Shrimanth Balasaheb Patil vs Honble Speaker Karnataka Legislative ... on 13 November, 2019

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Bench: Krishna Murari, Sanjiv Khanna, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 992 OF 2019

SHRIMANTH BALASAHEB PATIL …PETITIONER

VERSUS

HON'BLE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY AND OTHERS …RESPONDENTS

WITH

WRIT PETITION (CIVIL) NO. 997 OF 2019

RAMESH L. JARKHIHOLI AND ANOTHER …PETITIONERS

VERSUS

HON'BLE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY AND OTHERS …RESPONDENTS

AND

WRIT PETITION (CIVIL) NO. 998 OF 2019

PRATAP GOUDA PATIL AND OTHERS …PETITIONERS

VERSUS

HON'BLE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY AND OTHERS …RESPONDENTS

AND

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WRIT PETITION (CIVIL) NO. 1000 OF 2019

DR. K. SUDHAKAR …PETITIONER

VERSUS

THE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY …RESPONDENT

AND

WRIT PETITION (CIVIL) NO. 1001 OF 2019

ANAND SINGH …PETITIONER

VERSUS

THE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY …RESPONDENT

AND

WRIT PETITION (CIVIL) NO. 1003 OF 2019

R. SHANKAR …PETITIONER

VERSUS

HON'BLE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY AND OTHERS …RESPONDENTS

AND

WRIT PETITION (CIVIL) NO. 1005 OF 2019

A. H. VISHWANATH AND OTHERS …PETITIONERS

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VERSUS

HON'BLE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY AND OTHERS …RESPONDENTS

AND

WRIT PETITION (CIVIL) NO. 1006 OF 2019

ROSHAN BAIG …PETITIONER

VERSUS

HON'BLE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY AND OTHERS …RESPONDENTS

AND

WRIT PETITION (CIVIL) NO. 1007 OF 2019

N. NAGARAJU MTB …PETITIONER

VERSUS

HON'BLE SPEAKER, KARNATAKA
LEGISLATIVE ASSEMBLY AND OTHERS …RESPONDENTS

JUDGMENT

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A. INTRODUCTION

1. Reflecting on Indian parliamentary democracy, the words of André Béteille, Professor Emeritus of Sociology, need to be observed:

> "In a parliamentary democracy, the obligations of constitutional morality are expected to be equally binding on the government and the opposition. In India, the same political party treats these obligations very differently when it is in office, and when it is out of it. This has contributed greatly to the popular perception of our political system as being amoral…"1 Although the framers of the Constitution entrusted 'we the people' with the responsibility to uphold the constitutional 1 André Béteille, 'Constitutional Morality', Economic and Political Weekly, Volume 43 (40)

(4th October 2008).

values having attained freedom, the question which begs herein to be answered is to what extent we have discharged our duty and sustained our democratic and constitutional obligations.

2. In this context, the questions arising in this batch of Writ Petitions concern the importance of party politics in a democracy and the requirement to have stability within the government to facilitate good governance, as mandated under the Constitution. We need to keep in mind that the separating line between dissent and defection requires to be made apparent, so that democratic values are upheld in balance with other constitutional considerations. In an endeavor to maintain such balance, the role of the Speaker is critical in maintaining the balance between democratic values and constitutional considerations. In this regard, this Court's role is only to ascertain whether the Speaker, as a neutral member, upheld the tradition of his office to uphold the Constitution.

3. These Writ Petitions are filed against five different orders passed by the Speaker of the Karnataka Legislative Assembly: two orders dated 25.07.2019 in Disqualification Petition No. 01 of 2019 and Disqualification Petition No. 07 of 2019 respectively; two orders dated 28.07.2019 in Disqualification Petition No. 05 of 2019 and Disqualification Petition No. 08 of 2019 respectively;

and a common order dated 28.07.2019 in Disqualification Petition Nos. 3 and 4 of 2019.

4. Brief facts which are necessary for the disposal of the present petitions are that the results of the 15th Karnataka Legislative Assembly were declared on 15.05.2018. The contesting political parties secured the following seats:

Party	Seats Won
Indian National Congress [INC]	78
Karnataka Pragnyavantha Janatha Party [KPJP]	

5. The Petitioners herein were elected as members of 15 th Karnataka Legislative Assembly, as per the details given below:

W.P. (C) NO.	PETITIONER(S)	PARTY	CONSTITUENCY
992/2019	Shrimanth Balasaheb Patil	INC	Kagawad
997/	1. Ramesh Jarkhiholi 2. Mahesh Kumathalli	INC	1. Gokak 2. Athani

998/	1. Pratap Gouda Patil 2. B.C. Patil	INC	1. Maski 2. Hirekerur
2019	3. Arbail Shivaram Hebbar 4. S.T. Somashekhar 5. B.A. Basvaraja 6. Munirathna		3. Yellapur 4. Yeshvanthapura 5. KR Pura 6. RR Nagar
1000/	Dr. K. Sudhakar	INC	Chikkaballapur
1001/	Anand Singh	INC	Vijayanagara
1003/	R. Shankar	KPJP	Ranebennur
2019		Independent	
1005/	1. A.H. Vishwanath 2. K. Gopalaiah 3. K.C. Narayanagowda	JD(S)	1.Hunsur 2.Mahalakshmi Layout 3.Krishanarajapet
1006/	Roshan Baig	INC	Shivajinagar
1007/	N. Nagaraju MTB	INC	Hosakote

6. Though the BJP was the single largest party, its attempt to form the Government was not successful. A coalition government of INC and JD(S) was formed under the leadership of Mr. Kumaraswamy (one of the Respondents herein). This Government had a short life of about 14 months. The events leading up to the resignation of the Chief Minister, on losing the trust vote on 23.07.2019, after several days delay, form the backdrop to the case of the present Petitioners.

7. On 11.02.2019 Disqualification Petition No. 1 of 2019 was instituted against Ramesh L. Jarkhiholi, Mahesh Iranagaud Kumathalli, Umesh G. Jadhav and B. Nagendra. The main allegations against the aforesaid persons were that they did not participate in the meetings of the party and the proceedings of the Assembly session held from 06.02.2019 onwards, and the conduct of all the aforesaid members' was in violation of the whip issued by the INC in this regard. Thereafter, Petitioners in Writ Petition (C) No. 997 of 2019, Ramesh L. Jarkhiholi and Mahesh Iranagaud Kumathalli, are said to have submitted their resignations to the Speaker on 06.07.2019.

> 8. Other Petitioners, including, Dr. K. Sudhakar, Pratap Gouda Patil, B. C. Patil, Arbail Shivaram Hebbar, S. T. Somashekar, B.A. Basvaraja, Munirathna, A.H. Vishwanath, K. Gopalaiah, K.C. Narayanagowda, Anand Singh, N. Nagaraju MTB and Roshan Baig submitted their resignations from the membership of the House between 01.07.2019 to 11.07.2019.
>
> 9. However, the Speaker did not take any call on the resignation of the above persons. Aggrieved by the fact that their resignations were not accepted, and with the impending trust vote being inevitable, most of the above persons approached this Court by way of a Writ Petition, being Writ Petition (C) No. 872 of 2019.

This Court, on 11.07.2019, in the aforesaid Writ Petition directed the Speaker to take a decision qua the resignations forthwith, and further directed the same to be laid before this Court. The relevant extract of the said order is as under:□"....Having regard to the facts of the case, we permit the petitioners, ten in number, to appear before the Hon'ble Speaker of the Karnataka Legislative Assembly at 6.00 p.m. today. We request the Hon'ble Speaker to grant an audience to the ten petitioners at the said time. The petitioners, if they so wish and are so inclined, shall intimate the Hon'ble Speaker of the Assembly their decision to resign, in which event, the Hon'ble Speaker shall take a decision forthwith and, in any case, in the course of the remaining part of the day. Such decision of the Hon'ble Speaker as may be taken in terms of the present order, be laid before the Court tomorrow (12.07.2019)..."

10. Meanwhile, on 11.07.2019, members of the INC withdrew their disqualification complaint against B. Nagendra in Disqualification Petition No.1 of 2019. The Speaker, it appears, did not take any decision on the resignation in spite of the order of this Court. Simultaneously, a whip was issued by the INC and the JD(S) on 12.07.2019 calling upon their members to attend proceedings, and cautioning the members of disqualification if they failed to attend the same. Further, Disqualification Petition Nos. 3, 4 and 5 were filed against Dr. K. Sudhakar, Pratap Gouda Patil, B. C. Patil, Arbail Shivaram Hebbar, S. T. Somashekhar, B.A. Basvaraja, Munirathna, A.H. Vishwanath, K. Gopalaiah, K.C. Narayanagowda, Anand Singh, N. Nagaraju MTB and Roshan Baig between 10.07.2019 to 12.07.2019.

11. Subsequently, when the aforesaid Writ Petition came up for hearing on 12.07.2019, this Court passed the order as under:

> "Having regard to the weighty issues that have arisen and the incomplete state of facts, as indicated above, we are of the view that the matter should be considered by the Court further on 16th July, 2019.
>
> In the meantime, the status quo as on today, with regard to the ten petitioners, be maintained, namely, that neither the issue of resignation nor the issue of disqualification will be decided by the Hon'ble Speaker.

This order has been passed by this Court only to enable the Court to decide the larger constitutional questions arising as indicated above." (emphasis supplied)

12. Further, this Court on 17.07.2019, passed the following order:

"The issue arising in the case is whether resignations submitted by Members of the Legislative Assembly at a point of time earlier than petitions for their disqualification under the Tenth Schedule of the Constitution should have priority in the decision making process or whether both sets of proceedings should be taken up simultaneously or the disqualification proceedings should have precedence over the request(s) for resignation.

Arguments have been advanced by the learned counsels for the parties on the touchstone of Articles 164, 190, 191, 212 and 361B and the Tenth Schedule of the Constitution. We have considered the same. Constitutional principles should not receive an exhaustive enumeration by the Court unless such an exercise is inevitable and unavoidable to resolve the issues that may have arisen in any judicial proceeding.

In the present case, having regard to the stage at which the above issues are poised in the light of the facts and circumstances surrounding the same, we are of the view that the aforesaid questions should receive an answer only at a later stage of the proceedings. The imperative necessity, at this stage, is to maintain the constitutional balance and the conflicting and competing rights that have been canvassed before us. Such an interim exercise has become prudent in view of certain time frame exercise(s) that is in the offing in the Karnataka Legislative Assembly, particularly, the no trust motion against the present Government, which we are told is due for being taken up on 18th July, 2019. In these circumstances, the competing claims have to be balanced by an appropriate interim order, which according to us, should be to permit the Hon'ble Speaker of the House to decide on the request for resignations by the 15 Members of the House within such time frame as the Hon'ble Speaker may consider appropriate. We also take the view that in the present case the discretion of the Hon'ble Speaker while deciding the above issue should not be fettered by any direction or observation of this Court and the Hon'ble Speaker should be left free to decide the issue in accordance with Article 190 read with Rule 202 of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly framed in exercise of the powers under Article 208 of the Constitution.

The order of the Hon'ble Speaker on the resignation issue, as and when passed, be placed before the Court.

We also make it clear that until further orders the 15 Members of the Assembly, ought not to be compelled to participate in the proceedings of the ongoing session of the House and an option should be given to them that they can take part in the said proceedings or to opt to remain out of the same. We order accordingly." (emphasis

supplied)

13. Disqualification Petition No. 7 of 2019 was filed against R. Shankar on 16.07.2019 and Disqualification Petition No. 8 of 2019 was filed against Shrimanth Balasaheb Patel on 20.07.2019. The Speaker thereupon issued emergent notices between 18.07.2019 to 20.07.2019 to all the Petitioners regarding the pending disqualification petitions to appear before him on the date of hearing fixed for 23.07.2019 and 24.07.2019. The notices did not refer to the resignation letters which had been submitted by 15 Petitioners, who are parties to the Writ Petition (C) No. 872 of 2019 filed before this Court. The Petitioners have alleged that the period given in the aforesaid notices was too short and in fact some of them had not even received notices within time to respond.

14. While the aforesaid disqualification petitions/resignation letters were pending, the INC on 20.07.2019 had again issued a whip requiring their members of the Legislative Assembly to attend the proceedings of the House on 22.07.2019.

