R.N.R.

Before Ajay Tewari, J.

KULDEEP BISHNOI,—*Peitioner*

versus

SPEAKER, HARYANA VIDHAN SABHA AND OTHERS,—*Respondents*

C.W.P. No. 14194 of 2010

20th December, 2010

Constitution of India, 1950—Arts. 191 and 226—Haryana Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986—Speaker, Vidhan Sabha accepting applications of members of a party seeking merger of their party to another party-President of that party praying for disqualification of members-Speaker granting adjournments to respondents to file replies—Whether High Court has jurisdiction to intervene during trial of petitions—Held, yes—Substantive right of petitioner is being defeated by procedural facet of extension of time to file replies by respondents—Petitions allowed while directing Speaker to decide petitions within a period of four months.

Held, that while passing an order under Paragraph 4 of the Tenth Schedule of the Constitution of India, the Speaker is not enjoined to act as purely a judicial officer and to this extent the observations of the Hon'ble Supreme Court which laid down that an order of recognizing split/merger is not binding on a perosn who is not a party to it, would militate against the arguments of the petitioner. It must be noticed that both these cases arose from petitions under Article 191 and Paragraph 6 of the Tenth Schedule of the Constitution of India. Thus, it can be safely held that an order under Paragraph 4 would necessarily be subject to an adudication under Paragraph 6. The challenge to the orders 9th November, 2009 and 10th November, 2009 is, thus, rejected.

(Para 10)

S.P. Jain, Sr. Advocate with Dheeraj Jain, Advocate, *for the petitioner*

Mohan Jain, Addl. Solicitor General of India with Kamal Nehra, Advovate, *for respondents No. 1,2 and 8*

Harbhagwan Walia, Sr. Advocate with Arun Walia, Advocate *for respondents No. 3 to 7*

AJAY TEWARI, J.

(1) By this writ petition, the petitioner has challenged the orders dated 9th November, 2009 and 10th November, 2009 (Annexures P-4 and P-7 respectively), as well as sought the issuance of a direction to respondent No. 1 to decide five disqualification petitions, filed by him, against respandents No. 3 to 7 within a period of three months.

(2) The petitioner asserts that private respondents No. 3 to 7 had contested elections under the banner of Haryana Janhit Congress (BL) of which the petitioner was the President as well as the Leader. It has further been averred that elections to the Haryana Vidhan Sabha took place in September-October 2009. On 9th November, 2009, initially respondents No. 3 to 6 moved an application to respondents No. 1 claiming that they had taken a decision to merge Haryana Janhit Congress (BL) party with the Indian National Congress Party in terms of the provisions of Paragraph 4 of the Tenth Schedule of the Consititution of India, and prayed for

acceptence of the merger. On that very date, a similar application was moved by respondents No. 7 wherein he stated that he was also a party to the said decision but could not reach Chandigarh due to unavoidable circumstances and hence had moved a separate application. By the impugned orders, Annexures P-4 and P-7, respondents No. 1 accepted the merger.

(3) The petitioner further asserts that he moved applications and reminder to respondents No. 1 requesting him to provide copies of the applications moved by the private respondents, as also the copies of the orders passed thereon. However, the same were not provided. Thereafter, on 9th December, 2009, the petitioner moved petitions under Article 191 read with Tenth Schedule of the Constitution of India and the Haryana Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 (for short "the Rules") praying for disqualification of respondents No. 3 to 7 as Members of the Haryana Legislative Assembly. It is fruther averred in the petition that in response to his application for supplying him the documents, as aforesaid, the petitioner was asked,—*vide* letter dated 9th December, 2009, to intimate the provision under which the said application was maintainable. The petitioner submitted a detailed reply on 17th December, 2009. Thereafter, on 1st January, 2010 the petitioner was supplied the aforementioned documents. It is further the case of the petitioner that during the period Deceber 2009 to March 2010, he did not receive any notice, intimation or document from respondent No. 1 regarding the fate of the said five petitions filed by him. The petitioner thereafter on 20th April, 2010 inspected the files of the disqualification petitions wherein, the following facts were revealed :—

