Jagjit Singh vs State Of Haryana & Ors on 11 December, 2006

Equivalent citations: AIR 2007 SUPREME COURT 590, 2007 AIR SCW 158, 2006 (13) SCALE 335, 2006 (11) SCC 1, (2007) 5 ALLMR 16 (SC), 2007 (5) ALL MR 16 NOC, (2006) 13 SCALE 335, MANU/SC/5473/2006

Bench: Chief Justice, C.K. Thakker, P.K. Balasubramanyan

CASE NO.:
Writ Petition (civil) 287 of 2004

PETITIONER:
Jagjit Singh

RESPONDENT:
State of Haryana & Ors

DATE OF JUDGMENT: 11/12/2006

BENCH:
CJI,C.K. Thakker & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T [With WP (C) Nos.290, 291, 292, 293 & 294 of 2004] Y.K. Sabharwal, CJI.

These petitions challenge the legality of orders passed by the Speaker of Haryana Legislative Assembly (for short, 'the Assembly') disqualifying petitioners from being members of the Assembly. The impugned orders have been passed in exercise of the powers conferred on the Speaker under the Tenth Schedule to the Constitution of India. Four petitioners (Writ Petition Nos.290, 291, 293-294 of 2004) were independent members of the Assembly. Petitioner Jagjit Singh (W.P.No.287 of 2004) belonged to a political party named 'Democratic Dal of Haryana'. He was a lone member representing his party in the Assembly. Petitioner- Karan Singh Dalal (W.P.No.292 of 2004) was a lone member of a political party named 'Republican Party of India' in the Assembly.

The petitioners were elected to the Assembly in election held in February, 2000. All impugned orders disqualifying the petitioners were passed on 25th June, 2004. The voting for election to Rajya Sabha took place on 28th June, 2004. The petitioners, however, could not vote in the said election, having ceased to be the members of the Assembly with immediate effect.

The challenge to the orders of disqualification is made on various grounds. The ground common to all the petitions is the violation of principles of natural justice. It has been contended on behalf of all the petitioners that the orders of disqualification were made in utter haste with a view to deprive them of their right to vote on 28th June, 2004 with a view to help the Chief Minister whose son was a candidate in elections to Rajya Sabha. It is contended that the Speaker had no basis for coming to

the conclusion that the independent members had joined the Indian National Congress. It is claimed that the impugned orders are clearly result of malafides of the Speaker. On behalf of the two petitioners belonging to political parties, it has been contended that they are entitled to protection of paragraph 3 of the Tenth Schedule since there were splits in their original political parties and they being single member parties in the Assembly, on having joined Indian National Congress, the stipulation that when more than one-third members join another party, there is a split, stood fulfilled, it being a case of hundred per cent members joining another political party. Before considering the legal submissions, we may briefly narrate the facts of each case.

Writ Petition No.287 of 2004 (Jagjit Singh) and Writ Petition No.292 of 2004 (Karan Singh Dalal) The petitioner contested election as a candidate of National Congress Party (NCP) and was the only elected member of the party in the Assembly. The case of the petitioner is that on 28th December, 2003 due to organizational difficulties and differences with the central leadership of NCP which is primarily based in Maharashtra/Meghalaya, the workers/leaders of the NCP at Haryana decided to cause a split by passing a unanimous Resolution. The split was recognized by central leadership of NCP. On split, a new political party named 'Democratic Dal of Haryana' was formed. The petitioner on 29th December, 2003 filed application before the Speaker placing the factum of split and formation of the new party on record. On 31st December, 2003, respondent No.3 filed a complaint before the Speaker under paragraphs 2 and 6 of the Tenth Schedule of the Constitution of India seeking disqualification of the petitioner on the ground that he has voluntarily defected from NCP and formed/joined Democratic Dal of Haryana. On 17th March, 2004, Speaker issued notice to petitioner calling for his comments to the allegations made against him. However, notice could not be served on the petitioner. The case of petitioner is that on 30th April, 2004 merger of Democratic Dal of Haryana took place with Indian National Congress in accordance with law and, therefore, the case is covered by Paragraph 4 of the Tenth Schedule. In this view, no proceedings for disqualification could be initiated or continued. A further notice dated 23rd April, 2004 was also issued to the petitioner. A fresh notice dated 18th May, 2004 was issued calling upon the petitioner to file reply on or before 4th June, 2004 that was served on the staff of the petitioner on 31st May, 2004. The petitioner on 4th June, 2004 filed an application before respondent no.2 Speaker placing on record certain facts and praying for extension of time by four weeks to file reply. On 23rd June, 2004, request of the petitioner for adjournment of proceedings beyond 28th June, 2004 was rejected by the Speaker who heard the arguments and listed the matter for further proceedings for 24th June, 2004. On 24th June, 2004, proceedings were adjourned to 25th June, 2004 for orders. Further case of the petitioner is that the Speaker on 24th June, 2004, called him on his mobile phone and stated that if petitioner decides to abstain from voting in election of Rajya Sabha on 28th June, 2004, his disqualification can be avoided. The impugned order was passed on 25th June, 2004.

One of the contentions urged is that the Speaker, respondent No.2, has not filed any reply and, therefore, the averment made that he called the petitioner on 24th June, 2004 asking him that if he decides to abstain from voting, disqualification can be avoided shall be deemed to be admitted and, thus, the malafides of the Speaker are apparent. The contention is that the Speaker was acting on the dictates of respondent No.5, the Chief Minister of Haryana whose son was contesting the election to Rajya Sabha and the impugned order was passed at his behest.

The facts of writ petition No.292 of 2004 are almost similar with the only difference that the petitioner here was member of another political party, namely, Republican Party of India (RPI). All other facts including the dates, grounds, non- service and thereafter manner of service of the notice are almost similar.

W.P.No.291 of 2004 (Dev Raj Dewan) and W.P. Nos.290, 293- 294/2004 The petitioner in Writ Petition No.291 of 2004 was elected as an independent member of the Assembly and as such supported from outside the Government of Indian National Lok Dal Party headed by respondent No.5, as Chief Minister for more than four years from February, 2000 to June, 2004. The case of the petitioner is that on 14th June, 2004, he withdrew his support to Government of respondent No.5 and declared his outside support to Indian National Congress in the State of Haryana. On 15th June, 2004, a complaint was filed against him by respondent No.3 under paragraphs 2 and 6 of the Tenth Schedule of the Constitution on the ground that petitioner had joined the Indian National Congress. Complaints were also filed against petitioners in Writ Petition Nos.290, 293-294 seeking their disqualification on similar grounds. The Speaker, respondent No.2, issued notice to the petitioner on 16th June, 2004 for submitting comments on 24th June, 2004. The application dated 23rd June, 2004 filed by respondent No.3 before Speaker to place on record additional evidence was taken up by the Speaker on 24th June, 2004. The copies of application dated 23rd June, 2004 for placing on record additional evidence, affidavit of Ashwani Kumar along with transcripts of interview on Zee TV and Haryana News and the alleged page of Congress Legislature Party Register dated 16th June, 2004 were handed over by the Speaker to the counsel for the petitioner at 3.30 p.m. on 24th June, 2004 with a direction to file reply thereto by 10 a.m. on the next date i.e. 25th June, 2004. On 25th June, 2004, petitioner filed a short reply to the main petition alleging malafides against the Speaker and the Chief Minister and denying that he joined Indian National Congress. A reply was also filed on that date to the application stating that fair opportunity to contest the proceedings had not been granted and the evidence is concocted and manipulated. An opportunity was sought to cross-examine Ashwani Kumar and also to lead evidence. On the same date at 1.00 p.m. the impugned order was passed. The facts in the other three cases are almost identical. According to the petitioners, there is no material for coming to the conclusion that they joined Indian National Congress. They attribute malafides to respondent Nos.2 and

5. According to them, the sole purpose of respondent No.2 was to deprive them of their right to exercise their franchise in the Rajya Sabha elections to help the son of the Chief Minister. They also dispute the correctness of the T.V. and newspaper reports to the effect that they have all joined Indian National Congress. The contention is that joining a political party is different from extending outside support to it. They contend that in a similar manner the petitioners without joining the party of respondent No.5, for nearly 4 years were extending his Government outside support and now their decision to extend outside support to Indian National Congress cannot and does not amount to joining the said political party. It has been strenuously contended that the petitioners have been denied the opportunity to lead evidence and to cross-examine witnesses of the complainant to demonstrate that they had not joined Indian National Congress. It is contended that the orders of disqualification cast a stigma on the petitioners and adversely affected their reputation and any provision which may lead to their disqualification and affect their reputation has to be strictly construed. It is further contended that there is a fundamental difference between the position of

independent candidates and those who are elected on tickets of political parties. It is also their contention that the Speaker has passed orders with a pre-determined mind in haste so as to deprive the petitioners of their right to vote in Rajya Sabha elections. The submission is that the petitioners were entitled to explain what had appeared in the print and electronic media. The main contention is that since principles of natural justice have been violated, the impugned orders are nullity.

