



THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra Ordinary Jurisdiction)

D.B.: HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI

DATED : 19.06.2018

WP (PIL) No. 14 of 2017

1. Pahalman Subba,
S/o Lt. Ran Bahadur Subba,
aged about 83 years,
R/o Diesel Power House,
P.O. & P.S. Gangtok-737 101,
East District of Sikkim.
2. Nawin Kiran Pradhan,
S/o Harka Bahadur Pradhan,
Aged 35 years,
R/o Sisa Golai, 10 N-H Way,
P.O. & P.S. Gangtok-737 101,
East District of Sikkim.
3. Tshering Wangchuk Lepcha,
S/o Kazi Lepcha,
Aged 38 years,
R/o Metro Point, Tadong,
P.O. Tadong & P.S. Ranipool.

... Petitioner (s).

Versus

1. The Hon'ble Speaker,
The Sikkim Legislative Assembly,
Service through The Secretary
Sikkim Legislative Assembly,
Having his office at Namnang,
Gangtok-737 101.



2. The State of Sikkim,
Service through The Chief Secretary,
Government of Sikkim,
Having his office at Manan Kendra,
Gangtok-737 101.
3. Department of Law & Parliamentary Affairs,
Government of Sikkim,
Service through the Secretary,
Law & Parliamentary Affairs Department,
Government of Sikkim,
Having office at Gangtok-737 101.
4. The Election Commission of India,
Service through the Sr. Principal Secretary,
Election Commission of India,
Having his office at Nirvachan Sadan,
Ashoka Road, New Delhi-110001.
5. Shri Ugen Nedup Bhutia,
Hon'ble Member of Legislative Assembly,
29-Kabi Lungchuk (BL),
Having his office at Sikkim Legislative Assembly,
Namnang, Gangtok-737101.
6. Shri Shyam Pradhan,
Hon'ble Member of Legislative Assembly,
26-Arithang,
Having his office at Sikkim Legislative Assembly,
Namnang, Gangtok-737101.
7. Shri Hemendra Adhikari,
Hon'ble Member of Legislative Assembly,
19-Rhenock,
Having his office at Sikkim Legislative Assembly,
Namnang, Gangtok-737101.
8. Shri Gopal Baraily,
Hon'ble Member of Legislative Assembly,
18-West Pandam,
Having his office at Sikkim Legislative Assembly,
Namnang, Gangtok-737101.



9. Dr. Mechung Bhutia,
Hon'ble Member of Legislative Assembly,
24-Martam Rumtek (BL),
Having his office at Sikkim Legislative Assembly,
Namnang, Gangtok-737101.
10. Shri Pintso Chopel Bhutia,
Hon'ble Member of Legislative Assembly,
27-Gangtok (BL),
Having his office at Sikkim Legislative Assembly,
Namnang, Gangtok-737101.
11. Shri Timothy William Basnett,
Hon'ble Member of Legislative Assembly,
25-Upper Tadong,
Having his office at Sikkim Legislative Assembly,
Namnang, Gangtok-737101.

... Respondent (s).

Appearance:

Mr. Sabyasachi Chatterjee and Mr. Pem Tshering Lepcha, Advocates for the Petitioners.

Mr. D.K. Siwakoti, Advocate for Respondent No. 1.

Mr. A. Mariarputham, Advocate General, Mr. J.B. Pradhan, Addl. Advocate General with Mr. Thinlay Dorjee Bhutia, Govt. Advocate, Mr. Santosh Kr. Chettri and Ms. Pollin Rai, Asstt. Govt. Advocates for Respondents No. 2 & 3.

Mr. Tashi Rapden Barfungpa, Advocate for Respondent No. 4.

Mr. N. Rai, Sr. Advocate with Mr. Suraj Chettri, Advocate for Respondents No. 5 to 11.



J U D G M E N T

Satish K. Agnihotri, CJ

The first petitioner, stated to be a social activist and a former Member of Union Parliament but not being a member of any political party, the second and third petitioners, stated to be social and political activists but not the members of any political party, have come up with this petition seeking reading down of Rules 6 and 7 of the Members of Sikkim Legislative Assembly (Disqualification on ground of Defection) Rules, 1985 (hereinafter referred to as "the Rules of 1985"), in the light of Article 191 (2) and the Tenth Schedule to the Constitution of India. Further a direction is sought to cancel/quash/rescind the communication being No. 516/SLAS/L&PA dated 02nd February 2017 of the Additional Secretary, L&PA, Sikkim Legislative Assembly Secretariat, whereby the petition made by the first and second petitioners along with three others, seeking disqualification of 5th to 11th respondents on the ground of alleged defection, was not admitted in terms of Rule 7 Clauses (1) and (2) of the Rules of 1985. The petitioners have further prayed for declaration that the 5th to 11th respondents be held as disqualified for being the member of Sikkim Legislative Assembly on the ground of



defection, in addition other directions of interim nature during pendency of the petition.