"(i) Though the petitions were filed on 9th December, 2009, respondents No. 1 issued notices to the respondent-MLAs (respondents No 3 to 7) only on 22nd December, 2009, granting them three weeks time to file their replies ;

(ii) All the registered letters sent to respondents No. 3 to 7 were said to have been received back undelivered on 12th January, 2010 ;

(iii) On 14th January, 2010, respondents No. 1 again issued notices to respondents No. 3 to 7 for their comments within one week ;

(iv) Notices sent on 14th January, 2010 were again received back undelivered on 3rd February, 2010 ;

(v) Respondent No. 1 again on 9th February, 2010 issued similar order as before in all the petitions ;

(vi) It also came to notice that respondents No. 3 to 7 moved applications dated 4th March, 2010 praying for adjournment of the cases till service in the other disqualification petitions filed against them is complete ;

(vii) On 5th March, 2010, respondents No. 1, without issuing any notice of the applications, allowed the applications and granted respondents No. 3 to 7 six weeks time to file replies ;

(viii) Thereafter on 31st March, 2010, respondents No. 1 as a last opportunity granted two weeks' more time to file replies by respondents No. 3 to 7. However, no reply was filed by any of the said respondents.

(ix) On 7th April, 2010, respondents No. 3 to 7 filed applications before respondent No. 1 praying twelve weeks' time to file their replies Respondent No. 1, ignoring the earlier order of last opportunity, allowed the application and granted eight weeks' further time to file replies and adjourned the matter to 18th June, 2010 ;

(x) Respondent No. 1 neither issued any notice of the applications to the petitioner nor did he intimate him about the same before passing of the orders."

(4) It is further averred that on 21st April, 2010, the instant writ petition was filed and this fact was widely reported in the media. On 21st April, 2010 i.e. after inspecting the files by the petitioner, respondents No. 1 sent letters to the petitioner informing him that the petitions are fixed for hearing on 18th June, 2010. The petitioner along with his counsel appeared before respondent No. 1 on the said date but as respondent No. 1 had to go out of station, the matter was adjourned to 16th July, 2010. On the said date, the petitioner appeared before respondent No. 1. Respondents No. 3 to 7 filed applications praying for eight weeks' more time to file

replies, which were opposed by counsel for the petitioner. However, respondents No. 1 allowed the applications and granted four weeks' more time, as a last opportunity, to respondents No. 3 to 7 to file replies and adjourned the matter to 16th August, 2010. It is, thus, averred that respondent No. 1 was repeatedly granting adjournments to the private respondents to file replies and that this action of respondent No. 1 was a perversion of the judicial role conferred upon him.

(5) In the written statements, the impugned orders, Annexures P-4 and P-7 have been defended as is the action of respondent No. 1 in granting time to respondents No. 3 to 7 to file replies. Apart from this, a preliminary objection has been raised that it is imperssible for this Court to intervene in a procedural aspect of this nature.

(6) Before proceeding to adjudicate the matter, it would be profitable to re-produce Paragraphs 4 and 6 of Tenth Schedule as well as Articles 122 and 212 of the Constitution of India, which read as follows :—

> "4. **Disqualification on ground of defence not to apply in case of merger.**—(1) A member of House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party :—
>
> (a) have become members of such other political party or as the case may be, of a new political party formed by such merger ; or
>
> (b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragragh (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

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 refered 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 proceedngs 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.

122. **Courts not to inquire into proceedings of Parliament :**—(1) The validity of any proceedings in parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

212. **Courts not to inquire into proceedings of the Legislature :**—(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

(7) With regard to the challenge to Annexures P-4 and P-7, learned counsel for the petitioner has argued that these orders clearly reveal that respondent No. 1 has pre-decided the issue. He has relied upon **Parkash Singh Badal and others** *versus* **Union of India and others, (1),** wherein a Full Bench of this Court held as follows :—