15. The trust vote was finally taken up for consideration on 23.07.2019. The 17 Petitioners did not attend the House. As a result, the INC and JD(S) coalition Government, under the leadership of Mr. Kumaraswamy was in a minority, resulting in the resignation of Mr. Kumaraswamy as Chief Minister.

16. Further, as detailed above, on 25.07.2019 and 28.07.2019, the Speaker passed the five impugned orders in Disqualification Petition Nos. 1, 3, 4, 5, 7 and 8 of 2019. In these orders, the Speaker:

> a. Rejected the resignation of the members asserting that they were not voluntary or genuine b. Disqualified all the Petitioners, and c. Disqualified the Petitioners till the end of the 15 th Legislative Assembly term

17. Aggrieved, by the aforesaid disqualifications, all the Petitioners herein have approached this Court under Article 32 of the Constitution.

B. CONTENTIONS LEARNED SENIOR COUNSEL MR. MUKUL ROHATGI ON BEHALF OF PETITIONERS IN W.P. (C) NOS.997, 998, 1006 AND 1007 OF 2019 Learned Senior Counsel Mr. Mukul Rohatgi, argued that the members of the house have an indefeasible right to resign but the speaker went beyond his constitutionally mandated duty and gave an opinion on the motive of the members and wrongfully rejected the resignations tendered by them. On the contrary, the speaker has to accept the resignation once it has been tendered in the correct format.

Explaining the connection between resignation and disqualification under the Tenth Schedule of the Constitution, Mr. Rohatgi stressed that once resignation was validly tendered, there was no question of the Speaker exercising his jurisdiction to disqualify a member. Disqualification under the Tenth Schedule was only with respect to a person who was a member, and not otherwise.

The learned Senior Counsel challenging the legality of the disqualification order submitted that the same can be interfered with, if the Court finds that the order is perverse, results from non□

application of mind, or is in violation of principles of natural justice. It was contended that in the present case, all three of the above infirmities are made out in the disqualification order of the Speaker.

The Speaker, in issuing "emergent" notice returnable in 3□4 days is in contravention of the requirement for 7 days' notice under the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986. This makes the order of the Speaker bad for non□ compliance of the principles of natural justice, particularly when the Petitioners had only sought time of 4 weeks to produce documents.

Lastly, learned Senior Counsel vehemently submitted that even if disqualification is held to be valid in law, the same cannot take away the right of the Petitioners to contest in the upcoming elections, as there exists no bar on the right to contest elections under Tenth Schedule of the Constitution.

LEARNED SENIOR COUNSEL CA SUNDARAM ON BEHALF OF PETITIONER IN W.P. (C) NO. 1000 OF 2019 The learned Senior Counsel submitted that the resignation tendered in the present case was resignation from the House and not from the party.

If resignation is tendered under Article 190, the Speaker's role is limited to the extent of determining voluntariness and genuineness of the same. The inquiry of the Speaker as to the "voluntariness" is limited in its scope to the question of whether the member was coerced to resign or not. The enquiry as to "genuineness" only related to whether the resignation letter was forged, or not actually made by the member. Additionally, when a member hands over the letter of resignation to the Speaker personally and informs the Speaker that the same is voluntary and genuine, then the Speaker has to accept the resignation immediately.

The learned Senior Counsel also submitted that the motive behind the resignation is immaterial, as the proviso to Article 190(3) of the Constitution restricts the scope of inquiry by the Speaker only to voluntariness and genuineness. LEARNED SENIOR COUNSEL V. GIRI ON BEHALF OF PETITIONER IN W.P.(C) NO. 1003 OF 2019 The learned Senior Counsel distinguished the case of the Petitioner on the basis that he had never tendered his resignation. In spite of that, a separate disqualification order was passed against him.

In the present case, the Petitioner belonged to KPJP. Although the party had decided to merge with the INC and had intimated the Speaker about the same, there was no formal order of merger. When the whip was issued by the INC, the Petitioner herein requested the Speaker to provide him with a separate seat with the opposition members. But the Speaker refused the same, recognizing the Petitioner to be affiliated with the INC. The learned Senior Counsel for the Petitioner brought to the notice of the Court the letter of intimation issued by the Executive Committee of his party directing him to stay on the side of the opposition. Therefore, without any formal order of merger, the Petitioner was not bound by the whip issued by the INC.

LEARNED SENIOR COUNSEL V. GIRI ON BEHALF OF PETITIONER IN W.P. (C) NO. 992 OF 2019 The case of the Petitioner can be distinguished factually from the case of most of the other Petitioners as he had not tendered his resignation. When the whip was issued, due to prevailing medical conditions, the Petitioner had to urgently travel to Mumbai, pursuant to which he failed to participate in the proceedings of the House.

Although these facts were intimated to the Speaker with supporting medical records, the Speaker passed the order of disqualification in haste without giving due notice to the Petitioner. The learned Senior Counsel submitted that such an ex parte order of disqualification, without considering relevant material on record and placing reliance upon extraneous circumstances, is untenable.

LEARNED SENIOR COUNSEL A.K GANGULY ON BEHALF OF PETITIONERS IN W.P.(C) NO. 1005 OF 2019 This Court, vide its order dated 17.07.2019 in Writ Petition (C) No. 872 of 2019, granted liberty to the Petitioners herein to either participate or opt out of the proceedings of the ongoing session of the House. But the aforesaid order was ignored by the political party of the Petitioners herein by issuing the whip, and by the Speaker in relying upon the same to disqualify the Petitioners.

The learned Senior Counsel also submitted that the sanctity of the Petitioners' resignation should be protected. The order of disqualification rendered by the Speaker is mala fide and is not supported by any cogent reasons.

LEARNED SENIOR COUNSEL K.V. VISHWANATHAN ON BEHALF OF PETITIONERS IN W.P. (C) NO. 997 OF 2019 The learned senior counsel submitted that on 11.02.2019, a disqualification petition was filed against 4 MLAs including Dr. Umesh Yadav and the Petitioners herein. Subsequently, during the pendency of the said disqualification petition, Dr. Umesh Yadav submitted his resignation which was accepted by the Speaker. However, the Speaker, acting in a mala fide manner, kept the resignation letter submitted by the Petitioners herein pending until the disqualification petition was decided. Despite the orders of this Court directing the Speaker to decide the resignation, the Speaker kept the matter pending till the decision on the disqualification petition. The learned Senior Counsel further contended that the Speaker wrongly took into consideration actions pursuant to the orders of this Court dated 17.07.2019, wherein the Petitioners were granted the liberty not to participate in the ongoing proceedings of the house. LEARNED SENIOR COUNSEL SAJAN POOVAYYA ON BEHALF OF PETITIONER IN W.P. (C) NO. 1001 OF 2019 The Petitioner was a member of the INC who had resigned on 01.07.2019 in protest against certain land dealing in his Constituency. However, he was put in the same group as the other disqualified Petitioners by the Speaker. The learned Senior Counsel contends that omnibus statements and allegations have been rendered in the disqualification order and the same was passed without taking into consideration the documents submitted by the Petitioner herein.

The learned Senior Counsel reiterated the earlier contention that the actions of the Petitioner stood protected by virtue of the interim order dated 17.07.2019 passed by a Co□ordinate Bench of this Court in Writ Petition (C) No. 872 of 2019. LEARNED SOLICITOR GENERAL TUSHAR MEHTA ON BEHALF OF THE SPEAKER:

The learned Solicitor General submitted that members of the House have the right to resign.

The learned Solicitor General submitted that this was a fit case for the matter to be remanded to the Speaker for fresh hearing. LEARNED SENIOR COUNSEL KAPIL SIBAL ON BEHALF OF RESPONDENT NOS. 2 AND 3 IN W.P. (C) NOS. 992, 997, 998, 1000, 1001, 1003, 1006 AND 1007 OF 2019 The learned Senior Counsel firstly stated that the impugned orders of disqualification can only be challenged under Article 226 and not under Article 32 of the Constitution, as these are matters involving merely statutory rights. There is no alleged violation of fundamental rights which mandates the invocation of jurisdiction under Article 32 of the Constitution. Further, the Speaker is a quasi-judicial authority, the remedy against whose order lies only under Article 226 of the Constitution.

The learned Senior Counsel emphasized upon the conduct of the Petitioners to prove that their resignations were motivated. The counsel urged this Court to take a note of the conduct of the members both prior and subsequent to the act of resignation to comprehend the motive behind such resignation. He stated that motive has to be decided to determine the "genuineness" and "voluntariness" of the resignation, as it is the motive which acts as an umbilical cord between the issues of genuineness and voluntariness. In light of the same, learned Senior Counsel pointed out that the Petitioners, after tendering their resignation, never went to the Speaker; rather they approached the Governor and the Supreme Court. It ought to be noted that the letters of resignation were tendered collectively. The power vested in the Speaker is a judicial exercise of power. The Court's discretion in this arena is quite limited. Moreover, the Speaker, being the master of the House, can impose any restriction pursuant to the act of disqualification. It ought to be noted that the acts of disqualification took place within the House and therefore it is well within the inherent powers of the Speaker to impose any sanction consequent to the act of defection. Without such power of sanction, the position of the Speaker is equivalent to that of a toothless tiger. Additionally, it was submitted that although the Petitioners have repeatedly contended that the rules of natural justice have been violated, it ought to be noted that rules of natural justice cannot be put in a straitjacket. Although, these principles are immutable, yet they are flexible, and are not confined to technical limits. The Petitioners herein have to show some real injury or patent perversity in the order of the Speaker. Moreover, when the whip was issued with respect to a motion of confidence, the members are duty bound to accept the same. The Petitioners, by violating the whip, have voluntarily given up membership of the party. Even assuming that the liberty granted by this Court in the earlier writ proceedings was correct, with respect to non-compulsion of the members for attending the Assembly, there was legal necessity to attend the Assembly at such a determinative point. The learned Senior Counsel made a distinction between ordinary whips and those which are more essential, which were necessary for the survival of the Government-such as those pertaining to a trust vote, a no-confidence motion, or even a whip relating to the budget. He submitted that such a whip must be followed per se, and that a member could not refuse to appear/vote with respect to the same.

The learned Senior Counsel proceeded to distinguish between consequences of resignation with that of disqualification. He stated that sole purpose of the Tenth Schedule is to check bulk defections. In light of the same, the Petitioners cannot be allowed to contest the by-elections, as allowing them to contest dilutes the effect of disqualification. There is a clear bar for acceptance of the nomination of disqualified candidates under Section 36 of The Representation of the People Act, 1951. Therefore, the disqualified members should not be allowed to contest fresh elections.

The learned Senior Counsel also contended that the Speaker has the power to disqualify under the Tenth Schedule, which also includes the power of the Speaker to command that the member disqualified would not be eligible to stand for re-election, on the seat falling vacant, till the end of the term of the House. However, since the matter involves important questions in relation to the power of the Speaker to decide the parallel proceedings of resignation and disqualification, the power of the Speaker to conduct inquiry as to the "voluntariness" and "genuineness", the interpretation of the terms "voluntary" and "genuine", the relevant material to be considered during an inquiry under Article 190(3) of the Constitution, the relevant period of inquiry, etc., the same is required to be considered by a Constitution Bench.

LEARNED SENIOR COUNSEL DR. RAJEEV DHAVAN ON BEHALF OF RESPONDENT NO. 2 IN W.P (C) NO. 1005 OF 2019 The learned Senior Counsel defended the order of disqualification by stating that the Speaker exercises wide range of power while acting in an adjudicatory capacity and the same should not be reduced to a mechanical exercise. Therefore, while deciding the issues regarding "genuineness" and "voluntariness" behind the act of resignation, the Speaker can look to the series of events leading to the resignation so as to decide the motive. Pursuant to the above submission, the counsel stated that taking into totality of facts into consideration there exist no ground to claim that the order of the Speaker suffers from perversity or that the same was passed mala fide. The learned Senior Counsel also submitted that there exists no indefeasible right of resignation as these Petitioners are acting in their constitutional capacity as members of the Legislative Assembly. Moreover, the resignations rendered in the present case cannot be qualified as resignation simpliciter, rather they indicate resignation for the cause of defection and in such a situation, the Speaker could not have turned a blind eye to the activities of the Petitioners.