Four petitioners who were elected as members of the Assembly as independent candidates, have been disqualified by the impugned orders under paragraph 2(2) read with paragraph 6 of the Tenth Schedule. Paragraph 2(2) provides that an elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election. According to the impugned orders, the four independent members of the Assembly having joined Indian National Congress have incurred this disqualification.

The Speaker, while exercising power to disqualify members, acts as a Tribunal and though validity of the orders, thus, passed can be questioned in the writ jurisdiction of this Court or High Courts, the scope of judicial review is limited as laid down by the Constitution Bench in Kihoto Hollohan v. Zachillhu & Ors. [1992 supp.(2) SCC 651]. The orders can be challenged on the ground of ultra vires or malafides or having been made in colourable exercise of power based on extraneous and irrelevant considerations. The order would be a nullity if rules of natural justice are violated. The requirement to comply with the principles of natural justice is also recognized in rules made by the Speaker in exercise of powers conferred by paragraph 8 of the Tenth Schedule. The Speaker, Haryana Legislative Assembly, made the Haryana Legislative Assembly (Disqualification of Members on ground of Defection) Rules, 1986 in exercise of power conferred by paragraph 8 of the Tenth Schedule. Rule 7(7), inter alia, provides that neither the Speaker nor the Committee shall come to any finding that a Member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

The question whether reasonable opportunity has been provided or not cannot be put in a strait-jacket and would depend on the fact situation of each case.

At the outset, we may mention that while considering the plea of violation of principles of natural justice, it is necessary to bear in mind that the proceedings, under the Tenth Schedule, are not comparable to either a trial in a court of law or departmental proceedings for disciplinary action against an employee. But the proceedings here are against an elected representative of the people and the judge holds the independent high office of a Speaker. The scope of judicial review in respect of proceedings before such Tribunal is limited. We may hasten to add that howsoever limited may be the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated. The yardstick to judge the grievance that reasonable opportunity has not been afforded would, however, be different. Further, if the view taken by the Tribunal is a reasonable one, the Court would decline to strike down an order on the ground that another view is more reasonable. The Tribunal can draw an inference from the conduct of a member, of course, depending upon the facts of the case and totality of the circumstances.

Now, we may note some of the judgments on which reliance has been placed by learned counsel for the petitioners to support the argument that the principles of natural justice have been violated.

The observations in John v. Rees & Anr. [(1969) 2 All E.R. at pages 307-309] relied upon are to the following effect:

> "As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events".

The argument is that if opportunity to lead evidence and cross-examination had been granted to the petitioners, they would have shown that they had not joined Indian National Congress despite what had appeared in print and electronic media.

Reliance is also placed on the observations of Justice Chinnappa Reddy in National Textile Workers' Union & Ors. v. P.R. Ramakrishnan & Ors. [(1983) 1 SCC 228] in His Lordship's concurring opinion while dealing with a litigation between two rival groups of shareholders of a Company to take over the Company. While considering the question of right of hearing claimed by the workers and the question whether the Companies Act contemplates any hearing to be given to the workers or it is to be given only to the contributories and creditors, Justice Reddy observed that :

> "And, what do the workers want? They want to be heard lest their situation be altered unheard. They invoke natural justice, so to claim justice. They invoke the same rule which the courts compel administrative tribunals to observe. Can courts say natural justice need not be observed by them as they know how to render justice without observing natural justice? It will surely be a travesty of justice to deny natural justice on the ground that courts know better. There is a peculiar and surprising misconception of natural justice, in some quarters, that it is, exclusively, a principle of administrative law. It is not. It is first a universal principle and, therefore, a rule of administrative law. It is that part of the judicial procedure which is imported into the administrative process because of its universality. "It is of the essence of most systems of justice-certainly of the Anglo- Saxon System-that in litigation both sides of a dispute must be heard before decision. 'Audi Alterum Par tern' was the aphorism of St. Augustine which was adopted by the courts at a time when Latin Maxims were fashionable". Audi Alterum Partem is as much a principle of African, as it is of English legal procedure; a popular Yoruba saying is:
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> 'wicked and iniquitous is he who decides a case upon the testimony of only one party to it' (T.O. Elias : The Nature of African Customary Law). Courts even more than

administrators must observe natural justice."

After laying down aforesaid principles in relation to the right of workers to be heard, learned Judge said :

"It is said that the Companies Act does not confer any special rights on the workers, they are virtual strangers to the Act and so why should they be heard in the petition for winding-up? The duty to hear those asking to be heard is not dependent on the vesting of any right under the very statute in respect of which jurisdiction is being exercised by the court, but on any right whatever which may come under threat. Surely it is not the law that rights other than those created by a particular statute may be taken away in proceedings under that statute without affording a hearing to those desiring to be heard. If the statute says only so and so will be heard and no other, of course, no other will be heard. If the statute does not say who may be heard, but prescribes the procedure for the hearing, that procedure must be followed by every one who wants to be heard and what applies to one will apply to the other. If creditors and contributories desire to be heard and are heard, so shall workers. After hearing the workers, the court may say that, on the facts and circumstances of the case, it is not necessary to hear them further; but they cannot be turned away at the very threshold. It may be that it is not for them to support or oppose the winding- up petition for any of the traditional reasons. But they may make suggestions which may avert winding-up, save the company and save their own lives. They may have suggestions to make for restructuring the company or for the transfer of the undertaking as a running business. The workers themselves may offer to run the industry forming themselves into a society. They may have a myriad suggestions to make, which they can do if they are allowed to be heard, If every holder of a single share out of thousands may be heard, if every petty creditor may be heard, why can't the workers be heard? It is said that once the workers are allowed to enter the Company Court, the flood gates will be opened, all and sundry will join in the fray and utter confusion will prevail. These are dark forebodings for which there is no possible justification. The interest of the workers is limited. It is the interest of the others, those that battle for control and for power that may create chaos and confusion. It must not be forgotten that the court is the master of the proceedings and the ultimate control is with the court. Parties may not be impleaded for the mere asking or heard for the mere seeking. The court may well ask the reason why, if someone seeks to be heard. Workers will not crowd the Company Court and the Court will not be helpless to keep out those whom it is not necessary to hear. It is said that workers will not be allowed to intervene in a partition or a partnership action to oppose partition or dissolution of partnership and so why should they be allowed to intervene in a winding-up petition. That is begging the question. There is no reason why workers may not be allowed, in appropriate cases, to intervene in partition and partnership actions to avert disaster and to promote welfare. As we said, impleading and hearing are not for the mere asking and seeking."

In the context of the present case, we fail to understand the relevance and applicability of the relied upon observations. The present is not a case of no opportunity. It is a case where the question is whether sufficient opportunity was granted to the petitioners or not.

Reliance was also placed on the decision in Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664]. In that decision after reviewing almost the entire law including the decision of House of Lords in Ridge v. Baldwin [(1964) AC 40] John v. Rees (supra), it was held that a quasi-judicial or administrative decision rendered in violation of the audi alteram partem rule, wherever it can be read as an implied requirement of the law, is null and void.

There can be no quarrel about the applicability of general principles laid down in the aforesaid cases but the question is about the applicability of those principles to the facts of the cases before us. Let us now consider the case which specifically dealt with disqualification under the Tenth Schedule and similar argument of violation of principles of natural justice.

In Ravi S. Naik v. Union of India and Ors. [1994 Supp. (2) SCC 641], challenging the disqualification order passed by the Speaker of the Goa Assembly, it was urged that reasonable opportunity was denied in as much as sufficient time was not granted to respond. Further, it was urged that the Speaker had referred to certain extraneous materials and circumstances, namely, the copies of the newspapers that were produced at the time of hearing and the talks which the Speaker had with the Governor and had denied to the petitioner an opportunity to adduce evidence. Noticing the principles of natural justice, the decision of this Court in Kihoto Hollohan case, Mrs.Maneka Gandhi v. Union of India & Anr. [(1978) 1 SCC 248], Union of India and Anr. v. Tulsiram Patel [(1985) 3 SCC 398] and reiterating that an order of an authority exercising judicial or quasi judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error and that is the reason why in spite of finality under paragraph 6 (1) of the Tenth Schedule, such a decision is subject to judicial review on the ground of non-compliance with the rules of natural justice, it was said that "But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not cast in a rigid mould and cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case." Dealing with the argument that reference has been made to newspapers and opportunity to adduce evidence was denied, it was held that the Speaker was drawing an inference about the fact which had not been denied by the appellants themselves viz. that they had met the Governor along with two other persons in the company of Congress (I) MLAs. The talk between the Speaker and the Governor also referred to the same fact. It was noted that the controversy was confined to the question whether from the said conduct an inference could be drawn that they had voluntarily given up membership. Rejecting the grievance about the denial of opportunity to adduce evidence, in Ravi S. Naik's case, it was noticed that appellants were the best persons who could refute the allegations but they did not come forward to give evidence and also failed to seek permission to cross examine one Dr. Jahlmi in respect of the statement made by him before the Speaker that the appellants had given up their membership of their political party.