"40. Even if it may be acepted for the sake of argument that the filing of the application, Annexure P-1, before the Speaker gave rise to a question as to the disqualification of the petitioners and the Speaker was seized of the matter, the order, Annexure P-3, passed by him would be non est and ineffective so far as respondent No. 7 is concerned. The principle of law is well established that an order passed on a given proceedings would not bind any person affected thereby who was neither party to those proceedings nor given an opportunity of being heard before passing the same. It was on the same principle that a Five Judges Bench of this Court in **State of Haryana** *versus* **Vinod Kumar,** 1986 (1) 89 Pun L.R. 222 held an order of the Collector Agrarian to be ineffective and non est against the persons who were affected thereby but were neither party to the proceedings nor afforded any opportunity of being heard. The Fifty-Second Amendment has been enacted to prevent defections which necessarily means that it has been enacted primarily for the benefit of the political parties whose members constitute the House, though broadly speaking any citizen can invoke its provisions. The voluntary giving up of the membership of any political party would affect such a party and so would any order passed under para 6. Consequently an order passed under para 6 affecting adversely any political party would be ineffective and non est against it if no notice is issued to it for opportunity of being heard afforded. By making a claim under

(1) AIR 1987 Pb. & Hy. 263

para 3, the petitioners are deemed to have voluntarily given up the membership of the Shiromani Akali Dal on whose tickets they were elected. So, they were liable to be declared as disqualified from being members of the House. If their defence was to be accepted under para 3 and decision, as envisaged under para 6, to be made, the principles of natural justice would require a notice to be served on the President of the political party concerned. It has already been discussed above in detail that the Speaker would be a Tribunal while acting under para 6 and the proceedings before him of quasi-judicial nature. Any order passed by him under that paragraph without issuing notice or affording any opportunity of hearing to the interested party, therefore, would be non est and ineffective against such a part. As before passing the order, Annexure P-3, neither the political party nor any other person interested in the matter was heard, it would bind none and in that sense it can be said to be an order void ab initio. On both the grounds, therefore, the Speaker was justified in ignoring the order, Annexure P-3. However, the order dated July 4, 1986, Annexure P-8, has to be quashed because the claim of Shri Amrinder Singh that he has been elected leader of the splinter group could be disposed of only after the question of disqualification of the members of that group has been settled and their defence under para 3 upheld."

(8) Learned counsel for the petitioner has also relied upon **Jagjit Singh** *versus* **State of Haryana, (2),** particularly the following portions of paras 70 and 72, which read thus :—

"70. xx xx xx xx. We think the Speaker is right. Such a split, if held to be valid for the purpose of paragraph 3, would defeat the very purpose of the law. The requirement is not the split of the local or State wing of original political party but is of or original political party as defined in paragraph 1 (c) of the Tenth Schedule read with the explanation in paragraph 2 (1) to the effect that 'an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member.'

(2) AIR 2007 S.C. 590 (1)

72. xx xx xx. Paragraph 1(c) defining original political party and explanation as given in paragraph 2(1) have already been noticed herein before. It is clear from a bare reading thereof that the elected member belongs to the political party by which he is set up as a candidate for election as such member. From the plain language of these provisions, it cannot be held that for the purposes of the split, it is the State Legislature party in which split is to be seen. If a member is set up by a National Party, it would be no answer to say that events at National level have no concern to decide whether there is a split or not. In case a member is put up by a National Political Party, it is split in that party which is relevant consideration and not a split of that political party at the State level."

(9) Learned counsel for the petitioner has further relied upon clause (b)(3) of rule 7 of the Rules, which is to the following effect :—

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

(10) In my opinion, while passing an order under Paragraph 4, the Speaker is not enjoined to act as purely a judicial officer and to this extent the observations of the Hon'ble Supreme Court in the para extracted above, which laid down that an order of recognizing split/merger is not binding on a person who is not a party to it, would militate against the arguments of learned counsel for the petitioner. It must be noticed that both these cases arose from petitions under Article 191 and Paragraph 6 of the Schedule (*supra*). Thus, in my considered opinion, it can be safely held that an order under Paragraph 4 would necessarily be subject to an adjudication under Paragraph 6. The challenge to the orders, Annexures P-4 and P-7, is, thus, rejected.