LEARNED SENIOR COUNSEL DEVADUTT KAMAT ON BEHALF OF RESPONDENT NOS. 2 AND 3 IN W.P. (C) NOS. 992, 997, 998, 1000, 1001, 1003, 1006 AND 1007 OF 2019 The learned Senior Counsel reiterated the views expressed above by the other learned Senior Counsel and defended the orders of the Speaker stating that he had duly complied with the orders of this Court by deciding the resignations submitted by the Petitioners under Article 190 of the Constitution. The learned Senior Counsel submitted that the orders dated 11.07.2019 and 17.07.2019 passed by a Co-ordinate Bench of this Court in Writ Petition (C) No.872 of 2019 only requested the Speaker to take a decision on the resignations as per his discretion and within such time frame as he may consider appropriate. Acceptance or rejection of the resignations is dependent on the condition that the same are voluntary and genuine.

Further, the disqualification orders passed by the Speaker were based on a totality of circumstances prevailing in which the conduct of the Petitioners was questionable. The absence of

the Petitioners from the proceedings of the House, when the trust motion of their Government was being discussed, clearly shows their intention to act against the party interest. The disqualification orders were based on cumulative facts including the absence of the Petitioners despite repeated notices to remain present, and their actions and conduct in colluding with the BJP to engineer the fall of the coalition government. LEARNED SENIOR COUNSEL K. SHASHIKIRAN SHETTY ON BEHALF OF RESPONDENT NOS. 2 AND 3 IN W.P. (C) NOS. 992, 997, 998, 1000, 1001, 1003, 1006 AND 1007 OF 2019 Learned senior advocate supported the arguments advanced by the learned senior advocate, Mr. Kapil Sibal, and stated that the disqualification order could not be reviewed by this Court. Further, the Tenth Schedule is clear on the aspect of merger, wherein he pointed out that there is no need to communicate the factum of merger to R. Shankar [Petitioner in Writ Petition (C) No. 1003 of 2019].

LEARNED SENIOR COUNSEL RAKESH DWIVEDI ON BEHALF OF ELECTION COMMISSION OF INDIA The learned Senior Counsel submitted that it has been a matter of consistent practice that members disqualified under the Tenth Schedule can participate in the next elections. Any bar for a particular period is not anticipated by law with respect to disqualification under the Tenth Schedule. He further stated that the power of the Speaker is only limited to the adjudication of the disqualification petition. Any consequential action which flows from such disqualification is beyond his jurisdiction. The Speaker cannot, at will, provide any particular term of disqualification. Disqualification, and the consequences thereof, being punitive, have to be sanctioned by law.

When a member gets disqualified under the Tenth Schedule, a consequential vacancy arises thereby. However, it is impermissible for the Speaker to decide as to who can contest for the said vacancy.

C. ISSUES

18. In view of the arguments contended, following questions arise for our consideration herein:

1. Whether the Writ Petition challenging the order of the Speaker under Article 32 is maintainable?

2. Whether the order of the Speaker rejecting the resignation and disqualifying the Petitioners is in accordance with the Constitution?

3. Even if the Speaker's order of disqualification is valid, does the Speaker have the power to disqualify the members for the rest of the term?

4. Whether the issues raised require a reference to the larger Bench?

D. MAINTAINABILITY OF THE WRIT PETITION

19. At the outset, it must be noted that learned Senior Counsel, Mr. Kapil Sibal has contended that this Court does not have the jurisdiction under Article 32 of the Constitution of India to deal with

this matter. Further, learned Senior Counsel, Dr. Rajeev Dhavan, has supported the aforesaid argument by stating that no fundamental right is violated, more so when the members of Parliament or Legislative Assembly cannot invoke the 'right to freedom of trade and profession' under Article 19 (1)(g) of the Constitution of India.

20. The contours of this Court's writ jurisdiction has been long established in several decisions of this Court. Where the law provides for a hierarchy of appeals, the parties must exhaust the available remedies before resorting to writ jurisdiction of this Court [See U.P. State Spinning Co. Ltd. v. R.S. Pandey, (2005) 8 SCC 264]. At the same time, this Court in a catena of decisions has held that this doctrine is not a rule of law, but essentially a rule of policy, convenience and discretion and thus not a compulsion and where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction warrants, this Court may exercise its writ jurisdiction even if the parties had other adequate legal remedies. [State of Uttar Pradesh v. Mohammad Nooh, AIR 1958 SC 86; Harbanslal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107]

21. The learned senior counsel on behalf of the Respondents have challenged the jurisdiction of this Court under Article 32 of the Constitution by placing reliance on the Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651, wherein this Court, while dealing with the scope of judicial review stated as under:

> "109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non□compliance with rules of natural justice and perversity." (emphasis supplied)

22. We may note that writ jurisdiction is one of the valuable rights provided under Article 32 of the Constitution, which in itself forms part of the basic structure of the Constitution. After the decision in the Kihoto Hollohan case (supra), the Speaker, while exercising the power to disqualify, is a Tribunal and the validity of the orders are amenable to judicial review. On a perusal of the judgment in the Kihoto Hollohan case (supra), we do not find any explicit or implicit bar to adjudicate the issue under the writ jurisdiction of this Court.

23. The Petitioners are alleging violation of principles of natural justice and their right to a fair hearing. Principles of natural justice and right to fair hearing can be traceable to right to equality and rule of law enshrined under Article 14 of the Constitution, read with other fundamental rights [refer to Maneka Gandhi v. Union of India,(1978) 1 SCC 248].

24. A seven Judge Bench of this Court in the case of Ujjam Bai v.

State of Uttar Pradesh, AIR 1962 SC 1621, held that writ jurisdiction under Article 32 of the Constitution is available when principles of natural justice are violated. This view was affirmed by a nine Judge Bench of this Court in the case of Naresh Shridhar Mirajkar v. State of Maharashtra, AIR

1967 SC 1, in the following terms:

> "54. The scope of the jurisdiction of this Court in dealing with writ petitions under Article 32 was examined by a Special Bench of this Court in Ujjam Bai v. State of Uttar Pradesh [(1963) 1 SCR 778]. This decision would show that it was common ground before the court that in three classes of cases a question of the enforcement of the fundamental rights may arise; and if it does arise, an application under Article 32 will lie. These cases are: (1) where action is taken under a statute which is ultra vires the Constitution; (2) where the statute is intra vires but the action taken is without jurisdiction; and (3) where the action taken is procedurally ultra vires as where a quasi□judicial authority under an obligation to act judicially passes an order in violation of the principles of natural justice." (emphasis supplied)

25. In the context of disqualification orders, this Court has exercised its writ jurisdiction under Article 32. A three Judge Bench of this Court in Jagjit Singh v. State of Haryana, (2006) 11 SCC 1, has explicitly held that a challenge to an order of disqualification under the Tenth Schedule is available under the writ jurisdiction of this Court. This Court held as under:

> "11. 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 [1992 Supp (2) SCC 651]. The orders can be challenged on the ground of ultra vires or mala fides 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." (emphasis supplied)

26. Reliance can be placed on the constitutional provisions and debates thereupon which show that this Court can inquire into the legitimacy of the exercise of the power. Dr. B.R. Ambedkar has described Article 32 as the very soul of the Constitution □very heart of it □most important Article. Moreover, the jurisdiction conferred on this Court by Article 32 is an important and integral part of the basic structure of the Constitution of India and no act of Parliament can abrogate it or take it away except by way of impermissible erosion of fundamental principles of the constitutional scheme are settled propositions of Indian jurisprudence.

27. This Court, as the highest Constitutional Court, has to, and has always, functioned in accordance with the applicable judicially determined parameters while performing its constitutional duty to judicially review the acts of constitutional functionaries. It has examined questions of both fact and law, so long as it has been vested with the power to do so. The scrupulous discharge of duties by all guardians of the Constitution include the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what is properly the domain of other constitutional organs.

28. In any case, we note that by challenging the order directly under Article 32, the Petitioners have leapfrogged the judicial hierarchy as envisaged under the Constitution [refer to Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd., 2019 SCC Online SC 221].

29. We do not appreciate the manner in which the petitioners have knocked on the doors of this Court. Among other reasons, we proceeded to hear the present matter due to the peculiar facts presented before us, wherein certain interim orders were passed herein by another Co□ordinate Bench of this Court in Writ Petition (C) No. 872 of 2019 filed by some of the present petitioners. We had heard the matter at some length on 25.09.2019 and 26.09.2019, when with the consent of the counsel of all the parties, the matter was fixed for final hearing. Since a substantial amount of time has passed in the meanwhile, and to ensure that the same exercise need not be repeated before the High Court, we are left with no option but to hear these cases on merits.

30. Despite the fact that this Court has sufficient jurisdiction to deal with disqualification cases under the writ jurisdiction, a party challenging a disqualification order is required to first approach the High Court as it would be appropriate, effective and expeditious remedy to deal with such issues. This Court would have the benefit of a considered judicial verdict from the High Court. If the parties are still aggrieved, then they may approach this Court.

31. Having ascertained that this Court has the jurisdiction to deal with the subject matter of the present petitions, the question concerning the extent of judicial review can be taken up later, when we analyze and discuss the aspects concerning the validity of the orders passed by the Speaker, disqualifying the Petitioners and rejecting their resignations.

E. REJECTION OF RESIGNATIONS

32. In the present case, 15 of the 17 Petitioners had tendered their resignation from the House before the disqualification petitions were adjudicated. The Speaker vide orders dated 28.07.2019 in Disqualification Petition Nos. 3 and 4 of 2019 and Disqualification Petition No. 5 of 2019, and order dated 25.07.2019 in Disqualification Petition No. 1 of 2019, rejected the resignation of the Petitioners therein, holding that they were not voluntary and genuine.

33. Mr. Kapil Sibal, learned Senior Counsel, has contended that rejection of the resignation by the Speaker was appropriate as the same was given only to frustrate the object of disqualification. He has submitted that the consideration before the Court is limited considering the fact that the bonafides and motive of the Petitioners to resign was appropriately dealt under Article 190(3)(b) of the Constitution. On the other hand, the Petitioners have strenuously contended that the inquiry required under Article 190(3)(b) of the Constitution is limited to “voluntariness” and “genuineness”, and not the motive or the reason for resignation.

34. The first question we need to consider concerns the scope of judicial review with respect to acceptance/rejection of the resignation by the Speaker. The Respondents have contended on this count that the Court cannot go into this aspect as the acceptance/rejection of resignation is based on the subjective satisfaction of the Speaker, which is immune from judicial review.

35. We are unable to agree with this contention. It is true that 33 rd Constitutional Amendment changed the constitutional position by conferring discretion on the Speaker to reject the resignation. However, such discretion is not unqualified, as the resignation can only be rejected if the Speaker is "satisfied that such resignation is not voluntary or genuine". Determination of whether the resignations were "voluntary" or "genuine" cannot be based on the ipse dixit of the Speaker, instead it has to be based on his "satisfaction". Even though the satisfaction is subjective, it has to be based on objective material showing that resignation is not voluntary or genuine. When a member tenders his resignation in writing, the Speaker must immediately conduct an inquiry to ascertain if the member intends to relinquish his membership. The inquiry must be in accordance with the provisions of the Constitution and the applicable rules of the House. This satisfaction of the Speaker is subject to judicial review.

36. The next logical question which arises for consideration concerns the ambit of the terms "voluntary" and "genuine" in Article 190(3)(b) of the Constitution. Prior to the 33 rd Constitutional Amendment, Article 190(3)(b) read as follows:

"(3) If a member of a House of the Legislature of a State—

(a) .....

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be."

37. The 33rd Constitutional Amendment amended Article 190(3)(b) of the Constitution and added a proviso. The revised clause reads as follows:

"(3) If a member of a House of the Legislature of a State—

(a) .....

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:

> Provided that in the case of any resignation referred to in sub clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation."

38. Thus, prior to the 33rd Constitutional Amendment, there was no provision in the Article which required the resignation to be accepted by the Speaker to become effective. Originally, the position was that a member of a Legislative Assembly could resign from office by a unilateral act, and the acceptance of resignation was not required. [refer to Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301; Moti Ram v. Param Dev, (1993) 2 SCC 725]

39. First, as a starting principle, it has to be accepted that a member of the Legislature has a right to resign. Nothing in the Constitution, or any statute, prevents him from resigning. A member may choose to resign for a variety of reasons and his reasons may be good or bad, but it is his sole prerogative to resign. An elected member cannot be compelled to continue his office if he chooses to resign. The 33 rd Constitutional Amendment does not change this position. On the contrary, it ensures that his resignation is on account of his free will.