We will consider at an appropriate place later the contention urged in the present case that unlike Ravi S. Naik's case, the petitioners had disputed the allegations made in the petition and had also sought permission for leading evidence and for cross examination of Ashwani Kumar which was illegally denied to them.

Considering that rules of natural justice are flexible, let us now examine the facts of the present case where the petitioners filed their replies to the complaint and were asked by the Speaker to watch the video recording and point out doctoring thereof, if any. The question is that having failed to do so, can they be heard on the facts of the present case, to say that non-grant of opportunity to cross-examine Ashwani Kumar and to adduce evidence has resulted in violation of rules of natural justice on having simply denied that they have not joined the Indian National Congress? Had they availed of the opportunity and pointed out how the recording was not correct and it was doctored and then not permitted to lead evidence, the argument that there has been violation of principles of natural justice may have carried considerable weight. The petitioners cannot be permitted to sit on the fence, take vague pleas, make general denials in the proceedings before the Tribunal of the nature under consideration. Under these circumstances, mere denial of opportunity to cross-examine or adduce evidence may not automatically lead to violation of principles of natural justice. The principles of natural justice cannot be placed in such a rigid mould. The court, on facts of a case despite denial of opportunity to lead evidence, may come to the conclusion that reasonable opportunity has been afforded to the person aggrieved. The principles of natural justice are flexible and have to be examined in each case.

The question to be asked in the ultimate analysis would be whether the person aggrieved was given a fair deal by the authority or not? Could a reasonable person, under the circumstances in which Tribunal was placed, pass such an order? Answer to these questions would determine the fate of the case.

We have no difficulty in accepting the contention that there is a fundamental difference between an independent elected member and the one who contests and wins on ticket given by a political party. This difference is recognized by various provisions of the Tenth Schedule. An independent elected member of a House incurs disqualification when he joins any political party after election as provided in paragraph 2(2) of the Tenth Schedule. There is also no difficulty in accepting the proposition that giving of outside support by an independent elected member is not the same thing as joining any political party after election. To find out whether an independent member has extended only outside support or, in fact, has joined a political party, materials available and also the conduct of the member is to be examined by the Speaker. It may be possible in a given situation for a Speaker to draw an inference that an independent member of the Assembly has joined a political party. No hard and fast rule can be laid down when the answer is dependent on the facts of each case. It is also essential to bear in mind the objects for enacting the defection law also, namely, to curb the menace of defection. Despite defection a member cannot be permitted to get away with it without facing the consequences of such defection only because of mere technicalities. The substance and spirit of law is the guiding factor to decide whether an elected independent member has joined or not a political party after his election. It would not be a valid plea for a person who may have otherwise joined a political party to contend that he has not filled up the requisite

membership form necessary to join a political party or has not paid requisite fee for such membership. The completion of such formalities would be inconsequential if facts otherwise show that the independent member has joined a political party. The facts of the four cases of independent elected members are required to be examined in the light of these principles.

The facts have already been noticed earlier. We will now briefly recapitulate what was alleged in the complaint filed on 15th June, 2004, the documents filed therewith, the additional documents filed with the application dated 23rd June, 2004, the proceedings that took place before the Speaker and what has been held in the impugned orders by the Speaker. It was alleged i9n the complaints which were served on petitioners on 16th June, 2004 that they had joined the political and legislature parties of Indian National Congress as members thereof. The said fact had been widely reported in all daily newspapers in English as well as vernacular language dated 15th June, 2004. True copies of the news items as published in newspapers reporting their having joined the Indian National Congress were filed. According to those reports, the leader of the Opposition in the State Assembly had stated that these members were taken to Congress President and had joined the said party. Copies of the news items as appearing in '"The Tribune", "The Times of India", "Hindustan Times", "Punjab Kesari" and "Dainik Jagran" were filed with the complaints. It was further alleged that besides the news reports appearing in the print media, actions of these members joining the political and legislature parties of Indian National Congress were widely reported by the electronic media including Zee News television channel, Aaj Tak television channel and Haryana News of Punjab Today television channel.

Along with the application dated 23rd June, 2004, affidavit of one Ashwani Kumar was filed before the Speaker stating that he had seen these independent members admitting and acknowledging in an interview to Zee News television channel and Haryana News (Punjab Today Television Channel) that they had joined the Indian National Congress. The original C.Ds received from Zee Telefilms, true translation into English of the transcript of the interview conducted by the said channel and the original letter issued by Zee Telefilms and handed over to Ashwani Kumar on his request were filed on 23rd June, 2004. The original C.Ds received from Haryana News channel along with English translation as above and the original proceedings of the Congress legislative party in respect of proceedings dated 16th June, 2004 at 11.30 a.m. in the Committee room of Haryana Vidhan Sabha containing the signatures of three out of four independent members were also filed. It was stated that despite best efforts, the complainant could not produce these documents on 15th June, 2004 and was, thus, producing the same now along with the application. In reply to the complaint and to the application, the petitioners denied that they had joined the Indian National Congress on 14th June, 2004 and stated that the newspapers have not reported correct facts and that they have not filled up the requisite form and paid the subscription to become members of the Indian National Congress and they only decided to withdraw the support from the ruling party by joining hands with the Congress. It was further stated that they will cross-examine the complainant and reporters of the print media and T.V. Channels and also lead evidence to prove that they have not joined any political party much less Indian National Congress. In reply to the application, it was stated that on 24th June, 2004 written request was made by the counsel for grant of three weeks' time to file the reply but Speaker ordered that reply be filed on 25th June, 2004 by 10 a.m. and they were not provided fair opportunity to contest the petition. It was also pleaded that alleged recording in the

C.Ds is not genuine. In respect of the signatures as appearing in the photocopy of the proceedings register of the Congress legislature party, it was also denied that Annexure P1 is the photocopy of the original page of the proceedings register of the said legislature party in respect of proceeding held on 16th June, 2004.

It has to be noted that on 24th June, 2004 counsel representing the petitioners were asked by the Speaker to watch the interviews conducted in New Delhi on 14th June, 2004 by Zee News and Haryana News (Punjab Today Television Channel) which was available on the compact disc as part of the additional evidence with application dated 23rd June, 2004 filed by the complainant. The counsel, however, did not agree to watch the recording which was shown on these two channels. The copies of the application dated 23rd June, 2004 were handed over to the counsel and they were asked to file the reply by 10 a.m. on 25th June, 2004. In the replies, petitioners merely denied the contents of the application without stating how material by way of additional evidence that had been placed on record was not genuine. It is evident from the above facts that the petitioners declined to watch the recording, failed to show how and what part of it, if any, was not genuine but merely made general denials and sought permission to cross-examine Ashwani Kumar and opportunity to lead evidence.

The Speaker considered the request of the petitioners for grant of three weeks' time in this factual backdrop and disallowed it and this is the basis of the contention that the petitioners have been denied a reasonable opportunity to lead evidences and, therefore, rules of natural justice have been violated and, thus, the impugned orders of their disqualification are nullities.

The sufficiency of the time granted depends upon the facts and circumstances of each case. Having regard to the facts as noticed hereinbefore, we are unable to accept the contention that in the present case, the petitioners were not granted sufficient time to meet the case against them. It has to be remembered that the specific averment in respect of materials filed had already been made in the complaint dated 15th June, 2004. The material filed on 23rd June, 2004 was supplementary to further support the allegations in the complaint dated 15th June, 2004. The petitioners despite grant of opportunity had declined to watch the recorded interview. It is one thing to watch the interview, point out in what manner the recording was not genuine but instead of availing of that opportunity, the petitioners preferred to adopt the course of vague denial. Under these circumstances, the Speaker concluded that "there is no room for doubting the authenticity and accuracy of the electronic evidence produced by the petitioner". The Speaker held :

> " In this regard, it is to be noted that the petitioner has produced the original Compact disks (CDs), containing the interviews conducted by Zee News and Haryana News (Punjab Today Television channel) of the six independent Members of the Haryana Vidhan Sabha including the respondent and the same have been duly certified by both the Television Channels as regards its contents as well as having been recorded on 14.6.2004 at New Delhi. It has also been certified by both the Television Channels through their original letters (P-9 and P-12) duly signed by their authorized signatures that the original CDs were handed over to Ashwani Kumar who was authorized by the petitioner in this regard and whose affidavit is also on the

record as Annexure P-8 wherein he states that he had handed over the original CDs to the petitioner. The letters, Annexures P-9 and P-12, also give out that the coverage of their interviews on 14.6.2004 was also telecast by both the Television Channels. In fact, the certificate given by the Haryana News (Punjab Today Television Channel) authenticates the place of the interview as the residence of Mr. Ahmed Patel at 23, Mother Teresa Crescent in Delhi which interview as per the certificate was conducted by the correspondent of the said Television Channel, namely Shri Amit Mishra on 14.6.2004. the same certificate P-12 also authenticates the coverage of the CLP meeting held in Chandigarh on 16.6.2004 conducted by their correspondent Mr. Rakesh Gupta. Therefore, the electronic evidence which as per the petitioner is supplementary to the evidence of Print Media already on the record deserves to be taken on the record as it is admissible as per law."