(11) With regard to the second prayer, learned counsel for the petitioner has relied upon **Mayawati** *versus* **Markandeya Chand, (3),** and particularly paragraph 103 thereof, which is to the following effect :—

> "103. But I wish to add that it is absolutely necessary for every Speaker to fix a time schedule in the relevant rules for disposal of the proceedings for disqualification of MLAs or MPs. In my opinion, all such proceedings shall be concluded and orders should be passed within a period of three weeks from the date on which the petitions are taken on file."

(12) Leaned counsel has further placed reliance on **Ram Bilas Sharma** *versus* **The Speaker, Haryana Vidhan Sabha, Chandigarh and another, (4)** and particularly paras 3, 4, 5 which are to the following effect :—

> "3. It is an admited case that the petitioner and the second respondent were elected to Haryana Vidhan Sabha having been set up by the original political party BJP. On 17th July, 1991, the second respondent has written to the Speaker of the Legislative Assembly that as a result of the split in the Legislature party of the political party (BJP) another Legislature party in the name BJP(K) has come into being. He further averred that on account of ideological differences he has decided to form new Legislature party in the name and style of BJP(K). The letter written by the second respondent to the Speaker was reproduced in the impugned order Annexure P-7. It is no where stated therein that there was any split in the original political party either at the national level or in the Haryana State unit of BJP. A reading of the letter clerly shows that because of the ideological differences he (second respondent) has decided to form a new legislature party in the name and style of BJP (K). In our view such a contention cannot be accepted in view of the clear provisions contained in paragraph 3 of the 10th Schedule to the Constitution of India.

(3) AIR 1998 (7) S.C. 517
(4) 1997 (3) P.L.R. 318

4. Paragraph 1(b) defines Legislature party as a group consisting of the members of the House for the time being belonging to that political party in accordance with the provisions of Paragraph 2, 3 and 4. According to paragraph 1(c) original political party in relation to a member of a House is the political party to which he belongs for the purpose of Sub paragraph 1 of paragraph 2. Paragraph 2(a) makes a member of the House disqualified if he has voluntarily given up his membership of such political party. Paragraph 3 is in the nature of exception to paragraph 3. It reads as follows :—

'Where a member of a House makes a claim that he and any other members of his Legislature party constitute the group representing a faction which has arisen as a result of the split in his original political party and such group consists of not less than one-third of the members of such Legislature party,—

(a) he shall not be disqualified under sub-paragraph (1) of Paragraph 2'.

Thus, in order to attract paragraph 3 there should be a split in the original political party and one-third members of the Legislature party of that political party constitutes the group representing the faction which splits away from the original political party, then only those members of that faction do not incur disqualification under sub-paragraph 1 of paragraph 2 of the 10th Schedule. In the case on hand it is not the claim of the second respondent that there was a split of his original political party either at the national level or at the state level. In the letter written by him to the Speaker on 17th July, 1991 he only made a claim that due to ideological differences he wanted to form a separate legislature party. The main and essential ingredient for attracting paragraph 3 namely split in the original political party has not been pleaded or claimed in his letter written by the second respondent to the Speaker. In the absence of a split in the original political party, no member of that political party can claim to form a separate Legislature party. A legislature party is

not a separate entity. It is only a wing within the original political party. We are, therefore, of the opinion that the second respondent cannot claim that he formed a separate Legislature party and that he did not incur disqualification because he alone consists more than one-third of the Legislature party of the original political party BJP. We are, therefore, of the opinion that paragraph 3 of the 10th Schedule is not attracted to the case of the second respondent and, therefore, the second respondent has given up his membership of the original political party namely BJP which set him up as a candidate to contest the election to the Legislative Assembly. We are, therefore, of the opinion that the order of the Speaker dated 10th April, 1992 cannot be sustained and the second respondent incurred disqulification from being a member of the Assembly. We accordingly quash the order of the Speaker of the Haryana Legislative Assembly and declare the second respondent as disqualified for being a member of Haryana Legislative Assembly. The disqualification of the second respondent will come into effect from the date of the order of the Speaker i.e. 10th April, 1992.

5. The writ petition is accordingly allowed and the second respondent is declared disqualfied to be a member of Haryana Vidhan Sabha with effect from 10th April, 1992 and the necessary consequences will follow. However, there will be no order as to costs."

