25.2.1998. Explanation of the appellant for that is very important. According to the learned counsel for the appellant, she has been collecting affidavits of all the MLAs who loyally remained in the party since 1st respondent made a claim on 21.10.1997 that 23 MLAs have gone out of her party. She could get affidavits only one by one from all those MLAs who remained in the party so that she could show them whenever the need arose. Where was the opportunity for the appellant to produce the affidavits of 9 MLAs until 25.2.1998 when for the first time 1st respondent proclaimed the names of 267 MLAs who have defected on 21.10.1997? But when we perceived the promptitude with which appellant controverted it and supported her statement with thee affidavits of all the 9 MLAs, we fell that it is very unfortunate that she is accused of the charge that she has not controverted thee affidavits filed by

the respondents on 25.2.1998. Thus the basis of Speaker's conclusion i.e. appellant has not denied the assertion of the respondents made in the affidavit dated 25.2.1998 is non-existent. If so, the Speaker must necessarily have other materials to decide that the number of deserters reached the crucial limit of 23. Even on the day when 1st respondent announced in the Assembly (21.10.1997) that 23 BSP MLAs under his leadership have separated from the parent party and decided to support Kalyan Singh's Government the fact remained that only 12 MLAs (who are the respondents) voted in favour of the Government. The other MLAs who are alleged to have joined the faction repudiated the allegation in unmistakable terms. Thus when admittedly the number of BSP MLAs who supported Kalyan Singh's Government had never reached the figure 23 at any time, even subsequently, and when respondents could never even mention the names of those 23 MLAs at any time in spite of the Speaker granting opportunities to them for that purpose including the last opportunity on 9.2.1998, it is a perverse conclusion, overlooking the aforesaid formidable circumstances that 23 MLAs had split from the BSP on 21.10.1997. We have absolutely no doubt that no authority vested with jurisdiction to decide the question should ever have reached such a conclusion on the facts and materials made available to him.

The danger involved in upholding such a conclusion of the Speaker merely relying on the ipse dixit of the defectors can be illustrated thus: From one Legislature Party (having a strength of say one hundred members) two MLAs, A and B, defected and when they were confronted with the consequence of disqualification, they sought protection under the Third Paragraph of Xth Schedule by saying that along with them 31 more MLAs of their party have also gone out of the Party and A and B mentioned their names also. But all those 31 MLAs repudiated the allegations. In such a case the Speaker holds that the two defectors have the protection of the 3rd Paragraph for the simple reason that the Speaker chose to believe their ipse dixit. Such a syllogism, if adopted, would be be preposterous and revolting to judicial conscience from any standard of reasonableness and would toll the death knell of the Constitutional philosophy enshrined in the Xth Schedule. The finding in the impugned order is not materially different from the afore-cited illustration.

I, therefore, unhesitatingly hold that the finding of the Speaker that a split arose in the BSP on 21.10.1997 forming a group representing a faction consisting of not less than 1/3rd of the members of the Legislature party of BSP is vitiated by perversity. The corollary of it is that the 12 respondents who have defected from the BSP on the said date cannot escape from the consequence provided in sub-clause (a) paragraph 2(1) of the Xth Schedule.

In the light of our above finding it is unnecessary to consider the next question relating to sub-clause (b) of Paragraph 2(1) of the Xth schedule because such a venture would only be of academic utility now.

Learned senior counsel for the respondents made an alternative contention that in the event this court holds that the finding of the Speaker is perverse the next course to be adopted is to remit the matter to the Speaker for his final decision. Learned counsel cited some decisions of this Court which held the proposition that it is not the function of courts of law to substitute their wisdom and decision for that of the authority to whose judgment the matter in question is entrusted by law. [The Vice Chancellor, Utkal University vs. S.K. Ghosh (1954 SCR

883), Mansukh Lal Vithaidas Chauhan vs. State of Gujarat {1997 (7) SCC 622].

Learned counsel then invited our attention to the following passage from Fraser's speech in Re Amin {1983 (2) All England Reports 864}.

> "Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

The above passage has been quoted with approval by a three Judge Bench of this Court in Tata Celluiar vs Union of India [1994 (6) SCC 651].

In cases where the authority vested with jurisdiction has to consider and reach a fresh decision it is necessary that after exercising judicial scrutiny the matter must go back to such authority for fresh decision. But in the present case the situation is different. A remit to the Speaker will not serve any additional purpose because there is nothing further for him to decide. As the respondents, having given up their membership from the parent political party voluntarily, have sought to insulate such severance with the cover provided in Paragraph 3 of the Xth Schedule the only issue to be decided is whether the respondents are entitled to such protection. When this Court found that the aforesaid protection is not available to them under law in substitution of the contra finding made by the speaker, its inevitable sequetor is that all the twelve respondents stand disqualified under Paragraph 2(1) of the Xth Schedule of the Constitution. The impugned order would stand thus altered. I may point out, in this context, that the action of the Speaker, in allowing the 12 respondents to register their votes in a "composite poll" held by the Speaker on 26.2.1998 (as between Sri Kalyan Singh and Sri Jagdambika Pal - a rival claimant to the post of Chief Ministership) without deciding the complaint made by the appellant seeking their disqualification from the membership of the House, was criticised before this Court in special Leave Petition (Civil) No.4495 of 1998. This Court then noted in the Order dated 27.2.1998 that out of 225 MLAs who voted in favour of Sri Kalyan Singh as against 196 MLAs (who supported Sri Jagdambika Pal) the votes of 12 respondents were also counted. However, the Court did not in that case pursue the said criticism made against the Speaker mainly for the following reasoning:

> "Even when those 12 members are taken to have voted in favour of Sri Kalyan Singh, their votes when substracted from those polled still leaves him to be the one having majority in the House.
>
> Correspondingly, those 12 votes do not go to Sri Jagdambika Pal who would still be in minority."

Presumably on the above premise it was submitted before us that disqualification of 12 respondents would not affect the government of Sri Kalyan Singh which even otherwise commands a majority in the House. We make it clear that our decision, on the present issue, is not intended to disturb the government of Sri Kalyan Singh in any manner so long as he commands majority in the Legislative

Assembly. But that aspect cannot detract us from exercising power of judicial review of the impugned verdict.

In the result this appeal is allowed by declaring that the twelve respondents stand disqualified to be members of the U.P. Legislative Assembly under Paragraph 2(1)(a) of the Xth Schedule of the Constitution of India. New Delhi.

October 9, 1998.