40. Second, the 33rd Constitutional Amendment requires acceptance of resignation by the Speaker. Thus, merely addressing a resignation letter to the Speaker would not lead to the seat automatically falling vacant. The Speaker has to accept such resignation for the seat to become vacant. However, as discussed above, the Speaker has limited discretion for rejecting the resignation. If the resignation is voluntary or genuine, the Speaker has to accept the resignation and communicate the same.

41. Third, the Speaker can reject the resignation, if the Speaker is satisfied that resignation was "not voluntary or genuine". Herein, our attention is drawn to the Chapter 22, Rule 202 (2) of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly, which is extracted as under:

> "(2) If a member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, and if he is satisfied, the Speaker may accept resignation immediately." (emphasis supplied) The rule states that the Speaker has to take a call on the resignation letter addressed to him immediately, having been satisfied of the voluntariness and genuineness. Reading the rule in consonance with Article 190(3)(b) of the Constitution and its proviso, it is clear that the Speaker's satisfaction should be based on the information received and after making such inquiry as he thinks fit. The aforesaid aspects do not require roving inquiry and with the experience of a Speaker, who is the head of the House, he is expected to conduct such inquiry as is necessary and pass an order. If a member appears before him and gives a letter in writing, an inquiry may be a limited inquiry.
>
> But if he receives information that a member tendered his resignation under coercion, he may choose to commence a formal inquiry to ascertain if the resignation was voluntary and genuine.

42. Fourth, although the word "genuine" has not been defined, in this context, it would simply mean that a writing by which a member chooses to resign is by the member himself and is not forged by any third party. The word "genuine" only relates to the authenticity of the letter of resignation.

43. Similarly, the word "voluntary" has not been defined. In this context, it would mean the resignation should not be based on threat, force or coercion. This is evident from the Statement of Objects and Reasons of the 33 rd Constitutional Amendment which is extracted below:

> 1. Articles 101 (3) (b), and 190 (3) (b) of the Constitution permit a member of either House of Parliament or a member of a House of the Legislature of a State to resign his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be. In the recent past, there have been instances where coercive measures have been resorted to for compelling members of' a Legislative Assembly to resign their membership, if this is not checked, it might become difficult for Legislatures to function in accordance with the provisions of the Constitution. It is therefore, proposed to amend the above two articles to impose a requirement as to acceptance of the resignation by the Speaker or the Chairman and to provide that the resignation shall not be accepted by the Speaker or the Chairman if he is satisfied after making such inquiry as he thinks fit that the resignation is not voluntary or genuine.

(emphasis supplied) The Speaker therefore has a duty to reject the resignation if such resignation is based on coercion, threat or force.

44. Learned Senior Counsel, Mr. Kapil Sibal, has contended that a Speaker, as a part of his inquiry, can also go into the motive of the member and reject his resignation if it was done under political pressure. We are unable to accept this contention. The language of Article 190(3)(b) of the Constitution does not permit the Speaker to inquire into the motive of the resignation. When a member is resigning on political pressure, he is still voluntarily doing so. Once the member tenders his resignation it would be "voluntary" and if the writing can be attributed to him, it would be "genuine". Our view is also supported by the debates on the 33rd Constitutional Amendment. It may be necessary to quote the debate dated 03.05.1974 on the 33 rd Constitutional Amendment, which is extracted below:

> H.R. Gokhale: I do not want to reply elaborately to all the points because I know I will have to deal with these points when the Bill comes up for consideration. In a way, I am thankful to the Hon. Members. They have given me notice of what they are going to say. I will deal with some points raised. Sir, the idea that the Bill prevents any member from resigning is absolutely wrong. On the contrary, the basis on which the Bill proceeds is, the right of resignation is protected and the idea of acceptance of a resignation is also subject to a proviso that the acceptance is in the normal course and the resignation can take place only in the event of a conclusion being reached that either it is not genuine or it is not voluntary. Therefore, to proceed on the basis that the right of a Member to resign is taken away, is entirely wrong. This can be seen if the bill is properly studied. The other thing they said was, in the name of democracy, how do you prevent people from resigning. Nobody is prevented from resigning. On the contrary, the basic idea is, the ordinary right of a person to say 'I do not want to continue to be a Member of the House' is maintained. But, is it a democratic way, when a Member does not want to resign, people pressurise him to resign□not political pressure but by threats of violence□as had occurred in the recent past. The person has no option but to resign. The Speaker has no option but to accept the resignation in the present set□up. This is a matter which was true in Gujarat. It may be true elsewhere. It was true in Gujarat. It had happened. A large number of people,

> about 200-300 people, went and indulged in acts of violence, held out threats and under duress, signatures were obtained. In some cases, Members were carried physically from their constituencies to the Speaker for giving resignations.
>
> (emphasis supplied) In this regard, there is no doubt that the Petitioners have categorically stated and have re-affirmed before the Speaker and this Court, in unequivocal terms, that they have voluntarily and genuinely resigned their membership of the House. This Court, in the earlier Writ Petition, being Writ Petition (C) No. 872 of 2019, had also directed the Speaker to look into the resignation of the members, but the same was kept pending.

45. In view of our above discussion we hold that the Speaker can reject a resignation only if the inquiry demonstrates that it is not "voluntary" or "genuine". The inquiry should be limited to ascertaining if the member intends to relinquish his membership out of his free will. Once it is demonstrated that a member is willing to resign out of his free will, the Speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any other extraneous factors while considering the resignation. The satisfaction of the Speaker is subject to judicial review.

46. We are of the opinion that the aforesaid observations clarify the scope of the Speaker's duty under Article 190(3)(b) of the Constitution, and answer the contention raised by the learned senior counsel regarding the same. However, since we are deciding the question of disqualification, it might not be necessary to make any observations on the merits of the petitioners' plea regarding the non-acceptance of their resignation letters, in view of our subsequent findings on disqualification.

F. DISQUALIFICATION PROCEEDINGS AFTER RESIGNATION

47. It was also contended by the Petitioners that the Speaker did not have the jurisdiction to deal with disqualification petitions, as the Petitioners having resigned were no longer members who could have been disqualified. This issue does not apply to the Petitioners in Writ Petition (C) No. 992 of 2019 and Writ Petition (C) No. 1003 of 2019 as they did not tender their resignation.

48. Before we proceed to record our reasons, it is pertinent to reflect upon the statement of objects and reasons to the Constitution (Fifty-second Amendment) Act, 1985 which states that the issue of defection has preoccupied the national conscience from the 1960s. The importance of the same stems from the fact that it has the potential to cause extensive damage to the democracy. In this regard, having experienced earlier Governments falling due to such practice, the legislature introduced the bill inserting the Tenth Schedule for discouraging such practice.

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

49. This court in the Kihoto Hollohan case (supra) has clearly enunciated the purpose behind the introduction of the Tenth Schedule, wherein it is stated that "the main purpose underlying the constitutional amendment and introduction of the Tenth Schedule is to curb the evil of defection which was causing immense mischief in our body politic." The relevant extracts are presented below:

> "9. This brings to the fore the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule." (emphasis supplied)

50. Therefore, it can be clearly concluded that the Tenth Schedule was brought in to cure the evil of defection recognising the significant impact it has on the health of our democracy. The 91st Constitutional Amendment also strengthens the aforesaid view that the law needed further strengthening in order to curb the evil of defection. The aforesaid amendment introduced Articles 75(1B), 164(1B) and 361B in the Constitution. These provisions bar any person who is disqualified under the Tenth Schedule from being appointed as a Minister or from holding any remunerative political post from the date of disqualification till the date on which the term of his office would expire or if he is re□elected to the legislature, whichever is earlier.

51. The intent of the amendment is crystal clear. The constitutional amendment sought to create additional consequences resultant from the determination that a person was disqualified under the Tenth Schedule. If we hold that the disqualification proceedings would become infructuous upon tendering resignation, any member who is on the verge of being disqualified would immediately resign and would escape from the sanctions provided under Articles 75(1B), 164(1B) and 361B. Such an interpretation would therefore not only be against the intent behind the introduction of the Tenth Schedule, but also defeat the spirit of the 91st Constitutional Amendment.

52. A five Judge Bench of this Court, in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress, 1991 Supp (1) SCC 600 ruled that an inhibition under the Constitution must be interpreted so as to give a wider interpretation to cure the existing evils. The relevant extract has been provided below:

> 118. Legislation, both statutory and constitutional, is enacted, it is true, from experience of evils. But its general language should not, therefore, necessarily be confined to the form that that evil had taken. Time works changes, brings into existence new conditions and purposes and new awareness of limitations. Therefore, a principle to be valid must be capable of wider application than the mischief which gave it birth. This is particularly true of the constitutional constructions. Constitutions are not ephemeral enactments designed to meet passing occasions. These are, to use the words of Chief Justice Marshall, "designed to approach

immortality as nearly as human institutions can approach it ....".

In the application of a constitutional limitation or inhibition, our interpretation cannot be only of 'what has been' but of 'what may be'. See the observations of this Court in Sunil Batra v. Delhi Administration [(1978) 4 SCC 494: 1979 SCC (Cri) 155].

(emphasis supplied)

53. In the case of State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501, a five Judge Bench of this Court articulated the principles of constitutional interpretation, stating that Courts are obligated to take an interpretation which glorifies the democratic sprit of the Constitution:

> 284.1. While interpreting the provisions of the Constitution, the safe and most sound approach for the constitutional courts to adopt is to read the words of the Constitution in the light of the spirit of the Constitution so that the quintessential democratic nature of our Constitution and the paradigm of representative participation by way of citizenry engagement are not annihilated. The courts must adopt such an interpretation which glorifies the democratic spirit of the Constitution.
>
> 284.5. The Constitution being the supreme instrument envisages the concept of constitutional governance which has, as its twin limbs, the principles of fiduciary nature of public power and the system of checks and balances. Constitutional governance, in turn, gives birth to the requisite constitutional trust which must be exhibited by all constitutional functionaries while performing their official duties.

(emphasis supplied)

54. In addition to the above, the decision of the Speaker that a member is disqualified, relates back to the date of the disqualifying action complained of. The power of the Speaker to decide upon a disqualification petition was dealt by a Constitution Bench of this Court in Rajendra Singh Rana v. Swami Prasad Maurya, (2007) 4 SCC 270. This Court, reading the provisions of paragraphs 2 and 6 of the Tenth Schedule, has clearly held that the Speaker has to decide the question of disqualification with reference to the date it was incurred. The Court held that:

> "34. As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him.
>
> Therefore, the act that constitutes disqualification in terms of para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision

> only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore in the background of the object sought to be achieved by the Fifty□second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex post facto…" (emphasis supplied)

55. As such, there is no doubt that the disqualification relates to the date when such act of defection takes place. The tendering of resignation does not have a bearing on the jurisdiction of the Speaker in this regard. At this point we may allude to the case of D. Sanjeevayya v. Election Tribunal, Andhra Pradesh, AIR 1967 SC 1211, wherein this Court has held that:

> "5.It is, therefore, not permissible, in the present case, to interpret Section 150 of the Act in isolation without reference to Part III of the Act which prescribes the machinery for calling in question the election of a returned candidate. When an election petition has been referred to a Tribunal by the Election Commission and the former is seized of the matter, the petition has to be disposed of according to law. The Tribunal has to adjudge at the conclusion of the proceeding whether the returned candidate has or has not committed any corrupt practice at the election and secondly, it has to decide whether the second respondent should or should not be declared to have been duly elected. A returned candidate cannot get rid of an election petition filed against him by resigning his seat in the Legislature, whatever the reason for his resignation may be…" Therefore, the aforesaid principle may be adopted accordingly, wherein the taint of disqualification does not vaporise, on resignation, provided the defection has happened prior to the date of resignation.

56. In light of the above, resignation and disqualification are distinct mechanisms provided under the law which result in vacancy. Further, the factum/manner of resignation may be a relevant consideration while deciding the disqualification petition. We do not agree with the submission of the Petitioners that the disqualification proceedings cannot be continued if the resignations are tendered. Even if the resignation is tendered, the act resulting in disqualification arising prior to the resignation does not come to an end. The pending or impending disqualification action in the present case would not have been impacted by the submission of the resignation letter, considering the fact that the act of disqualification in this case have arisen prior to the members resigning from the Assembly. G. VALIDITY OF DISQUALIFICATION ORDER

57. The Petitioners have challenged the orders passed by the Speaker disqualifying them. The Speaker has, after a detailed analysis, categorically concluded that the present Petitioners have voluntarily given up membership of the party, through their undisputed conduct.