(13) Both sides have also placed reliance on **Kihoto Hollohan** *versus* **Zachillhu and others, (5)** wherein a Consititution Bench of the Hon'ble Supreme Court held as follows :—

"111. In the result, we hold on contentions (E) and (F) :

That the Tenth Schedule does not, in providing for an additional grant (sic ground) for disqualification and for adjudication of disputed disqualifications, seek to create a non-justifiable constitutional area. The power to resolve such disputes vested in the Speaker or chairman as a judicial power.

(5) 1992 Suppl. (2) S.C.C. 651

That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/ Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, *mala fides*, non-compliance with Rules of Natural Justice and perversity, are concerned.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Consititution as understood and explained in Keshav Singh case to protect the validity of proceedings from mere irregularities of Procedure. The deeming provision, having regard to the words 'be deemed to be proceedings in Parliament' or 'proceedings in the legislature of a State' confines the scope of the fiction accordingly.

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicil review.

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/ Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence."

(14) Learned counsel for the respondents has, on the other hand, placed reliance on **Ravi S. Naik** *versus* **Union of India and others, (6),** wherein the Hon'ble Supreme Court held as follows :—

> "18. The submission of Shri Sen is that the petitions that were filed by Khalap before the Speaker did not fulfil the requirements of clause (a) of sub-rule (5) of Rule 6 inasmuch as the said petition did not contain a concise statement of the material fats on which the petitioner (Khalap) was relying and further that the provisions of clause (b) of sub-rule (5) of Rule 6 were also not complied with inasmuch as the petitions were not accompanied by copies of the documentary evidence on which the petitioner was relying and the names and addresses of the persons and the list of such information as furnished by each such person. It was also submitted that the petitions were also not verified in the manner laid down in the Code of Civil Procedure for the verification of pleadngs and thus there was non-compliance of sub-rule (6) of Rule 6 also and that in view of the said infirmities the petitions were liable to be dismissed in view of sub-rule (2) of Rule 7. We are unable to accept the said contention of Shri Sen. The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in Kihoto Hollohan case. Moreover, the field of Judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in Kihoto Hollohan case is confined to breaches of the constitutional mandates, *mala fide*, non-compliance with Rules of Natural Justice and pervisity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing

(6) 1994 Supp. (2) S.C.C. 641

so we would be elevating the rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqalification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in Kihoto Hollohan case.

20. Principles of natural justice have an improtant place in modern Administrative Law. They have been defined to mean "fair play in action". As laid down by this Court : They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men." 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 thereason 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 right mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case."

(15) Learned counsel has also placed reliance on Mayawati's case (supra) but a reference is made to para 102 thereof which is to the following effect :—

"102. One of the contentions urged under this head is that the Speaker has by unduly delaying the proceedings acted

perversely. Though learned Senior counsel stated expressly in the course of his arguments that he is not alleging bias or personal *mala fides* against the Speaker, in the written submissions given by him, it is stated as follows :

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

The said submission is not permissible in view of the statement expressly made and referred to above. In any event, merely because there is a delay in concluding the hearing, the order cannot be said to be perverse. The Speaker has framed the question properly as to whether a split as alleged by the respondents had taken place on 21st October, 1997 and whether it was supported by acceptable evidence. This Court in exercise of its power of limited judicial review has only to see whether the findings arrived at by the Speaker are perverse in the sense in which the expression 'perversity' has been undertood by this Court in several decisons. I am unable to accept that as a matter of law, delay in the completion of proceedings would by itself vitiate the order passed by him."

(16) He has further placed reliance upon Jagjit Singh's case (supra), but has drawn the attention of the Court to para 11 thereof which reads thus :—

"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** *versus* **Zachillhu.** 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 of rules of natural justice are violated."