The Speaker after holding that the petitioners have made vague allegations, without producing in support any material and evidence, has further concluded as under :

"As there is no controversy regarding the status of the respondent from February 2000 and before 14.6.2004, the dispute primarily arises regarding his true status as on 14.6.2004 onwards. In order to resolve the matter, the evidence produced and placed on the record by the petitioner has to be considered. The petitioner has placed on record firstly the news items appearing on 15.6.2004 in the various leading newspapers (popularly labeled as the "Print Media") as Annexures P-1 to P-7. A perusal of the same reveals the reporting that six independent Members of the Haryana Vidhan Sabha were taken to Ms. Sonia Gandhi, the Congress President on 14.6.2004 by Mr. Ahmed Patel and Mr. Bhupinder Singh Hooda, Congress M.P. and thereafter, it was reported that on 14.6.2004, all the six Members of the Haryana Vidhan Sabha mentioned therein, (including the respondent) had joined the Congress Party. This documentary evidence is corroborated by the electronic evidence placed on the record by the petitioner in the form of the original Compact Disks (CDs) containing the interviews conducted by Zee News and Haryana News (Punjab Today Television Channel) of the six independent Members of the Haryana Vidhan Sabha including the respondent which show that on 14.6.2004 at 23, Mother Teresa Crescent Road, New Delhi the six independent Members of Haryana Vidhan Sabha (including the respondent) joined the Indian National Congress Party. As per the certificates by both the Television Channels, which are on record as (P-9 and P-12), the said interviews were telecast on Zee News Television Channel at 5.00 p.m. On 14.6.2004 and on Haryana News (Punjab Today Television Channel) on 14.6.2004 at 10 P.M. and on 15.6.2004 at 10 A.M. The petitioner has also placed on record the original CD received from Haryana News (Punjab Today Television Channel), which shows its coverage of the meeting of the CLP on 16.6.2004 at Chandigarh. Although an opportunity was given to the Learned Counsel representing the respondent to watch/view the electronic evidence placed on the record by the petitioner, the said opportunity was not availed of. A viewing of the entire electronic record considered along with the supporting evidence placed on the record clearly

leads this Authority inter-alia to the following conclusions:

(i) Six independent Members of the Haryana Vidhan Sabha are clearly seen and heard acknowledging and admitting to their interviewers, including Mr. Amit Mishra of Haryana News (Punjab Today Television Channel) that they had joined the Congress Party on 14.6.2004.

(ii) These six independent Members of the Haryana Vidhan Sabha are:

1. Shri Bhim Sain Mehta, MLA

2. Shri Jai Parkash Gupta, MLA

3. Shri Mula Ram, MLA

4. Shri Rajinder Singh Bisla, MLA

5. Shri Dariyab Singh, MLA

6. Shri Dev Raj Deewan, MLA

(iii) The above named six Members of Haryana Vidhan Sabha were interviewed by Zee News Television Channel and Haryana News (Punjab Today Television Channel) on 14.6.2004 at 23, Mother Teresa Crescent, New Delhi which interview was witnessed by Shri Ashwani Kumar as corroborated by him.

(iv) All the above named six members are seen in the company of Senior Congress Party Functionaries and Leaders during the course of the above said interviews by the Television Channels, wherein they admitted and acknowledged the fact that they had joined the Congress Party.

(v) Out of the above named six Members, three members, namely, Shri Dev Raj Deewan, Shri Rajinder Singh Bisla and Shri Jai Parkash Gupta are seen participating in the meeting of the CLP held on 16.6.2004 in the premises of the Haryana Vidha Sabha."

In the impugned orders, respondent No. 2 has further noted that while examining and considering the aforenoted electronic evidence, he was fortified by the fact that being the Speaker of the Haryana Vidhan Sabha, on many occasions as well as during the Sessions of the House, he has seen and heard these members. He found that these members as seen and heard in the electronic evidence are genuinely identified as also their voices which are easily and clearly identified. The Speaker, thus, held that in view of the irrefutable and overwhelming documentary and electronic evidence, no other conclusion was possible than that on 14th June, 2004 these independent members of Haryana Vidhan Sabha joined the Congress Party. He has also referred to the documentary evidence regarding CLP meeting held on 16th June, 2004 in the form of original sheet of proceedings register

of CLP containing the signatures of the petitioners. In respect of the signatures also, the Speaker has noted that the signatures of the petitioners on the original sheet of the CLP proceedings are the same as their signatures on the Vakalatnama filed by their counsel as is clear after comparison.

It was strenuously contended by learned counsel for the petitioners that the Speaker while passing the impugned orders has relied upon his personal knowledge which is wholly impermissible for a tribunal and contrary to the principles of fair play and violative of principles of natural justice. In support, reliance is placed on the case of Dewan Singh v. Champat Singh and Ors. [(1969) 3 SCC 447] where this Court considered misconduct of the arbitrators who decided the disputes referred to them on the basis of their personal knowledge. On consideration of the arbitration agreement, it was held by this Court that it does not empower the arbitrators either specifically or by necessary implication to decide the disputes referred to them on the basis of their personal knowledge.

The principles laid down in the above case, have no application to the facts of the present case. The two situations have no similarity. The Speaker has only noticed that he has had various opportunities to see the petitioners in the Assembly and those shown in the recording are the same persons. We are unable to find fault with this course adopted by the Speaker. There is also nothing wrong or illegal in comparing signatures and coming to the conclusion that the same are that of the petitioners. These proceedings before the Speaker are not comparable with the arbitration proceedings before arbitrators.

Undoubtedly, the proceedings before the Speaker which is also a tribunal albeit of a different nature have to be conducted in a fair manner and by complying with the principles of natural justice. However, the principles of natural justice cannot be placed in a strait-jacket. These are flexible rules. Their applicability is determined on the facts of each case. Here, we are concerned with a case where the petitioners had declined to avail of the opportunity to watch the recording on the compact disc. They had taken vague pleas in their replies. Even in respect of signatures on CLP register their reply was utterly vague. It was not their case that the said proceedings had been forged. The Speaker, in law, was the only authority to decide whether the petitioners incurred or not, disqualification under the Tenth Schedule to the Constitution in his capacity as Speaker. He had obviously opportunity to see the petitioners and hear them and that is what has been stated by the Speaker in his order. We are of the view that the Speaker has not committed any illegality by stating that he had on various occasions seen and heard these MLAs. It is not a case where the Speaker could transfer the case to some other tribunal. The doctrine of necessity under these circumstances would also be applicable. No illegality can be inferred merely on the Speaker relying upon his personal knowledge of having seen and heard the petitioners for coming to the conclusion that persons in the electronic evidence are the same as he has seen and so also their voices. Thus, even if the affidavit of Ashwani Kumar is ignored in substance it would have no effect on the questions involved. Now, we may also note as to what is stated in the interviews on the News Channel.

"PETITIONER- DEV RAJ DIWAN:

ZEE NEWS CORRESPONDENT Why have you decided to join Congress Party?

SHRI DEV RAJ DIWAN:

I was basically Congressman. I have been in Congress, I have struggled for the sake of Congress and worked for the Congress. Moreover, my family has given blood for the Congress. Secondly, due to some reasons, I was not given Congress party ticket in 1996 and I contested election as an independent candidate. Thereafter, in 1997, I joined Congress Party. Again, I was not given Congress Party ticket and in 2000. I again contested election as an independent candidate and won the election. I was Congressman. I have affection and friendly relation with Hooda ji. I was looking for the opportunity to join the Congress Party. Hooda Ji has shown love, Smt. Sonia Ganhi Ji has bestowed her blessings and we have joined the Congress Party. Now, we will serve the Congress Party.

ZEE NEWS CORRESPONDENT In case you are not given Congress Party ticket this time, will you leave the party again?

SHRI DEV RAJ DIWAN:

No, now we have got blessings. Now, we will serve the Congress Party physically, mentally and financially and will work only for the Congress Party.

SHRI DEV RAJ DIWAN:

Dev Raj Diwan, MLA from Sonepat. I was congressman and in 1996, I was not given party ticket due to some reasons. I contested elections as an independent candidate and I won the election too. I topped the elections in 1996 by getting maximum votes. Thereafter, I joined Congress Party in 1997. In 2000, due to some reasons, I was not given Congress Party ticket and again I contested elections as an independent candidate. I was again elected as MLA by the people. I am basically (Khaandani) Congressman. My whole of the family has given blood for the sake of Congress Party. We are Congressman since the time of Shri Sanjay Gandhi. We stood with Shri Rajiv Gandhi Ji. The whole country has been impressed by Smt. Sonia Gandhi with her sacrifice. Keeping in view all these factors, we requested Hooda Ji in this context. Now when such sacrificing leaders have come in India, we also want to serve Congress Party. Smt. Sonia Ji has given her blessings. We will serve the Congress Party physically, mentally and financially from very today.