58. To examine the above contention, we need to refer to the scheme of Tenth Schedule and other provisions of the Constitution. There is no dispute that in India, since the framing of the

Constitution, there was a constant demand for formulating a law on defection. It may be noted that India was one of the first countries to legislate on an Anti-Defection Law. Following the example of India, many other countries including Israel, Canada etc. have followed suit.

59. Relevant provisions of Paragraph 2 of the Tenth Schedule provide that:

> "2.Disqualification on ground of defection.—

(1) Subject to the provisions of paragraphs 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 authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention." That the Speaker can disqualify a member belonging to any political party if he has voluntarily given up his membership of such political party or if he votes against the wishes of his party. It is in this regard that an appropriate meaning needs to be given to the term disqualification.

60. The dictionary meaning of the word 'disqualification' is 'to officially stop someone from being in a competition or doing something because they are not suitable, or they have done something wrong'. However, under the Tenth Schedule this term occupies a specific meaning wherein, a member is stopped from continuing to be a member of a legislative body, if his actions fall in one of the conditions provided under paragraph 2.

61. In order to analyze the case at hand, we need to briefly refer to and understand the scheme of the Constitution with respect to State Legislatures. Article 168 of the Constitution provides that for every State there shall be a Governor and two Houses of Legislature namely Legislative Council and Legislative Assembly or where only one such Legislative House is there, then a Legislative Assembly. Under Article 172 of the Constitution every Legislative Assembly unless sooner dissolved shall continue for five years from the date appointed for its first meeting. In order to secure the membership of the State Legislature, such members must comply and conform to three distinct qualifications enlisted under Article 173.

62. Article 190(3) of the Constitution provides that the seat belonging to a member of the Legislative Assembly becomes vacant if such a member becomes subject to any disqualification as mentioned in clause (1) or (2) of Article 191 of the Constitution, or he resigns his seat by writing under his hand addressed to the Speaker, and his resignation is accepted by the Speaker in terms of the proviso to Article 190(3) of the Constitution.

63. Article 191 provides for disqualification of a membership which may be reduced as under:

> "191. Disqualifications for membership.— (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—
>
> (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
>
> (b) if he is of unsound mind and stands so declared by a competent court;
>
> (c) if he is an undischarged insolvent;
>
> (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
>
> (e) if he is so disqualified by or under any law made by Parliament.

Explanation.—For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule."

64. It is interesting to note that Article 191(1) of the Constitution provides for disqualification of a person (a) for being chosen as and (b) for being, a member of the Legislative Assembly or the Legislative Council if his actions or candidature attract the grounds therein. We can therefore easily infer from the usage of language under Article 191(1) that for disqualification such as holding an office of profit, unsoundness of mind, insolvency, etc., bars a person from continuing as a member as well as from contesting elections. Article 191(2), on the other hand, bars a person only "for being a member" of the Legislative Assembly or the Legislative Council. This difference in phraseology would be explained later when we consider the part of the order of the Speaker which disqualified the present Petitioners for the rest of the legislative term.

65. Article 192 of the Constitution provides that the Governor will be the authority for determination of disqualification on the grounds as contained under Article 191(1) of the Constitution. In contrast, the decision as to disqualification on the ground as contained in Article 191(2) of the Constitution vests exclusively in the Speaker in terms of paragraph 6 of the Tenth Schedule. There is no dispute that provisions under Tenth Schedule are relatable to disqualification as provided under Articles 102(2) and 191(2) of the Constitution.

66. At this point we need to observe Article 164 (1B) and 361B of the Constitution. Article 164(1B) of the Constitution reads as under:

> "164. Other provisions as to Members ...
>
> (1B). A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier." Article 361B of the Constitution reads as under:
>
> "361B. Disqualification for appointment on remunerative political post.☐A member of a house belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier." (emphasis supplied) From a perusal of the above provisions, it is clear that the disqualification of a member, apart from the political taint, results in two further restrictions as a means of punitive actions against the members disqualified under the Tenth Schedule.

67. Having understood the meaning and ambit of disqualification, we now need to concern ourselves with the extent of judicial review of the order of the Speaker passed under the Tenth Schedule.

68. Paragraph 6 of the Tenth Schedule has an important bearing upon extent of the judicial review in case of disqualification, and the same is reproduced as under:

> "6. Decision on questions as to disqualification on ground of defection.— (1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:
>
> Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

> (2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212." Disqualification is with respect to the status of being a member of the House and can only be considered by the Speaker if such question, through a petition, is addressed/ referred to the Speaker. It is apparent from the reading of paragraph 6 of the Tenth Schedule that the decision of the Speaker on disqualification under the Tenth Schedule is final.

69. However, the finality which is attached to the order of Speaker cannot be meant to take away the power of this Court to review the same. In the Kihoto Hollohan case (supra) this Court recognized the Speaker's role as a tribunal and allowed judicial review of the orders of the same on the grounds provided therein. The Speaker, being a constitutional functionary, is generally presumed to have adjudicated with highest traditions of constitutionalism. In view of the same, a limited review was allowed for the courts to adjudicate upon the orders passed by the Speaker under the Tenth Schedule. Here, we need to appreciate the difference in the meaning of the terms 'final' and 'conclusive', in the context that the order of the Speaker is final but not conclusive and the same is amenable to judicial review.

70. Now we come to the principles that have been evolved by Courts in deciding a challenge to the order passed by Speaker in exercise of his powers under the Tenth Schedule of the Constitution. In the Kihoto Hollohan case (supra) this Court, while upholding the constitutionality of the Tenth Schedule of the Constitution, held that the finality clause under paragraph 6(2) of the Tenth Schedule limits the scope of judicial review available to an aggrieved person to certain limited grounds. This Court, in this context, held that:

> "109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity." (emphasis supplied)

71. The Petitioners contend that the principles of natural justice were breached when the Speaker provided for a three-days' notice, in derogation of Rule 7(3)(b) of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, wherein a seven-day period is prescribed. On the contrary, the Respondents have emphatically stressed on the fact that there was adequate opportunity given to the disqualified members to make out their case before the Speaker.

72. Principles of natural justice cannot be reduced into a straitjacket formula. The yardstick of judging the compliance of natural justice, depends on the facts and circumstances of each case. In the case of R.S. Dass v. Union of India, (1986) Supp SCC 617, this Court made following

observations:

> "25. It is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provision, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case...." (emphasis supplied)

73. This Court in the case of Kihoto Hollohan case (supra) held that the Speaker decides the question as to the disqualification in an adjudicatory disposition. This view received further elaboration by this court in the case of Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641 at page 653:

> "20...An order of an authority exercising judicial or quasi□judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non□ compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not cast in a rigid mould and they cannot be put in a legal straitjacket. 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." (emphasis supplied)

74. At this point, the Petitioners have placed reliance on the case of Balachandra L. Jarkhiholi v. B. S. Yeddyurappa, (2011) 7 SCC 1 and argued that in that case, this Court had struck down the disqualification order solely on the basis of the fact that only three days' notice was given to the members. However, it is relevant to point out here, that in the Ravi S. Naik case (supra), a disqualification order wherein the Speaker had granted two days' notice to the members was upheld. The question, therefore, is not the number of days that were given by the Speaker for answering the show□cause notice, rather to see whether an effective opportunity of hearing was provided. This brings us back to the point already reiterated that the principle of natural justice is not a straitjacket formula.

75. In this context, this aspect needs to be adjudicated in the individual facts and circumstances having regard to the fact as to whether the members received notice of hearing, the reason for their absence and their representation before the Speaker. Therefore, we will deal with the individual cases later, having regard to the law laid down. [Refer to Chapter J]

76. The second contention raised by some of the Petitioners is that the order of the Speaker was passed in violation of the constitutional mandate. We are of the considered view that such contention cannot be sustained.

77. The phrase “violation of constitutional mandate” speaks for itself and does not need much elaboration. A “constitutional mandate” can be understood as what is required under, or by, the Constitution. For instance, in the Raja Ram Pal v. Hon’ble Speaker, Lok Sabha, (2007) 3 SCC 184, the phrase “constitutional mandate” is used in this sense:

> “360…On a plain reading, Article 122(1) prohibits "the validity of any proceedings in Parliament" from being "called in question"
>
> in a court merely on the ground of "irregularity of procedure". In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, 'procedural irregularity' stands in stark contrast to 'substantive illegality' which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ vis□a□vis proceedings in Parliament uses language which is neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an answer elsewhere or invocation of principles of harmonious construction.” (emphasis supplied) In the context of the Tenth Schedule, and an order of disqualification passed by the Speaker thereunder, the “constitutional mandate” is therefore nothing but what is constitutionally required of the Speaker. A “violation of constitutional mandate” is merely an unconstitutional act of the Speaker, one that cannot be defended on the touchstone of the Tenth Schedule and the powers or duties of the Speaker therein and is in contravention or violation of the same.

78. On the point of violation of constitutional mandate, although we are of the opinion that there was an error committed by the Speaker in deciding the disqualification petitions, the same does not rise to a level which requires us to quash the disqualification orders in their entirety. The specific error which we have identified relates to the period of disqualification imposed by the Speaker in the impugned orders. However, this error is severable, and does not go to the root of the disqualification, and thus does not require us to quash the disqualification orders in toto. Our findings on this issue highlighted above are dealt with in separate section of this judgment, for the sake of clarity .

79. The third contention of the Petitioners is that the orders of the Speaker were passed with malafides, and therefore, the same needs to be quashed. While there is no gainsaying that the ground of malafides is available to an individual challenging the order of the Speaker, the onus of proof regarding the same is on the one who challenges the said action and has a very heavy burden to discharge. [See E. P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3; Raja Ram Pal case (supra); Sub□Committee on Judicial Accountability v. Union of India, (1991) 4 SCC 699]. In the present case, although the Petitioners claimed that the Speaker acted malafide, they have neither made any specific allegation, nor can it be said that they have discharged the heavy burden that is required to prove that the ground of malafide is made out.

80. The Petitioners have contended that the order of the Speaker is perverse; however, they are not able to specifically point out any such instance. "Perversity" has been understood by this Court in a catena of judgments as relating to a situation where the findings assailed before it have been arrived at on the basis of no evidence, or thoroughly unreliable evidence, and no reasonable person would act upon it.

81. Although, the learned Senior Counsel Dr. Rajeev Dhavan contended that the "some material" test needs to be applied to determine perversity. However, we are not expressing any opinion on this issue as in the earlier case of Mayawati v. Markandeya Chand, (1998) 7 SCC 517, a three-Judge Bench of this Court expressed different views on the same. In our opinion, the impugned orders of the Speaker can be sustained from the challenge made on the ground of perversity as the Respondents have been able to show that there was sufficient material available before the Speaker to pass the impugned orders. Further, on a consideration of the totality of the facts brought on record before us, it cannot be held that the findings of the Speaker are so unreasonable or unconscionable that no tribunal could have arrived at the same findings. Additionally, it may be noticed that the counsel for the Petitioners did not even controvert before us, the material relied upon by the Speaker. In view of the above, the Petitioners failed to show any illegality in the orders of the Speaker.

82. Before we conclude we need to refer to Griffith and Ryle on Parliament Functions, Practice and Procedure (1989 edn., p. 119) say:

> "Loyalty to party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for Members to accept the opinion of their Leaders and Spokesmen on the wide variety of matters on which those Members have no specialist knowledge. Generally Members will accept majority decisions in the party even when they disagree. It is understandable therefore that a Member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy. To abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other side of conspiracy." (emphasis supplied)

83. There is no gainsaying that the scope of judicial review is limited to only grounds elaborated under the Kihoto Hollohan case (supra). In this regard, the Petitioners have not been able to establish any illegality in the orders passed by the Speaker. The Speaker, in our view, had concluded based on material and evidence that the members have voluntarily given up their membership of the party, thereby accruing disqualification in terms of the Tenth Schedule, which facts cannot be reviewed and evaluated by this Court in these writ petitions. So, we have to accept the orders of the Speaker to the extent of disqualification.

H. POWER OF THE SPEAKER TO DIRECT DISQUALIFICATION TILL THE EXPIRY OF THE TERM

84. The Petitioners have submitted that the Speaker, through the disqualification orders, has prohibited them from contesting elections and becoming members of the House for the remaining duration of the 15th Legislative Assembly of Karnataka.