(17) Learned counsel for the responents have further placed reliance on a judgment rendered by learned Single Judge of the Rajasthan High Court in S.B. Civil Writ Petition No. 4991 of 2010, **Jaswant Singh Gurjar** *versus* **The Hon'ble Speaker, Rajasthan Vidhansabha,** decided on 3rd September, 2010. In that case, *inter-alia* the following prayers were made :—

> "a. That this Hon'ble Court may direct the respondent No. 1 Hon'ble Speaker of the Rajasthan State Legislative Assembly, Jaipur to decide the application of the petitioner applicant seeking releasing of petition No. 1/2009 for its adjudication by the Hon'ble High Court on the next date of hearing 3rd May, 2010 (last date 26th February, 2010) and thereafter conduct the proceedings on day-to-day basis if need be.
>
> b. That in case of Hon'ble Court reaching to a satisfaction that Hon'ble Speaker will not comply with the direction within the time appointed for the purpose, the petition No. 1/2009 may kindly be ordered to be withdrawn to this Hon'ble Court and thereafter decided by this Hon'ble Court in view of the position of law settled by the Hon'ble Supreme Court in the case of **Rajindra Singh Rana** *versus* **Swami Prasad Mourya."**

(18) It was in that context that the learned Single Judge, while relyng upon **Ravi S. Naik's case** (supra), held as follows :—

> "14. In the above case also the Apex Court specifically held that judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. It is an admitted fact that the petition is pending before the Hon'ble Speaker and it is a prior stage to the making of a decision by the Speaker and thus at this stage this Court cannot issue notice of this petition to the Speaker. It is not proper for this Court to issue notice of this petition to the Speaker who is one of the Constitutional functionary. Thus the petition fails and deserves to be rejected."

(19) Learned counsel for the respondents has further argued that the exercise of power by the Speaker would be entitled to the protection of Articles 122 and 212 of the Constitution and in this context, he has placed

reliance upon **Amarinder Singh** *versus* **Special Committee, Punjab Vidhan Sabha and others (7).**

(20) A perusal of the Constitutional provisions read with the judgments extracted above makes it clear that even though proceedings under Paragraph 6 of the Tenth Schedule cannot be termed to be immune from judicial review, yet the Courts would enter this area with strict circumspection.

(21) Learned counsel for the respondents have urged that at an interim stage, there is no review jurisdiction available to the Courts, more-so when review is sought on what can only be termed as essentially procedural matters. I put it to Shri Harbhagwan Walia, Sr. Advocate representing respondents No. 3 to 7, whether such absolute immunity would extend to a case where a Speaker does not enter into an adjudication for an entire term of the Vidhan Sabha and he conceded that in such an extreme situation, intercession of Court could not be impermissible but went on to assert that the present is not such an extreme case. It must be remembered that all such discussion on the powers of/immunity from judicial review is subject to two basic principles; firstly that justice must not only be done but must be seen to have been done; and secondly that no person, howsoever high- in this case respondent No. 1- 'notwithstanding that he enjoys a very high status and position of great respect and esteem in the Parliamentary Traditions and is the embodiment of propriety and impartiality'-can be above the law. A reference in this regard is made to the observations of the Hon'ble Supreme Court in **Jagjit Singh's case** *(supra),* which are to the following effect :—

> "84. Before parting, another aspect urged before us deserves to be considered. However, at the outset, we do wish to state that the Speaker enjoys a very high status and position of great respect and esteem in the parliamentary traditions. He, being the very embodiment of propriety and impartiality, has been assigned the function to decide whether a Member has incurred disqualification or not. In **Kihoto Hollohan judgment** various great Parliamentarians have been noticed pointing out the confidence in the impartiality of the Speaker and he being above

(7) (2010) 6 S.C.C. 113

all parties or political considerations. The high office of the Speaker has been considered as one of the grounds for upholding the consititutional validity of the Tenth Schedule in **Kihoto Hollohan case.**

85. Undoubtedly, in our constitutional scheme, the Speaker enjoys a pivotal position. The position of the Speaker is and has been held by people of outstanding ability and impartiality. Without meaning any disrespect for any particular Speaker in the country, but only going by some of the events of the recent past, certain questions have been raised about the confidence in the matter of impartiality on some issues having political overtones which are decided by the Speaker in his capacity as a tribunal. It has been urged that if not checked, it may ultimately affect the high office of the Speaker....."