HARYANA NEWS CORRESPONDENT Have you imposed any condition for that? SHRI DEV RAJ DIWAN Condition for what? We have come only to serve the Congress Party being an MLA, we have already been serving the people of Constituency. Now we will serve Congress Party and will also serve people of Constituency while remaining in Congress. Thank you.

PETITIONER- RAJINDER SINGH BISLA: ZEE NEWS CORRESPONDENT Why have you decided to join Congress Party at the time when assembly general elections are drawing near?

SHRI RAJINDER SINGH BISLA: -

We have decided to join Congress Party keeping in view the conditions of the country because dedicated and right forces can fight against the communal forces only under the leadership of Smt. Sonia Gandhi. Today, after meeting Smt. Sonia Gandhi, we have joined Congress Party under the leadership of Shri Bhupinder Singh Hooda. Now, we will serve and strengthen the Congress Party physically, mentally and financially. SHRI RAJINDER SINGH BISLA:

Rajinder Singh Bisla, MLA, Ballabhgarh. HARYANA NEWS CORRESPONDENT On which conditions, you have joined the Congress Party?

SHRI RAJINDER SINGH BISLA:

We have not imposed any condition to join the Congress Party. During my longest political life, I was elected as an independent MLA in 1977. In 1991, I was given Congress Party ticket by Shri Rajiv Gandhi. I had been President of District Congress Committee, Faridabad. I had been on some important posts of the organization. This time, I was not given Congress Party ticket from Ballabhgarh. The people gathered in huge number (in the shape of big Panchayat) and they elected me as an independent MLA with maximum votes. The people of my Constituency who elected me, keeping in view the conditions of Haryana State as well as conditions of our country, reposed faith in the leadership of Smt. Sonia Gandhi and having faith therein. We met Smt Sonia Gandhi and joined Congress Party under he leadership of Shri Bhupinder Singh Hooda. We will serve the Congress Party. We have entered into politics for the purpose of serving people.

PETITIONER- JAI PARKASH GUPTA:

ZEE NEWS CORRESPONDENT Jai Parkash Ji, why have you taken decision to join Congress Party at this stage. You all were supporting Chautala Government so far.

SHRI JAI PARKASH GUPTA:

Since by birth, we are with Congress and our family has been with Congress for the last three decades. We are members of Congress. We cannot breathe without Congress Party. Last time, I was Legislator and thereafter, during elections, I was not given Congress Party ticket due to some reasons. Then, I contested assembly elections as an independent candidate and was elected by the people too. Today we have come back to our home. We have got inspiration from Smt. Sonia Gandhi who

has sacrificed and has put an example. She has sacrificed the chair of Prime Minister, which she could have and made Sardar Manmohan Singh as Prime Minister. By coming back to our home, we have again joined Congress Party under the command of Smt. Sonia ji, Hooda Sahib and Ahmed Sahib. Today we have become associate members of Congress Party.

HARYANA NEWS CORRESPONDENT Whether you have joined Congress Party under pressure or with your own willing?

SHRI JAI PARKASH GUPTA We are veteran Congressmen. Our family is Congressman so far and have been members of Congress Party for the last three decades. After 1996, last time in 2000-Assembly Elections, there has been some problem with me in getting party ticket. Public brought forth me as an independent candidate and I won elections as an independent candidate. Smt. Sonia Gandhi has made a great sacrifice as she did not accept the chair of Prime Minister and put an example in the world. She has made Sardar manmohan Singh as Prime Minister. We have been impressed by this step of Smt. Sonia Gandhi and, therefore, we have come back to our home. We will be in the Congress Party as follower of Smt. Sonia Gandhi and abide by the dictates of Smt. Sonia Gandhi as workers of Congress Party and will step forward in unity while remaining in Congress Party.

PETITIONER- BHIM SAIN MEHTA:

HARYANA NEWS CORRESPONDENT Your good name please?

SHRI BHIM SAIN MEHTA:

I, Bhim Sain Mehta, MLA from Indri, District Kaul. I was elected as an independent MLA for last two consecutive terms. It is a matter of great happiness that we have joined our original home because my initial entry into politics has been in Congress Party. In 1979, I had been President of Congress Party. Thereafter, I had been in Congress. Today, I am happy to see that we have joined Congress Party under the leadership of Smt. Sonia Gandhi who is idol of sacrifice. By reposing faith in her leadership, we all have joined Congress Party, today selflessly and we don't have any expectations. We will abide by the dictates of Smt. Sonia Gandhi Ji."

In view of the aforesaid statements and absence of any explanation, let alone reasonable explanation, except only vague and general pleas and denials by the petitioners in their stand before the Speaker, they cannot be heard to say that they have been deprived of reasonable opportunity or there is violation of rules of natural justice.

From the facts and circumstances of the case and the conduct of the petitioners, it can be reasonably inferred that they were only interested in prolonging the proceedings beyond 28th June, 2004, the date fixed for Rajya Sabha elections. The argument that the Speaker passed the impugned order in

haste as voting for Rajya Sabha elections was fixed for 28th June, 2004 is a double edged one since the petitioners were interested in prolonging the proceedings beyond 28th June, 2004 and the Speaker wanted to decide before it, if the petitioners had incurred disqualification under the Tenth Schedule.

Relying upon the case of Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors. [(1960) 1 SCR 773], it was sought to be contended on behalf of the petitioners that the admissions allegedly made before the media could be explained and shown as erroneous and not binding on them and, therefore, opportunity ought to have been granted to them to prove so and the failure to grant opportunity vitiates the impugned orders. The petitioners had failed to plead how the admissions/statements made by them were erroneous. Had they done so, then the question of its proof would have arisen. Instead of so doing, the petitioners only took shelter under the general vague denial pleading that they wish to adduce evidence. It is also to be remembered as observed by the Supreme Court in the aforesaid case, that admission is the best evidence that can be relied upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. The petitioners have failed to satisfy the later part.

Undoubtedly, the Speaker has to comply with the principles of natural justice and cannot pass an order on the basis of pre-determination but in the present case, it cannot be held that the impugned order suffers from any such infirmity. We are unable to accept the contention that the petitioners were not given a fair deal by the Speaker and principles of natural justice have been violated. It was also contended that paragraph 2(2) of the Tenth Schedule deserves to be strictly construed. The submission is that the word 'join' in Paragraph 2(2) deserves a strict interpretation in view of serious consequences of disqualification flowing therefrom on an order that may be made by the Speaker. Paragraph 2(2) of the Tenth Schedule reads as under:

> "2(2). An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election."

As noted earlier, the object of the defection law has to be borne in mind. The question to be considered is whether a member formally joining a political party is the requirement so as to earn disqualification or the factum of joining can be inferred from facts and conduct of a member, without a member formally joining a political party inasmuch as not filling form required to be filled by a member of the political party under the rules and regulations of that party or payment of any prescribed fee. The respondents pleaded for a liberal construction and submitted that inference from conduct was sufficient to establish that an independent member has joined a political party. These are two extreme views on the issue. We are of the view that to determine whether an independent member has joined a political party the test is not whether he has fulfilled the formalities for joining a political party. The test is whether he has given up his independent character on which he was elected by the electorate. A mere expression of outside support would not lead to an implication of a member joining a political party. At the same time, non- fulfillment of formalities with a view to defeat the intent of paragraph 2(2) is also of no consequence. The question of fact that a member has given up his independent character and joined, for all intent and

purposes, a political party though not formally so as to incur disqualification provided in paragraph 2(2) is to be determined on appreciation of the material on record.

Applying this test here, it cannot be held that the Speaker committed any illegality in coming to the conclusion that the petitioners had joined the Indian National Congress. The conclusions reached by the Speaker cannot be held to be unreasonable, assuming that two views were possible. Under the aforesaid circumstances, we are unable to find any illegality in the impugned orders holding that the petitioners (in Writ Petition Nos. 290, 291, 293 and 294 of 2004) have incurred disqualification as provided in paragraph 2(2) of the Tenth Schedule of the Constitution of India. Now, we revert to the disqualification of the petitioners in Writ Petition Nos. 287 and 292 of 2004. It is not disputed that these petitioners have joined Indian National Congress. As already noted, these petitioners were lone members representing their respective parties in the Legislative Assembly. The Speaker in their cases has held that the protection of paragraph 3 of the Tenth Schedule is not available to a single member party. According to the petitioners, they are covered by the protected umbrella of paragraph 3 of the Tenth Schedule. The petitioners have been disqualified by the impugned order in exercise of power under paragraph 2(1) and paragraph 6. Paragraph 2(1) is subject to paragraphs 3, 4 and 5.