85. The impugned disqualification orders not only disqualify the Petitioners, but also indicated the time period for which they would be disqualified, viz., from the date of the order till the expiry of the term of the 15th Legislative Assembly of Karnataka.

86. Learned counsel for the Petitioners have specifically challenged this finding by asserting that the Speaker did not have the jurisdiction. They contended that the Speaker's orders have the effect of disqualifying them from contesting elections and "being chosen" as members. Learned Senior Counsel asserted that the Constitutional provisions, particularly Articles 361B and 164(1B) of the Constitution, clarify that the disqualification of a member under the Tenth Schedule does not bar him from contesting elections, and on a member being re-elected the bar under the two Articles comes to an end.

87. Learned Senior Counsel, Mr. Kapil Sibal, defended the orders of the Speaker barring the disqualified members till the end of the term of the Legislative Assembly. He contended that the Speaker was within his jurisdiction, as the master of the House, to punish the members for having indulged in anti-party activities. While the learned Senior Counsel was unable to point to any specific provision in the Constitution allowing the same, he submitted that the Speaker has the inherent power to maintain the integrity and decorum of the House. The learned Senior Counsel gave the example of the power of the Speaker to take action against a member who commits a crime in the well of the House, despite the absence of any specific provision allowing him to do the same. The learned Senior Counsel lastly submitted that unless the Speaker had such a power, the anti-defection law would be a toothless law and that constitutional morality requires such interpretation.

88. Mr. Rakesh Dwivedi, learned Senior Counsel appearing for the Election Commission of India submitted that as a matter of practice, the Election Commission has always allowed a person disqualified under the Tenth Schedule to participate in the next election. The learned Senior Counsel substantiated his position by indicating from the provisions of the Tenth Schedule of the Constitution that the Speaker has only been given a limited jurisdiction therein, that is, to decide on the question of disqualification. The consequences of the same, however, are separately provided for under the Constitution, and the Speaker does not have the power to decide the same. The learned Senior Counsel also took us through the phrasing of Article 191 of the Constitution, which provides for disqualification, and Section 36 of the Representation of the People Act, 1951 to indicate that disqualification under the Tenth Schedule is not included in the Representation of the People Act, 1951 as a ground for rejecting the nomination of a candidate. Finally, the learned Senior Counsel submitted that barring someone from contesting elections is a very serious penal power which cannot be resorted to by the Speaker in absence of an express and specific provision of law.

89. The crucial question which arises is whether the power of the Speaker extends to specifically disqualifying the members till the end of the term?

90. The Tenth Schedule of the Constitution while dealing with disqualification on account of defection, does not specify the consequences or period of such disqualification. In fact, the vacancy which results from the disqualification is provided under Article 190(3) of the Constitution. The scope of the Speaker's powers on disqualification requires us to examine the other provisions of the Constitution and relevant statutory provisions.

91. Article 191 of the Constitution provides for disqualification from the membership of the Legislative Assembly or Legislative Council of a State generally. Article 191(1) of the Constitution is a general provision providing for the disqualification from the membership of the Legislative Assembly or the Legislative Council of a State on the grounds mentioned therein. Article 191(2) of the Constitution specifically provides that a person disqualified under the Tenth Schedule is disqualified for being a member. It is relevant to note that Article 191(2) of the Constitution, like the Tenth Schedule, does not provide that the "disqualification" is to operate for a particular period or duration.

92. The contrast in phraseology between Article 191(1) and Article 191(2) of the Constitution is crucial for deciding the present controversy. Article 191(1) of the Constitution provides that a person disqualified under any one of the clauses of Article 191(1) is disqualified both "for being chosen as" and "for being" a member of the house. In contrast, Article 191(2) only uses the phrase "for being a member", which is the language used in paragraph 2 of the Tenth Schedule. The exclusion of the phrase "for being chosen as" a member in Article 191(2) of the Constitution suggests that the disqualification under the Tenth Schedule is qualitatively and constitutionally different from the other types of disqualification that are provided for under Article 191(1) of the Constitution. The phrase "for being chosen as" has a specific connotation, meaning that a person cannot become a member of the House, if suffering from a disqualification under Article 191(1) of the Constitution. At the same time, the absence of these words in Article 191(2) of the Constitution suggests that a person who is no longer a member due to disqualification under the Tenth Schedule of the Constitution does not suffer from the additional infirmity of not being allowed to become a member subsequently. Therefore, such a person is not barred from contesting elections.

93. This interpretation is further supported by the language employed in Section 36(2) of the Representation of the People Act, 1951, which provides for when a returning officer may reject the nomination of a candidate. Section 36(2)(a), of the Representation of the People Act, 1951 states that the nomination may be rejected if a candidate is disqualified "for being chosen" to fill the seat under Article 191 of the Constitution, echoing the language employed in Article 191(1), and not Article 191(2) of the Constitution.

94. Apart from the above, Articles 164(1B) and 361B of the Constitution, which were inserted by the 91 st Constitutional Amendment, also show that disqualification under the Tenth Schedule does not bar a person from contesting elections. Both the above constitutional provisions specifically indicate the outer period for which the consequences indicated therein would extend, which is, either till the end of the term or till the disqualified member is elected, whichever is earlier. The fact that the phrase "whichever is earlier" is used in both these provisions, indicates that the Constitution contemplates a situation where an election takes place prior to the end of the term of the House.

Further, the term "election" as used in the above provisions has not been constrained by any other word, which strengthens the view that a member who has been disqualified under the Tenth Schedule is not barred from contesting elections.

95. Parliament by way of an enactment under Article 191(1)(e) read with Entry 72 of the Union List in the Seventh Schedule can make a law providing for disqualifications of persons from contesting elections. It is in exercise of this power that the Parliament enacted The Representation of the People Act, 1951. The Preamble to the aforementioned Act makes it evident that it was enacted for the purpose of "providing qualifications and disqualifications for membership" to the Houses of Legislature.

"An Act to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections." (emphasis supplied)

96. Chapter II of Part II of the Representation of the People Act, 1951 provides for the qualification for membership of the State Legislature while Chapter III vide Sections 7 to 11 provides for disqualification for membership of the Legislature. These sections not only provide for the event of disqualification, but also provide for the specific periods for which such disqualification shall operate. For instance, under Section 8 of the Representation of the People Act, 1951, different periods of disqualification are provided depending on the specific offence an individual is convicted under.

97. However, the provisions do not provide for and deal with disqualification under the Tenth Schedule. Clearly, Section 36 of the Representation of the People Act, 1951 also does not contemplate such disqualification. Therefore, neither under the Constitution nor under the statutory scheme is it contemplated that disqualification under the Tenth Schedule would operate as a bar for contesting re□elections. The language of clauses (1) and (2) of Article 191, Articles 164(1B) and 361B are contrary to the contention of the Respondents.

98. Given this position, we conclude that the Speaker does not have any explicit power to specify the period of disqualification under the Tenth Schedule or bar a member from contesting elections after disqualification until the end of the term of the Legislative Assembly.

99. It is necessary for us to look at the submission of the learned Senior Counsel, Mr. Kapil Sibal, that the Speaker can still be said to have inherent powers which allows him to pass restrictions like the one impugned herein. On this point, the counsel for the Petitioners argued that such a broad inherent power does not exist with the Speaker. He contended that even for granting leave of absence, the Speaker is required to present the same before the Legislative Assembly, which needs to accept the leave application before leave of absence is actually granted.

100. We are unable to agree with the contention of the learned Senior Counsel, Mr. Kapil Sibal, that the power of the Speaker to bar a disqualified member from contesting re-election is inherent to his role and is required to be read into the Constitution to prevent the Speaker from becoming toothless. When the express provisions of the Constitution provide for a specific eventuality, it is not appropriate to read an "inherent" power to confer additional penal consequences. To do so, and accept the contention of the respondents, would be against the express provisions of the Constitution.

101. This Court has repeatedly held that a person cannot be barred from contesting elections if he is otherwise qualified to contest the same. This legal position is vividly illustrated by the Constitution Bench ruling in G. Narayanaswami v. G. Pannerselvam, (1972) 3 SCC 717. In dealing with the question as to whether a non-graduate was qualified to be a candidate for the graduate constituency for the Legislative Council, when such a requirement was not prescribed either by the Constitution or the Parliament, this Court reversed the judgment of the Madras High Court which required the candidate to be a graduate. This Court held that when the law does not require such a qualification, it cannot be imposed by the Courts, and observed that:

> "20. We think that the language as well as the legislative history of Articles 171 and 173 of the Constitution and Section 6 of the Representation of People Act, 1951, enable us to presume a deliberate omission of the qualification that the representative of the graduates should also be a graduate. In our opinion, no absurdity results if we presume such an intention. We cannot infer as the learned Judge of the Madras High Court had done, from the mere fact of such an omission and opinions about a supposed scheme of "functional representation" underlying Article 171 of our Constitution, that the omission was either unintentional or that it led to absurd results. We think that, by adding a condition to be necessary or implied qualifications of a representative of the graduates which the Constitution-makers, or, in any event the Parliament, could have easily imposed, the learned Judge had really invaded the legislative sphere. The defect, if any, in the law could be removed only by law made by Parliament.

(emphasis supplied)

102. Similarly in the case of N.S. Vardachari v. G. Vasantha Pai, (1972) 2 SCC 594, a three-Judge bench of this Court reiterated the above position, and held that once a candidate possesses the qualifications and is not subject to any of the disqualifications specified in the law, he is qualified to be a candidate and any other consideration becomes irrelevant. The Court held that:

> "18. The Representation of the People Act, 1950 prescribes qualifications for being enrolled as an elector. Sections 8 to 10-A of the Act set out the grounds which disqualify a person from being a candidate. If a person possesses all the qualifications prescribed in the Constitution as well as in the Act and has not incurred any of the disqualifications mentioned therein then he is qualified to be a candidate. It may look anomalous that a non-graduate should be a candidate in a Graduates' constituency.

> But if a candidate possesses the qualifications prescribed and has not incurred any of the disqualifications mentioned in the Constitution or in the Act other consideration becomes irrelevant. That is the ratio of the decision of this Court in Narayanaswamy case." (emphasis supplied)

103. It is clear that nothing can be added to the grounds of disqualification based on convenience, equity, logic or perceived political intentions.

104. It is the contention of the Respondents that the Court should consider desirability of having a stricter model of disqualification wherein a person who has jumped the party lines should not be encouraged and should be punished with severe penal consequences for attempting to do so. Further, learned Senior Counsel, Mr. Kapil Sibal, has termed the actions of the Petitioners as a constitutional sin.

105. We do not subscribe to such an extreme stand taken by the learned Senior Counsel, considering the fact that such extreme stand could have a chilling effect on legitimate dissent. In any case, such a change in the policy cannot be looked into by this Court, as the same squarely falls within the legislative forte. Any attempt to interfere is better termed as reconstruction, which falls beyond the scope of legal interpretation by the Courts. [refer to G. Narayanaswami case (supra)]

106. It is clear that the power to prescribe qualifications and disqualifications for membership to the State Legislature must be specifically provided for under the Constitution or by the Parliament by enacting a law. Since neither the Constitution nor any Act provides for defection to another party as a bar from contesting further elections, reading such a bar into the nebulous concept of the inherent powers of the Speaker is impermissible and invalid. Without commenting on whether the Speaker has inherent powers or not, a Constitution Bench of this Court in the Raja Ram Pal case (supra), while holding that certain unwritten powers inure with the Parliament under Article 105(3) of the Constitution, went on to observe even in case of expulsion, the expelled candidate is not barred from contesting re-election.

107. Viewed from a different angle, although the Constitution may not say everything, this Court is mandated to expound the unsaid. However, such elaboration cannot be done in derogation of separation of powers and in a drastic or radical fashion. In this context, Benjamin Constant, a prominent Swiss-French political writer, wrote in 1814 that:

> "Constitutions are seldom made by the will of men. Time makes them. They are introduced gradually and in an almost imperceptible way. Yet there are circumstances in which it is indispensable to make a constitution. But then do only what is indispensable. Leave room for time and experience, so that these two reforming powers may direct your already constituted powers in the improvement of what is done and the completion of what is still to be done." (emphasis supplied)

108. The contention of the Respondents that the political exigencies required such measures to be taken needs to be rejected. The Constitutional silences cannot be used to introduce changes of such

nature.