(22) A third corollary also needs to be noticed, *viz* that in some cases, even a procedural facet can defeat a substantive right. The best illustration is, of-course, the rule of *audi alterm partem* which is essentially a procedural aspect but of such fundamental importance that itself embodies a basic substantive right. It cannot also be forgotten that the present government initially earned legitimacy only after the addition of respondent No. 3 to 7 to its ranks. Had they not joined up, the present government could not have been formed. For this reason, an adjudication on these petition under Article 191 of the Constitution cannot be limited only to law but to the essential concept of democracy. If it is found that respondent No. 3 to 7 have incurred disqualification, the very existence of the government would be in jeopardy. Thus, to argue that the Hon'ble Supreme Court has barred meddling by Courts cannot be said to be in such absolute terms as is convassed by learned counsel for the respondents. A Court cannot also close its eyes to the provisions of clause (b)(3) of rule 7 of the Rules, which have been framed by respondent No. 1 himself, and as per which time to file reply has been fixed at one week. Which is not to say that respondent No. 1 cannot extend the time in any circumstance but only to bear in mind the kind of time frame envisaged under the Rules. It is now beyond the scope of any controversy that respondent No. 1 exercises an essential judicial

function while deciding a petition under Paragraph 6 of the Tenth Schedule of the Constitution. In fact, in para 95 of **Kihoto Hollohan's case** *(supra)*. the Hon'ble Supreme Court held as follows :—

> "95. In the present case, the power to decide disputed disqualification under Paragraph 6(1) is pre-eminently of a judicial complexion."

(23) As regards the plea of protection under Articles 122 and 212 of the Constitution of India, the said argument was specifically repelled by the Hon'ble Supreme Court in **Kihoto Hollohan's case** *(supra)*, in the following terms :—

> "97 That apart, even after 1986 when the Tenth Schedule was introduced, the Constitution did not evince any intention to invoke Article 122 or 212 in the conduct of resolution of disputes as to the disqualification of members under Articles 191(1) and 102(1). The very deeming provision implies that the proceedings of disqualification are, in fact, not before the House; but only before the Speaker as a specially designated authority. The decision under Paragraph 6(1)is not the decision of the House, nor is it subject to the approval by the House. The decision operates independently of the House. A deeming provision cannot by its creation transcend its own power. There is, therefore, no immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power under Paragraph 6(1) of the Tenth Schedule."

(24) In this writ petition, allegations of *mala fide* have also been levelled against respondent No. 1 primarily relying upon the sequence of events extracted above. I put it to learned counsel for the petitioner what would be the position if the allegations of *mala fide* are held to be substantiated, and would it then mean that this Court would either nominate some other functionary or substitute itself for respondent No. 1 and then proceed to decide the petitions under Article 191 read with Tenth Schedule of the Constitution of India ? Faced with this logjam, learned counsel for the petitioner has stated that he would not press the allegations of *mala fide* at this stage but prayed that in any case the alleged inaction has entitled the petitioner to the second relief of issuance of directions. Coming back

to the facts of the case, it is revealed that respondent No. 1 gave as many as six opportunities to respondents No. 3 to 7 to file replies over a period of about eight and half months. Respondent No. 1, even after the filing of the present writ petition on 21st April, 2009 wherein the prayer was for speedy decision-kept granting further time to respondents No. 3 to 7. As far as the petitioner is concerned, this was an indefinite postponement of his claim. A perusel of the facts of the judgments cited reveals that in **Ravi S. Naik's case** *(supra)*, the petition was decided within one month, in **Jagjit Singh's case** *(supra)*, the petition was decided within 17 days and in **Mayawati's case** *(supra)*, the petition was decided within four months. The case in hand, as shown above, presents a stark contrast. It can, thus, be concluded that the substantive right of the petitioner to have his lis decided is being defeated by the procedural facet of extension of time to file replies by respondents No. 3 to 7. Consequently, this Court is of the considered opinion that the present is a case where judicial intervention is justified even during the trial of the petitions, filed by the petitioner, and issue a direction to resonent No.1 to decide the said petitions within a fixed time frame.

(25) Resultantly, this writ petition is allowed and respondent No. 1 is directed to finally decide the petitions, filed by the petitioner under Article 191 read with Tenth Schedule of the Constitution of India, and the Rules, in accordence with law, within a period of four months from the receipt of a certified copy of this order.

R.N.R.

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