In the present case, the question is of interpretation of paragraph 2(1) and paragraph 3 of the Tenth Schedule which read as under:

> "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 authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.
>
> 3. Disqualification on ground of defection not to apply in a 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 a split in his original 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 authorized 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."

The case of the petitioners is that each of them constitute a group representing a faction which has arisen as a result of split in their respective original political parties and this group consist of not less than one third of the members of the legislature party. They say that this group consists of 100% since both of them were the only members of the legislature party in the Assembly and the requirement of paragraph 3 is that the group to be entitled to the protection of the said paragraph is to be of not less than 'one third' of the members of such legislature party. They say that 100% is more than one third and even otherwise when group of not less than one third is protected, the paragraph cannot be interpreted in a manner which will deprive a group of 100% of the protection. The submission is that once the sole member of a party is recognized by Speaker as constituting the legislature party in the Vidhan Sabha, the benefit of paragraph 3 has to be given to the said sole member as it would be a case of more than one-third members of the legislature party representing the group.

In the first paragraph of the Tenth Schedule, expressions 'legislature party' and 'original political party' have been defined which read as under :

> "1. Interpretation. In this Schedule, unless the context otherwise requires,
>
> (a) .
>
> (b) 'legislature party', in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;
>
> (c) '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;
>
> (d) ."

The reliance of the petitioners is on the words 'unless the context otherwise requires'. The contention is that in the context of a recognized single member legislature party, the definition has to be adopted suitably so as not to deny the benefit of paragraph 3 to a sole member constituting the legislature party of a political party.

The question, however, is not only of the definition of the expression 'legislature party' or of the words 'unless the context otherwise requires' in paragraph 1 of the Tenth Schedule, but is also of the interpretation of paragraph 3 under which protection is sought by the petitioners. The words in paragraph 3 are 'he and any other members of his legislature party'. The further requirement is of such members constituting 'the group' representing a faction. It is the group which has to represent a faction which has arisen as a result of split in the original political party. It is such 'group' which is to consist of not less than one third of the members of such legislature party. The question also is as to the interpretation of the expression 'original political party' mentioned in paragraph 3. Further, the contention is that for the applicability of paragraph 3, mere making of a claim about the split is sufficient and nothing more is required to be shown in so far as split is concerned. The submission is that mere making of claim as to the split would entitle a member to the protection of Paragraph 3 subject, of course, to the fulfillment of other conditions laid therein.

The petitioner Jagjit Singh (Writ Petition No. 287/2004) was a sole elected member of the political party 'NCP'. He claims that there was a split in the national unit of 'NCP' as a result whereof a political party named Democratic Dal of Haryana was formed on 20th December, 2003. On 29th December, 2003 the petitioner intimated the Speaker about the split and formation of the new political party and requested the Speaker to accept the new legislature party and treat the petitioner as a member of the said party. On 31st December, 2003 respondent No. 3 filed a complaint before the Speaker respondent No. 2 alleging disqualification on the ground that the petitioner has incurred disqualification by voluntarily defecting from 'NCP' and founding/joining the Democratic Dal of Haryana. On 30th April, 2004 Democratic Dal of Haryana is said to have merged with the Indian National Congress in accordance with paragraph 4 of the Tenth Schedule. The petitioner, for a long time, could not be served with the notices issued by the Speaker on the complaint of respondent No.3. The impugned order notices steps that had to be taken for effecting substituted service on the petitioner. Ultimately, he was served on 5th June, 2004. Thereafter, the petitioner has been repeatedly seeking adjournments in proceedings before the Speaker. He, however, filed an interim reply on 16th June, 2004 and sought four weeks' time on the ground that due to summer vacation of the Court, senior advocates were not available. Petitioner has further alleged that he received a telephone call from the Speaker on 24th June, 2004 when the Speaker told him that if he abstains from voting in Rajya Sabha, the disqualification can be avoided. The impugned order disqualifying the petitioner on account of defection was passed on 25th June, 2004 under paragraph 2(1)(a) of the Tenth Schedule.

The facts in the case of Karan Singh Dalal (Writ Petition No. 292/2004) are almost identical except that he belonged to Republican Party of India (RPI), in respect whereof a similar split as in the case of Jagjit Singh was made with the same dates and same reasons.

The question for determination is about the applicability of paragraph 3 of Tenth Schedule to the petitioner on the facts abovenoticed, namely, applicability of protection of paragraph 3 to a single member party in a legislatiure.

Paragraph 3 requires the following conditions to be complied with :

> (a) a split in the original political party giving rise to a faction; and
>
> (b) faction is represented by group of MLAs in the House which consists of not less than one-third of the members of such legislature party.

Re. (a) The submission urged on behalf of the petitioners is that only requirement of this paragraph is that a claim of split is made by the member of the House and it is not the requirement to even prima facie show that such claim is correct or not. The disqualification under paragraph 2(1)(a) is incurred when a member of the House voluntarily gives up membership of his original political party. Paragraph 2 is, however, subject to paragraph 3 of the Tenth Schedule. If conditions of paragraph 3 are satisfied, despite giving up membership voluntarily, a member would not incur disqualification under paragraph 2. 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. 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 for that reason disqualification under paragraph 2 is not attracted. In Ravi S. Naik, it was observed that :

> "In the present case Naik has not disputed that he has given up his membership of his original political party but he has claimed that there has been a split in the said party. The burden, therefore, lay on Naik to prove that the alleged split satisfies the requirements of paragraph 3. The said requirements are:
>
> (i) The member of a House should make a claim that he and other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original party; and
>
> (ii) Such group must consist of not less than one-third of the members of such legislature party."

Learned counsel for the petitioner, however, relies upon paragraph 37 in Ravi S. Naik's case in support of the submission that only a claim as to split has to be made and it is not necessary to prove the split. The said observations are :

> "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 observations relied upon are required to be appreciated in the light of what is stated in the next paragraph, i.e., paragraph 38, namely :

> "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."

Apart from the above, the acceptance of the contention that only claim is to be made to satisfy the requirements of paragraph 3 can lead to absurd consequences besides the elementary principle that whoever makes a claim has to establish it. It will also mean that when a claim as to split is made by a member before the Speaker so as to take benefit of paragraph 3, the Speaker, without being satisfied even prima facie about the genuineness and bonafides of the claim, has to accept it. It will also mean that even by raising a frivolous claim of split of original political party, a member can be said to have satisfied this stipulation of paragraph 3. The acceptance of such broad proposition would defeat the object of defection law, namely, to deal with the evil of political defection sternly. We are of the view that for the purposes of paragraph 3, mere making of claim is not sufficient. The prima facie proof of such a split is necessary to be produced before the Speaker so as to satisfy him that such a split has taken place.

In the present case, the Speaker has held that the petitioner has failed to satisfy that split in the original party, namely, NCP had taken place. According to the petitioner, he had formed/joined a new political party on 20th December, 2003 having been elected on the ticket of NCP in February 2000. On 20th December, 2003, a new political party by the name of Democratic Congress Party of Haryana was formed. The petitioner voluntarily gave up membership of NCP on 20th December, 2003 and joined this newly formed party. On these facts, the disqualification of voluntarily giving up membership of NCP stands attracted subject to the claim of the petitioner under paragraph 3. The petitioner had to prove that the stipulations of paragraph 3 are satisfied. The Speaker has held that no valid proof or evidence was placed on record to show that split had indeed taken place in NCP on 20th December, 2003 or at any other time. It has further been noted by the Speaker that several times the respondent had been asked the names and addresses of the office bearers of the original political party at the National and State level as well as the names and addresses of the office bearers of the NCP who attended the meeting in which resolution dated 20th December, 2003 was passed. The petitioner, despite opportunity, did not give any satisfactory response or reply in this regard. The Speaker further held that it is only in the original party of NCP, the split had to be proved and not in the Legislative Party of Haryana. The complainant had specifically taken the plea in the complaint that no such split in NCP had taken place. The reply of the petitioner to the said assertion is that he is only claiming that a split was caused by the party workers in the original political party on 20th December, 2003 and that information had been sent to the Speaker as well as to the Election Commission of India. The Speaker, on the basis of material on record, has come to the conclusion that the petitioner was wanting to treat his own defection allegedly supported, according to the petitioner, by some party workers at local level as a split in his original political party. Such a plea was not accepted by the Speaker. We think the Speaker is right. Such a split, if held to be valid for the purposes of paragraph 3, would defeat the very purpose of the law. The requirement is not the split of the local or State wing of original political party but is of original political party as defined in paragraph 1(c) of the Tenth Schedule read with the explanation in paragraph 2(1) to the

effect that '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'.