109. In Kihoto Hollohan (supra), this Court observed:

> 48. The learned author, referring to cases in which an elected Member is seriously unrepresentative of the general constituency opinion, or whose personal behaviour falls below standards acceptable to his constituents commends that what is needed is some additional device to ensure that a Member pays heed to constituents' views. Brazier speaks of the efficacy of the device where the constituency can recall its representative.

Brazier says: [Ibid. at 52, 53] "What sort of conduct might attract the operation of the recall power? First, a Member might have misused his Membership of the House, for example to further his personal financial interests in a manner offensive to his constituents. They might consider that the action taken against him by the House (or, indeed, lack of action) was inadequate .... Thirdly, the use of a recall power might be particularly apt when a Member changed his party but declined to resign his seat and fight an immediate by-election. It is not unreasonable to expect a Member who crosses the floor of the House, or who joins a new party, to resubmit himself quickly to the electors who had returned him in different colours. Of course, in all those three areas of controversial conduct the ordinary process of reselection might well result in the Member being dropped as his party's candidate (and obviously would definitely have that result in the third case). But that could only occur when the time for reselection came; and in any event the constituency would still have the Member representing them until the next general election. A cleaner and more timely parting of the ways would be preferable.

Sometimes a suspended sentence does not meet the case."

49. Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil...

(emphasis supplied)

110. From the above, it is clear that the Speaker, in exercise of his powers under the Tenth Schedule, does not have the power to either indicate the period for which a person is disqualified, nor to bar someone from contesting elections. We must be careful to remember that the desirability of a particular rule or law, should not in any event be confused with the question of existence of the same, and constitutional morality should never be replaced by political morality, in deciding what the Constitution mandates. [refer to Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217]

111. We, therefore, hold that part of the impugned orders passed by the Speaker which specifies that the disqualification will last from the date of the order to the expiry of the term of the 15 th Legislative Assembly of Karnataka to be ultra vires the constitutional mandate, and strike down this portion of the disqualification orders. However, this does not go to the root of the order, and as

such, does not affect the aspect of legality of the disqualification orders.

112. Before parting, having ascertained the ambit of the Speaker's power, the only regret this bench has, is with respect to the conduct and the manner in which all the constitutional functionaries have acted in the current scenario. Being a constitutional functionary, the Constitution requires them and their actions to uphold constitutionalism and constitutional morality. In this regard, a functionary is expected to not be vacillated by the prevailing political morality and pressures. In order to uphold the Constitution, we need to have men and women who will make a good Constitution such as ours, better. In this regard, Dr. Ambedkar on 25.11.1949 stated that:

> ... 'As much defence as could be offered to the Constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr T.T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave? Will they uphold constitutional methods of achieving their purposes or will they prefer revolutionary methods of achieving them? If they adopt the revolutionary methods, however good the Constitution may be, it requires no prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to play.' (emphasis supplied)

113. Dr. Rajendra Prasad reiterated the same on 26.11.1949, in the following words:

> ... 'Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them.' (emphasis supplied)

114. In view of the same, we can only point out that merely taking the oath to protect and uphold the Constitution may not be sufficient, rather imbibing the Constitutional values in everyday functioning is required and expected by the glorious document that is our Constitution. Having come to conclusion that the Speaker has no power under the Constitution to disqualify the members till the end of the term, we are constrained to make certain observations.

115. In the end we need to note that the Speaker, being a neutral person, is expected to act independently while conducting the proceedings of the house or adjudication of any petitions. The constitutional responsibility endowed upon him has to be scrupulously followed. His political affiliations cannot come in the way of adjudication. If Speaker is not able to disassociate from his political party and behaves contrary to the spirit of the neutrality and independence, such person does not deserve to be reposed with public trust and confidence.

116. In any case, there is a growing trend of Speakers acting against the constitutional duty of being neutral. Additionally, political parties are indulging in horse trading and corrupt practices, due to which the citizens are denied of stable governments. In these circumstances, the Parliament is required to re□consider strengthening certain aspects of the Tenth Schedule, so that such undemocratic practices are discouraged. I. REFERENCE TO CONSTITUTION BENCH

117. Mr. Kapil Sibal, learned Senior Counsel, has contended that the matters herein involve substantial questions of law, which require a reference to a larger bench. To support his argument, he has referred to Article 145 (3) of the Constitution to state that this Court is mandated under law to refer the matters to a larger bench since a substantial question of law concerning the interpretation of the Constitution has arisen in the instant case.

118. At this juncture, it may be beneficial to quote Article 145(3) of the Constitution:

> “145. Rules of Court, etc.□..
>
> (3)The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under Article 143 shall be five:
>
> Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.”

119. There is no doubt that the requirements under Article 145(3) of the Constitution have never been dealt with extensively and, more often than not, have received mere lip service, wherein this Court has found existence of case laws which have already dealt with the proposition involved, and have rejected such references. Normatively, this trend requires consideration in appropriate cases, to ensure that unmeritorious references do not unnecessarily consume precious judicial time in the Supreme Court.

120. In any case, we feel that there is a requirement to provide a preliminary analysis with respect to the interpretation of this provision. In this context, we need to keep in mind two important phrases occurring in Article 145(3) of the Constitution, which are, 'substantial question of law' and 'interpretation of the Constitution'. By reading the aforesaid provision, two conditions can be culled out before a reference is made:

> i. The Court is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution;
>
> ii. The determination of which is necessary for the disposal of the case.

121. We may state that we are not persuaded for referring the present case to a larger bench as the mandate of the aforesaid Article is that this Court needs to be satisfied as to the existence of a substantial question of law on the Constitutional interpretation. However, this does not mean that every case of constitutional interpretation should be compulsorily referred to a Constitutional Bench.

122. Any question of law of general importance arising incidentally, or any ancillary question of law having no significance to the final outcome, cannot be considered as a substantial question of law. The existence of substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the question of law will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as "substantial questions of law". In any case, no substantial question of law exists in the present matter, which needs reference to a larger bench. The cardinal need is to achieve a judicial balance between the crucial obligation to render justice and the compelling necessity of avoiding prolongation of any lis.

123. Similar questions for reference to a larger bench had arisen in the case of Abdul Rahim Ismail C. Rahimtoola v. State of Bombay, AIR 1959 SC 1315, wherein this Court rejected the reference as the questions sought to be referred were already settled by an earlier five judge bench. Likewise, this Court in the case of Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, AIR 1965 SC 682, held that a substantial question of interpretation of a provision of the Constitution cannot arise when the law on the subject has been finally and effectively decided by this Court. The same is provided hereunder:

> "11... Learned counsel suggests that the question raised involves the interpretation of a provision of the Constitution and therefore the appeal of this accused will have to

> be referred to a Bench consisting of not less than 5 Judges. Under Article 145(3) of the Constitution only a case involving a substantial question of law as to the interpretation of the Constitution shall be heard by a bench comprising not less than 5 Judges. This Court held in State of Jammu and Kashmir v. Thakur Ganga Singh, AIR 1960 SC 356 that a substantial question of interpretation of a provision of the Constitution cannot arise when the law on the subject has been finally and effectively decided by this Court.....As the question raised has already been decided by this Court, what remains is only the application of the principle laid down to the facts of the present case. We cannot, therefore, hold that the question raised involves a substantial question of law as to the interpretation of the Constitution within the meaning Article 145(3) of the Constitution." (emphasis supplied) This Court sitting in a three Judge Bench in People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399, has reiterated the above principle.

124. In light of the above pronouncements, we observe that question of constitutional interpretation would arise only if two or more possible constructions are sought to be placed on a provision. In spite of the assertive arguments made by the learned Senior Counsel, Mr. Kapil Sibal, we are guided by the decisions rendered by two Constitutional Bench decisions of this Court in the Kihoto Hollohan case (supra) and Rajendra Singh Rana case (supra). These decisions form the authoritative framework for understanding the Tenth Schedule and have been followed in a number of subsequent judgments and do not require reconsideration.

125. At the cost of repetition, we may note that the ambit of this Court's jurisdiction under Article 32 of the Constitution is well settled, which does not merit any further reference in this regard. The Respondents have contended that the disqualification issue cannot be dealt under the writ jurisdiction, however, we have already pointed out that there is no bar for this Court to deal with the same as portrayed by various precedents cited above.

126. The case mostly turns on the fact that there is ample evidence to portray that the defection of these Petitioners had occurred even before they resigned. In the impugned orders, the Speaker has made out a case that the acts of the Petitioners indicated "voluntary giving up of membership". Therefore, the question as to the jurisdiction of the Speaker to deal with disqualification after the members have tendered the resignation does not arise, stricto sensu. In view of the aforesaid factual scenario, there is no requirement to deal with the questions of law raised by the Respondents.

127. Further, the power of the Speaker to disqualify has been interpreted in a number of cases, and the present case does not require any broad□based reference which would only prolong the inevitable. Such casual and cavalier references should not be undertaken by this Court in view of conditions prescribed under Article 145(3) of the Constitution, which mandates a responsibility upon this Court not to indulge in excessive academic endeavors and preserve precious judicial time, and effectively dispense justice in a timely fashion.

128. The last aspect, which relates to the power of the Speaker to disqualify the members till the end of the term, has already been dealt with extensively. At the cost of repetition, we may only point out

that the Respondents' contention that a bar exists on the members till the end of the term, falls within the domain of the legislature. Therefore, we do not see any merit in referring the aforesaid case to a larger bench. [Refer to Public Interest Foundation v. Union of India, (2019) 3 SCC 224]

129. In view of the aforesaid discussion, we decline to refer the case to a larger bench considering that there is no substantial question of constitutional interpretation that arises in this case. J. INDIVIDUAL CASES W.P. (C) NO. 992 OF 2019

130. The Petitioner (Shrimanth Balasaheb Patil) accepts that he was elected on the ticket of INC and claims that he proceeded to Chennai for personal reasons without abstaining from his presence in the ongoing Assembly Session. Admittedly, the Petitioner had abstained from attending the proceedings in the Assembly on 18.07.2019 and 19.07.2019. Pursuant to the same, the disqualification petition was filed against him on 20.07.2019 and he was further directed to appear for hearing on 24.07.2019. Subsequently, the Petitioner had written a letter dated 23.07.2019 addressing the Speaker and seeking four weeks' time to file appropriate reply to the contents of the petition. Nevertheless, the Hon'ble Speaker proceeded and passed the disqualification order on 28.07.2019 which has been impugned in the instant petition.

131. It ought to be noted that the impugned order passed by the Hon'ble Speaker, refers to the communication/letters addressed by the petitioner of having gone to Chennai, but due to discomfort and health reasons had contacted his doctor friend and accordingly proceeded to Mumbai where he was admitted. It also records that the petitioner had attended the Assembly sessions on 12.07.2019 and 15.07.2019 but thereafter had abstained from attending the session on 22.07.2019 for which whip had been issued on 20.07.2019. It was also admitted that no formal leave was granted to the Petitioner. The Speaker had earlier rejected the leave of absence tendered by the Petitioner as the documents issued by the private hospital did not inspire confidence. Pertinently, the petitioner's letter dated 19.07.2019 written to the Speaker was not countersigned by any doctors of the Hospital.

132. It is further recorded that the petitioner had not attended the Assembly sessions on 18.07.2019, 19.07.2019, 22.07.2019 and 23.07.2019. So, the petitioner was aware that the motion seeking the vote of confidence was on the floor of the Karnataka Legislative Assembly. The petitioner accepts that he had sent letter dated 23.07.2019, which refers to the disqualification petition. The petitioner herein was clearly aware of the disqualification proceedings.

133. The objections filed to the writ petition also refer to the fact that the INC, to test the loyalty of its Members, in view of the pending trust vote, had categorically informed the party members not to absent themselves from the proceedings of the Assembly, failing which action under the Tenth Schedule would be taken.

134. We do not think that the order of the Speaker suffers from perversity. Even the petitioner has not submitted material to controvert the findings recorded by the Speaker in the impugned order. With regard to the assertion that there was violation of principles of natural justice would not also stand in view of the fact that the Speaker has taken a holistic view and gave sound reasons to disqualify the petitioner after providing him sufficient opportunity to defend himself. Alleged

violation of principles of natural justice also do not carry any weight in view of the factual background of the case read in light of the fact that trust vote had to be voted upon.