In support of the contention that for the purposes of paragraph 3 of the Tenth Schedule, the split in a State unit is the requirement, reliance has been placed on a Full Bench decision of Punjab High Court in the case of Madan Mohan Mittal, MLA v. The Speaker, Punjab Vidhan Sabha [The Punjab Law Reporter Vol.CXVII (1997-3) page 374)]. In the said case, it was held :

> "A reading of these provisions clearly indicate that importance was given to the House of the Legislative Assembly of the State. The original political party in relation to a member of the House is the political party to which he belongs. Thus, it is clear that the Parliament intended to treat the State unit of a political party as a separate entity for the purpose of determining whether there is any disqualification of a member of the House of that State Legislature. It is further made clear that in the case of split one- third members of the State Legislature belonging to that political party must form a group to make the split effective within the State Legislature. Likewise for the purpose of (sic) merger within the meaning of paragraph 4, two-thirds of the members of the State Legislature party must have agreed to such merger. Thus, while deciding the disqualification of the member of the State Legislature the events that have taken place at the national level have no concern to decide whether there is a split or (sic) merger. To elucidate this point one may take the case of split of a national political party at the national level but in a particular State the members of that political party do not want to split and they want to continue the State unit intact. In such an event the split or events that have taken place at the national level of the political party will have no effect on the State unit of that political party and the political party at the State level continues to be in the original form. Likewise there may not be a split at the national level but at the State level there may be a split in the State unit of that political party and one-third of the members of the State Legislature constitute the group representing the faction as a result of the split in the State unit of the political party. Then the split comes into existence even though there is no split as such at the national level. The scheme of Tenth Schedule is to be looked from the point of view of State units of political parties when the question of disqualification arises within the State Legislative Assembly. Thus, according to us if there is a split of a political party at the State level and one-third members of the Legislature party of that political party at the State level consists of the group representing that faction which splits away from the original political party then the split comes into existence and is effective."

The Full Bench, in the above case, was considering the legality of the Order of the Deputy Speaker of Punjab Legislative Assembly whereby he declined to declare Respondent Nos.3 and 4 as disqualified under paragraph 2 of Tenth Schedule. The said respondents were candidates put up by Bhartiya Janata Party in assembly elections held in February 1992 in which they were elected. According to the petitioner, these members joined Congress (I) party. The petitioner before the High Court was a leader of the original political party, i.e., Bhartiya Janata Party. Legislature Party made a complaint

to Speaker to disqualify these members and stated that there was no split in the party as claimed by Respondents 3 and 4. The Deputy Speaker, however, held that there was split in the party and the original party had six seats and respondents 3 and 4 constitute one-third members of the Legislature party and, therefore, they are not disqualified in view of paragraph 3 of the Tenth Schedule and their original political party would be Bhartiya Janata Party (Punjab). The Full Bench, after rightly holding that 'the original political party in relation to a member of the House is a political party to which he belongs' erroneously held that 'the Parliament intended to treat the State unit of a political party as a separate entity for the purpose of determining whether there is any disqualification of a member of the House of that State Legislature'. In the case of split, one-third members of State Legislature belonging to that political party must form a group to make the split effective within the State Legislature but it does not lead to the conclusion that the Parliament intended to treat State Unit of a political party as a separate entity for the purposes of the benefit of paragraph 3. Paragraph 1(c) defining original political party and explanation as given in paragraph 2(1) have already been noticed hereinbefore. It is clear from a bare reading thereof that the elected member belongs to the political party by which he is set up as a candidate for election as such member. From the plain language of these provisions, it cannot be held that for the purposes of the split, it is the State Legislature party in which split is to be seen. If a member is set up by a National Party, it would be no answer to say that events at National level have no concern to decide whether there is a split or not. In case a member is put up by a National Political party, it is split in that party which is relevant consideration and not a split of that political party at the State level. We may also refer to the decision in G. Viswanathan v. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras & Anr. [(1996) 2 SCC 353], the observation whereof clearly show that the relevant factor is of the political party by which a member is set up as a candidate for election as such member. It would be useful to reproduce paragraph 13 from the said judgment :

> "Mr. Shanti Bhushan laid stress on paragraph 1(b) of the Tenth Schedule and contended that the Legislative Party in relation to a member of a House belonging to any political party means the group consisting of all the members of that House for the time being belonging to that political party, and so understood, the appellants who were thrown out or expelled from the party, did not belong to that political party nor will they be bound by any whip given by that party, and so, they are unattached members who did not belong to any political party, and in such a situation the deeming provision in sub-paragraph (a) of the explanation to paragraph 2(1) will not apply. We are afraid it is nothing but begging the question. Paragraph 1(b) cannot be read in isolation. It should be read along with paragraphs 2, 3 and 4. Paragraph 1(b) in referring to the Legislature Party in relation to a member of a House belonging to any political party, refers to the provisions of paragraphs 2, 3 and 4, as the case may be, to mean the group consisting of all members of that House for the time being belonging to that political party in accordance with the said provisions, namely, paragraphs 2, 3 and 4, as the case may be. Paragraph 2(1) read with the explanation clearly points out that an elected member shall continue to belong to that political party by which he was set up as a candidate for election as such member. This is so notwithstanding that he was thrown out or expelled from that party. That is a matter between the member and his party and has nothing to do so far as deeming clause in

> the Tenth Schedule is concerned. The action of a political party qua its member has no significance and cannot impinge on the fiction of law under the Tenth Schedule. We reject the plea solely based on Clause 1(b) of the Tenth Schedule."

The Punjab case is not correctly decided.

On the facts of the present case, the Speaker was justified in coming to the conclusion that there was no split in the original political party of the petitioner Jagjit Singh (Writ Petition 287/2004). Likewise, in Writ Petition 292/2004, the Speaker on consideration of relevant material placed before him came to the conclusion that there was no split as contemplated by paragraph 3 of the Tenth Schedule. The finding of the Speaker cannot be faulted. In fact, letter of the petitioner dated 17th June sent to the Speaker itself shows that what was claimed was that the Haryana unit of the Republican Party of India effected a split in the original party on 21st December, 2003. The finding that the claim of split was made as an afterthought to escape disqualification under paragraph 2(1)(a) of the Tenth Schedule cannot be held to be unreasonable or perverse. The Speaker was justified in coming to the conclusion that despite various opportunities, no valid proof or evidence was placed on record by the petitioner to show that indeed a split had taken place in the original political party, i.e., Republican Party of India on 21st December, 2003.

It is a matter of great anguish that the mode of substituted service had to be resorted to, to serve elected members of a Legislative Assembly.

The manner in which the matter proceeded before the Speaker after complaint was filed is evident from the impugned order, relevant part whereof reads as under :

> "Notice was issued to the respondent and copies were forwarded to him in the manner provided under Para-7 of the Rules of 1986. A period of one month from the date of issue of the notice was given to the Respondent to file his reply to the Petition. However, the record reveals that the Registered-AD letter dated 17.3.2004 containing the notice, was received back undelivered with the report of the serving agency (Postal Department) dated 30.3.2004. This report when translated, stated that "the addressee is not contactable and no one else is ready to take the registered letter and, therefore, the letter is being returned." The report itself mentions that the official of the postal department visited the given address of the respondent on 25.3.2004, 26.3.2004, 27.3.2004 and 28.3.2004.
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> In view of this it was again ordered that the respondent be served with the notice of the petition by Registered-AD post. Accordingly Registered-AD letter dated 23.4.2004 was sent to the respondent to submit his comments to the petition before 11.5.2004. This letter was also received back undelivered with the accompanying report dated 5.5.2004 of the serving agency, which in terms, was to the same effect as the earlier report dated 30.3.2004. The report further reveals that the official of the postal department went to the given address of the respondent on 27.4.2004, 28.4.2004, 29.4.2004, 30.4.2004 and 1.5.2004. so far as the substituted service of

the Respondent through SDO(C) Palwal was concerned, the report of the same was still awaited when the case was taken up on 11.5.2004. In these circumstances, it was ordered on 15.5.2004 to make another effort to serve the respondent by sending notice, yet again, by registered post and as well as by substituted service through publication in two leading newspapers and the case was adjourned to 4.6.2004, by which date the respondent had been directed to file his reply. The record reveals the notice dated 18.5.2004 through registered post, along with the copy of the petition and its annexures was again sent to the respondent asking him to furnish his reply by 4.6.2004. In the mean time, the respondent through a letter received on 21.5.2004, made a prayer for giving him six weeks time to file the reply as he had only received the notice on 12.5.2004 whereas reply had to be given by 11.5.2004. Since a notice dated 18.5.2004 had already been sent to the respondent asking him to submit his reply by 4.6.2004, the request of the respondent for giving him six weeks time could not be granted and he was duly informed on 28.5.2004 through telegram to submit his reply by 4.6.2004. When the case was taken up on 4.6.2004, an application dated 4.6.2004 was submitted by the respondent seeking permission to file a detailed reply to the petition and four weeks more time was prayed for this purpose as well as the opportunity of being assisted by an advocate was asked for. Although more than sufficient time had been granted to the respondent to furnish his comments/reply by this Authority and in view of the fact that by letter dated 18.5.2004 he had already been asked to submit his reply by 4.6.2004, therefore, no case was made out to grant the respondent any more time. However, in the interest of justice a final opportunity was granted to the respondent and he was asked to submit the detailed comments on the petition latest by 11.6.2004. An opportunity of personal hearing was also granted to the respondent along with the assistance of an Advocate, if desired. On 4.6.2004, it was intimated to the respondent telegraphically as well as by Registered Post/Courier and fax and through SDO(C), Palwal to submit his detailed reply by 11.6.2004 and also to appear at 11 AM on 11.6.2004 in the Haryana Vidhan Sabha before this Authority with the assistance of an Advocate, if desired. Consequently, the respondent put in appearance at 11 AM on 11.6.2004 along with his counsel Sh. Joginder Pal Sharma, Advocate and submitted an Application dated 11.6.2004 seeking permission to inspect the record and for obtaining the certified copies of the documents mentioned in Para 3 of the application. In the interest of justice, a detailed order was passed on 11.6.2004 allowing the application of the respondent and granting permission to him to inspect the record and also for supply of certified copies of the documents which were demanded by the respondent. An intimation of the order passed by this Authority was conveyed to the respondent by the Secretary vide letter dated 11.6.2004 which was received by the respondent on the same day at 5.30 pm as the record reveals. By this letter it was also conveyed to the respondent that permission to inspect the record at 10 AM on 14.6.2004 had also been granted. The certified/Photostat copies as asked for by the respondent had also been enclosed with the said letter. The respondent was asked to submit his comments latest by 2 pm on 14.6.2004 and also to appear personally with the assistance of his Advocate. The record reveals that the inspection had indeed been done by the respondent and he

was assisted by his Advocate in the said inspection of the record.

Instead of filing his reply on 14.6.2004, another application was submitted by the respondent on 14.6.2004 itself seeking permission to inspect the files of some other cases and also put a query to this Authority regarding the procedure adopted in those cases regarding evidence etc. The desired files/documents were got inspected to the Respondent on 14.6.2004 which was acknowledged by the respondent on his above stated letter dated 14.6.2004. After completion of the inspection, on 14.6.2004 again another application was made by the respondent that certified copies of more documents was required by him for filing his comments/reply to the petition."

The position is almost same in both cases.

Re : (b) The words 'he and any other person' and the words 'the group' in paragraph 3 on the plain reading shows that the benefit of paragraph 3 is not available to a single member legislature party. It was, however, contended that the words 'he and any other person', in the context of a recognized single member legislature party should be read and understood as 'he or he and any other members of his legislature party constitute the group'. We cannot read words in the Constitution which do not exist. The contention is that once a single member legislature party is recognized by the Speaker, the benefit of paragraph 3 has to be given to the sole member representing that party as it would be a case of 100% representing break away group. Undoubtedly, paragraph 2(1)(a) is subject to the provisions of paragraphs 3, 4 and 5 and if paragraph 3 applies and ingredients thereof are satisfied the member would not attract disqualification under paragraph 2(1)(a). In that sense paragraph 3 overrides paragraph 2(1)(a). The factor that a single member legislature party is recognized by the Speaker is of no relevance in interpreting paragraph 3 of the Tenth Schedule. In the context of the language of paragraph 3 of the Tenth Schedule, Section 13(2) of the General Clauses Act, 1897 which requires that unless there is anything repugnant in the subject of context, 'words in the singular shall include the plural, and vice-versa' has no applicability. It is, ordinarily, not the function of the Court to read words into a statute. The Court must proceed on the assumption that the Legislature did not make a mistake and it intended to say what it said. It is well settled that "the Court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result' {See P.K. Unni v. Nirmala Industries & Ors. [(1990) 2 SCC 378]}. The contention is that when paragraph 3 protects when there is defection of a group consisting of not less than one-third of the members of a legislature party, the intention of law can never be to deprive such a benefit where group is 100%. We are unable to accept this contention for more than one reason. Firstly, there is no contradiction or ambiguity or defect or omission in paragraph 3; secondly, there is no manifest contradictions insofar as the apparent object of the defection law is concerned in paragraph 3 depriving the benefit of single member legislature party; thirdly the legislature is assumed to have known the existence of single member legislature party; and finally from the language of paragraph 3, it is evident that the Parliament did not intend to grant the benefit of paragraph 3 to a single person legislature party, having regard to the object of the Constitutional amendment dealing with evil of defection. Advisedly, the words are 'he and other members' instead of the words 'he or he and other members'. The object of the Tenth Schedule is to discourage defection. Paragraph 3 intended to protect a larger group which, as a result of split in a

political party which had set up the candidates, walks off from that party and does not treat it as defection for the purposes of paragraph 2 of the Tenth Schedule. The intention of the Parliament was to curb defection by a small number of members. That intention is clear from paragraph 3 which does not protect a single member legislature party. It may be noted that by Constitution (Ninty-first Amendment) Act, 2003, paragraph 3 has been omitted from the Tenth Schedule.

Lastly, we will consider the ground of personal malafides. It is alleged that a telephone call was made by the Speaker to the petitioners asking them not to vote in the Rajya Sabha election. The averments made in Writ Petition 287 of 2004 are:

> "That with a sense of utmost responsibility, the Petitioner states that the Respondent No.2 had called up the Petitioner on his mobile phone on 24.6.2004 asking the Petitioner that if he decides to abstain from voting, then disqualification can be avoided."

The Speaker has not filed any reply. It is true that the aforesaid averments have remained unrebutted. The contention is that adverse inference should be drawn against the Speaker and the impugned orders set aside on the ground of malafides of the Speaker.

The question of drawing adverse inference in view of Speaker not rebutting the aforesaid averments would depend upon the satisfaction of the Court, having regard to the facts and circumstances of the case. Ordinarily, the adverse inference can be drawn in respect of allegations not traversed, but there is no general rule that adverse inference must always be drawn, whatever the facts and circumstances may be. The facts and circumstances of the present case have already been noticed as to how the petitioners have been avoiding to appear before the Speaker; how the proceedings were being delayed and long adjournments sought on ground such as non-availability of senior advocates because of court vacations. In the light of these peculiar facts and circumstances, a telephone call like the one alleged can mean that further adjournment as sought for by the petitioners is possible if they do not vote in the Rajya Sabha election on 28th June, 2004. On facts, we are unable to draw adverse inference and accept the plea of malafides.

Before parting, another aspect urged before us deserves to be considered. However, at the outset, we do wish to state that the Speaker enjoys a very high status and position of great respect and esteem in the Parliamentary Traditions. He, being the very embodiment of propriety and impartiality, has been assigned the function to decide whether a member has incurred disqualification or not. In Kihoto Hollohan's judgment various great Parliamentarians have been noticed pointing out the confidence in the impartiality of the Speaker and he being above all parties or political considerations. The High office of the Speaker has been considered as one of the grounds for upholding the constitutional validity of the Tenth Schedule in Kihoto Hollohan's case.

Undoubtedly, in our constitutional scheme, the Speaker enjoys a pivotal position. The position of the Speaker is and has been held by people of outstanding ability and impartiality. Without meaning any disrespect for any particular Speaker in the country, but only going by some of events of the recent past, certain questions have been raised about the confidence in the matter of impartiality on

some issues having political overtones which are decided by the Speaker in his capacity as a Tribunal. It has been urged that if not checked, it may ultimately affect the high office of the Speaker. Our attention has been drawn to the recommendations made by the National Commission to review the working of the Constitution recommending that the power to decide on the question as to disqualification on ground of defection should vest in the Election Commission instead of the Speaker of the House concerned. Our attention has also been drawn to the views of number of other experts, committees/commissioner to the effect that the power of disqualification as a result of defection need to be exercised in accordance with the opinion of the Election Commission as in the case of decision on question as to disqualification of members provided for in Article 103 and 194(2) of the Constitution (See Anti-Defection Law and Parliamentary Privileges by Dr. Subhash C. Kashyap, M.P. Jain's Indian Constitutional Law, 5th Edn., Constitutional Law of India, 2nd Edn. by T.K. Tope, Reviewing the Constitution edited by Dr. Subhash C. Kashyap & Ors., First V.M. Tarkunde Memorial Lecture on "Indian Democracy Reality or Myth?" delivered by Shri Soli J. Sorabjee).

Whether to vest such power in the Speaker or Election Commission or any other institution is not for us to decide. It is only for the Parliament to decide. We have noted this aspect so that the Parliament, if deemed appropriate, may examine it, bestow its wise consideration to the aforesaid views expressed also having regard to the experience of last number of years and thereafter take such recourse as it may deem necessary under the circumstances.

As a result of the aforesaid discussions, we find no merit in the writ petitions. Writ Petition Nos.287/2004 and 290 to 294/2004 are, accordingly, dismissed.