W. P. (C) NO. 997 OF 2019

135. The Petitioners were elected to the 15th Karnataka Legislative Assembly on the INC ticket. On 19.01.2019, show-cause notices were issued to the Petitioners by INC for having failed to attend the party meeting on 18.01.2019, to which explanation was submitted by the Petitioners claiming that due to personal exigencies and medical reasons they could not attend the meeting. However, the Petitioners again failed to attend the meeting held on 08.02.2019. The Petitioners also did not attend the Budget session. On 08.02.2019, the Petitioner No.1 (Ramesh Jarkhiholi) sought leave of absence in a letter addressed to the Speaker, due to his daughter's wedding fixed for 24.02.2019. Similarly, the Petitioner No. 2 (Mahesh Kumathalli) had also addressed a letter seeking leave of absence due to ill-health. disqualification petition was filed against the two Petitioners on 11.02.2019 on the ground that the Petitioners had voluntarily given up membership of the political party, i.e. INC and incurred disqualification under paragraph 2(1)(a) of the Tenth Schedule. Thereupon, notices were issued to the Petitioners on 14.02.2019, who duly filed their response disputing the contents of the disqualification petition on 20.02.2019. While the disqualification petition was pending, the two Petitioners submitted their resignation to the Speaker along with ten other MLAs belonging to INC/JD(S) on 06.07.2019. The Petitioners were thereupon given notice to appear before the Speaker on 11.07.2019 in connection with the disqualification petition.

136. The Speaker in the impugned order has taken note of the surrounding circumstances, including the conduct of the Petitioners from February 2019 onwards. It ought to be noted that sufficient opportunity of hearing was accorded to the Petitioners herein who had also filed their responses. It ought to be noted that, vide notice dated 16.01.2019, a meeting of the INC legislative party was called for 18.01.2019. The notice stated that the members must compulsorily attend the meeting otherwise action would be taken against them under the Tenth Schedule. The Petitioners did not attend the party meeting on 18.01.2019. Admittedly, the Petitioners also refrained from attending the subsequent general body meeting dated 06.02.2019 as well as Assembly Sessions from 06.02.2019. The resignations were submitted by the Petitioners nearly four months after the Disqualification Petition had already been filed.

137. One of the contentions raised by the Petitioners is predicated on the order of the Speaker in the case of Dr. Umesh Yadav who was also named and served with the disqualification petition filed on 11.02.2019. Dr. Umesh Yadav had tendered his resignation on 04.03.2019, which was accepted by the Speaker on 01.04.2019. Therefore, the Petitioners claim parity and equal treatment. The contention deserves to be rejected as the Speaker has given detailed reasons to why he was not bound by the case of Dr. Umesh Yadav's resignation.

138. As observed earlier, the Speaker had sufficient material before him to pass the order of disqualification. There exist no infirmities in the order, which calls for our indulgence and interference.

W.P. (C) NOS. 998, 1000, 1001, 1005, 1006 AND 1007 OF

139. The three Petitioners in Writ Petition (C) No. 1005 of 2019 were members of the JD(S), against whom a separate Disqualification Petition No. 5 of 2019 was moved. The Speaker passed a separate impugned order dated 28.07.2019 against these Petitioners.

140. Petitioners in Writ Petition (C) Nos. 998, 1000, 1001, 1006 and 1007 of 2019 were all members of the INC, against whom Disqualification Petition Nos. 3 and 4 of 2019 were moved. A common order dated 28.07.2019, disqualifying the 10 Petitioners, was passed by the Speaker.

141. Both the above orders are being dealt with together as there are certain commonalities in the facts and circumstances which need to be noted and highlighted, which led to the decision of the Speaker. Between 01.07.2019 and 11.07.2019, the Petitioners resigned from their posts as members of the Legislative Assembly. However, the Speaker did not adjudicate upon their resignation. Aggrieved by the fact that the Speaker was not taking a decision, ten Petitioners approached this Court in WP (C) No. 872 of 2019, wherein this Court on 11.07.2019, passed an order directing the Speaker to take the decision forthwith. The Speaker, on the other hand, did not take the decision. The other five Petitioners impleaded themselves in the pending Writ Petition (C) No. 872 of 2019 and again, on 17.07.2019, this Court granted protection to the Petitioners with respect to being compelled to participate in the proceedings of the House. As the Speaker, did not conduct the floor test, R. Shankar [Petitioner in Writ Petition (C) No. 1003 of 2019] approached this Court in Writ Petition (C) No. 929 of 2019, wherein this Court passed following order on 23.07.2019:

> "It has been stated that the Speaker expects and is optimistic that the Trust Vote would be taken up by the House in the Course of the day, perhaps later in the evening. We, therefore, adjourn the matter till tomorrow.
>
> 142. In this regard, it was imperative for the Speaker to pass orders in view of the urgency indicated by this Court. In these facts and circumstances, the reasonable opportunity of hearing needs to be assessed.
>
> 143. A notice of three days with an opportunity for hearing would have been sufficient in the facts and circumstances of this case, when viewed in light of the decision in the Ravi S Naik case (supra). In this regard, our attention was drawn to the fact that notices were sent to their emails, and their permanent addresses within their constituency. In view of the unique facts, it cannot be said that an opportunity was not provided to the Petitioners to appear before the Speaker.
>
> 144. It is altogether a different matter that the aforesaid Petitioners were in Mumbai even though they were aware of the notice, and some of them did not even bother to be represented before the Speaker. In this light, we cannot say that effective opportunity was not granted to the Petitioners. Consequently, it cannot be said as well that there has been a violation of principles of natural justice as against the aforesaid Petitioners.

W.P. (C) NO. 1003 OF 2019

145. The Petitioner (R. Shankar) claims that he is the sole elected member of the House belonging to KPJP. As per the Petitioner, KPJP had not merged with INC and consequently whip issued by the INC on 11.07.2019 was not binding on the Petitioner. As a result, the Petitioner had not incurred any disqualification under the Tenth Schedule of the Constitution.

146. The Petitioner, however, accepts that he had addressed a letter dated 14.06.2019 to the Speaker that he was the only legislator elected under the KPJP ticket and he had agreed to merge his party with the INC. The Petitioner had relied upon paragraph 4(2) of the Tenth Schedule stating that since he is the sole elected member of his party there is a deemed merger under the Tenth Schedule.

147. The Petitioner, however, claims that the said letter dated 14.06.2019 was not accepted by the Speaker and, therefore, would be inconsequential. He relied upon the letter dated 17.06.2019 written by the Speaker requiring him to file on record resolution of merger passed by KPJP, and to furnish documents as per legal requirements. It was further stated that is stated that no such document was filed.

148. The impugned order passed by the Speaker, on the other hand, refers to the letter of the Speaker dated 25.06.2019 stating that in terms of paragraph 4(2) of the Tenth Schedule, if two thirds of the members of the party decides to merge with another party, that decision would not attract provisions of the Tenth Schedule. As the Petitioner had represented that he was the lone elected member of the KPJP and had decided to merge with INC, appropriate steps had been initiated. In this background, with effect from 25.06.2019, the Petitioner would be considered as a member of the INC legislative party. The Petitioner has disputed this letter and has stated that this letter was not addressed to him but was addressed to the Leader of the Congress Legislature Party and the President of the Karnataka Pradesh Congress Party. The letter dated 25.06.2019 is available on the file of the Speaker.

149. The contention of the Petitioner may have carried weight in other circumstances, but we find that it is an accepted and admitted position that the Petitioner, after giving letter dated 14.06.2019, had even become a Minister in the Government then in power. Pertinently, the Petitioner does not deny the letter dated 14.06.2019 and the fact that he had become a Minister. The impugned order passed by the Speaker further records that on 25.06.2019 a direction had been issued by the Speaker to the Secretary, Karnataka Legislative Assembly, to treat the Petitioner as a member of the INC and allot him a seat in the forthcoming session. Further, on 08.07.2019, the Petitioner had addressed a letter to the then Chief Minister tendering his resignation from the Council of Ministers of which he was a part, with a request that his resignation be accepted. This resignation was also personally given to the Governor. On 12.07.2019, the Petitioner had addressed a letter to the Speaker about withdrawing support to the Government and had requested that he be allotted a seat on the floor in the opposite benches. These aspects have been highlighted in the impugned order, which show that the contention of the Petitioner that the Speaker did not apply his mind on the aspect of merger, is wrong and incorrect.

150. We do not find any reason and good ground to hold that the findings in the impugned order are perverse and based on no evidence. Rather the stand and plea taken by the Petitioner is devoid of merit. Similarly, the plea predicated on the violation of principles of natural justice must fail in the light of the above facts.

151. Our findings on allegations of not granting specific time in all the above cases are based on the unique facts and circumstances of each case. It should not be understood to mean that the Speaker could cut short the hearing period. The Speaker should give sufficient opportunity to a member before deciding a disqualification proceeding and ordinarily follow the time limit prescribed in the Rules of the Legislature. K. CONCLUSION

152. In light of the discussion above, summary of law as held herein is as follows:

a. The Speaker, while adjudicating a disqualification petition, acts as a quasi-judicial authority and the validity of the orders thus passed can be questioned before this Court under Article 32 of the Constitution. However, ordinarily, the party challenging the disqualification is required to first approach the High Court as the same would be appropriate, effective and expeditious.

b. The Speaker's scope of inquiry with respect to acceptance or rejection of a resignation tendered by a member of the legislature is limited to examine whether such a resignation was tendered voluntarily or genuinely. Once it is demonstrated that a member is willing to resign out of his free will, the speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any extraneous factors while considering the resignation. The satisfaction of the Speaker is subject to judicial review.

c. Resignation and disqualification on account of defection under the Tenth Schedule, both result in vacancy of the seat held by the member in the legislature, but further consequences envisaged are different. d. Object and purpose of the Tenth Schedule is to curb the evil of political defection motivated by lure of office or rather similar considerations which endanger the foundation of our democracy. By the 91 st Constitutional Amendment, Articles 71 (1B), 164(1B) and 361B were enacted to ensure that a member disqualified by the Speaker on account of defection is not appointed as a Minister or holds any remunerative political post from the date of disqualification or till the date on which his term of office would expire or he/she is re-elected to the legislature, whichever is earlier. e. Disqualification relates back to the date when the act of defection takes place. Factum and taint of disqualification does not vaporise by tendering a resignation letter to the Speaker. A pending or impending disqualification action does not become infructuous by submission of the resignation letter, when act(s) of disqualification have arisen prior to the member's resignation letter.

f. In the earlier Constitution Bench judgment of Kihoto Hollohan (supra), the order of the Speaker under Tenth Schedule can be subject to judicial review on four grounds:

mala fide, perversity, violation of the constitutional mandate and order passed in violation of natural justice.

g. Our findings on allegations of not granting specific time in all the above cases are based on the unique facts and circumstances of the case. It should not be understood to mean that the Speaker could cut short the hearing period. The Speaker should give sufficient opportunity to a member before deciding a disqualification proceeding and ordinarily follow the time limit prescribed in the Rules of the Legislature.

h. In light of the existing Constitutional mandate, the Speaker is not empowered to disqualify any member till the end of the term. However, a member disqualified under the Tenth Schedule shall be subjected to sanctions provided under Articles 75(1B), 164(1B) and 361B of Constitution, which provides for a bar from being appointed as a Minister or from holding any remunerative political post from the date of disqualification till the date on which the term of his office would expire or if he is re□elected to the legislature, whichever is earlier.

i. There is a growing trend of the Speaker acting against the constitutional duty of being neutral. Further horse trading and corrupt practices associated with defection and change of loyalty for lure of office or wrong reasons have not abated. Thereby the citizens are denied stable governments. In these circumstances, there is need to consider strengthening certain aspects, so that such undemocratic practices are discouraged and checked.

j. The existence of a substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the “question of law” will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as “substantial questions of law”. In any case, no substantial question of law exists in the present matter, which needs reference to a larger bench.

153. In view of the discussion above, we pass the following order:

1. Orders dated 25.07.2019 and 28.07.2019 passed by the Speaker in Disqualification Petition Nos. 1, 3, 4, 5, 7 and 8 of 2019, are upheld to the extent of the disqualification of the Petitioners therein.

2. However, the part of Speaker’s orders detailing the duration of disqualification, viz., from the date of the respective order till the expiry of the term of the 15 th Legislative Assembly of Karnataka, is accordingly set aside.

154. The Writ Petitions are disposed of in the afore□stated terms. All pending applications are also accordingly disposed of.

.....J. (N.V. Ramana) .....J. (Sanjiv Khanna) .....J. (Krishna Murari) NEW DELHI;

November 13, 2019.