2. The genesis of *this* involved in this petition is that 32 members were elected in the General Election for Sikkim Legislative Assembly held in the month of May, 2014. Out of 32 members, 10 members including the 5th to 11th respondents won the election on Sikkim Krantikari Morcha (SKM) tickets. It is stated that on 30th November 2015, the 5th to 11th respondents switched over to the ruling party Sikkim Democratic Front (SDF) and thereafter were appointed as Parliamentary Secretaries. Their appointments, as Parliamentary Secretaries, were quashed on 25th August 2017 by this Court in Pahlman Subba & others vs. State of Sikkim & Others¹. After a period of 13 months, the first and second petitioners along with three other persons, namely, Mr. T.B. Rai, Mr. Sonam Pintso Bhutia and Mr. Mohan Kr. Rai, filed a petition addressed to the Speaker through the Secretary, Sikkim Legislative Assembly on 25th January 2017 seeking disqualification of the 5th to 11th respondents. It is apt to state here that Mr. T.B. Rai did not sign the petition, as is manifest from the petition. It is also relevant to mention at this stage that the petition was not addressed only to the competent authority i.e. the Speaker, but a copy was endorsed to the President of

¹ WP (PIL) No. 04 of 2016



India, Prime Minister of India, Chief Justice of India, Minister of Law and Justice, Chairman, Law Commission of India, Chief Election Commissioner and other three elected members of Sikkim Krantikari Morcha. In addition, a copy was given to the press and media also. The Additional Secretary, Sikkim Legislative Assembly Secretariat by the impugned communication dated 02nd February 2017 informed the petitioners that the petition dated 25th January 2017 could not be admitted in terms of Rule 7 Clauses (1) and (2) of the Rules of 1985. After about 10 months, the 1st and 2nd petitioners, who submitted the petition, with others before the 1st respondent, filed the instant petition on 12th December 2017. It is relevant to state here that the 3rd petitioner was not the petitioner before the Speaker.

3. On perusal of the records, it is found that one more letter was sent by Mr. P.S. Tamang, an elected member and President, Sikkim Krantikari Morcha party to the Speaker, seeking disqualification of 5th to 11th respondents on 29th December 2015, however, we are not concerned with the said letter in this petition.

4. Mr. Sabyasachi Chatterjee, learned counsel appearing for the petitioners in the aforesaid backdrop submits that the petition dated 25th January 2017 was in the form of information



to the Speaker. The Speaker, should not have insisted on other formalities and on having come to know about the defection by the contesting private respondents, which was against the spirit of Tenth Schedule of Constitution as well as Article 191 (2) of the Constitution of India, ought to have declared them disqualified cancelling their membership. The defection of 5th to 11th respondents to the ruling party thereafter assuming the office of Parliamentary Secretaries could not be termed as merger of original party, which is exempted from the disqualification under the Tenth Schedule. The action of the 1st respondent frustrates the constitutional objectives. It is not necessary to be a Member of Legislative Assembly to make a petition to the Speaker, seeking compliance of provisions of the Tenth Schedule read with Article 191 (2) of the Constitution of India. The petitioners, not being members of any registered political party, filed the petition to uphold the sanctity of the Constitutional mandate and protect it from vice of defection.

5. The learned counsel for the petitioner further submits that the Constitution (Fifty-second Amendment) Act, 1985 was passed with the sole objective to prevent evil of political defection, which undermines the very foundation of democracy and the principles which sustain it. The Speaker, being the head of Legislature, is under obligation to uphold constitutional values.



On having come to know the alleged defection made by the 5th to 11th respondents, who were elected on the symbol of Sikkim Krantikari Morcha and thereafter defected to the ruling party for personal gain, without proper merger with the party, the first respondent failed to discharge constitutional mandate and as such it needs correction by this Court in this petition. The petitioners are discharging their fundamental duties, as enshrined under Article 51A to abide and uphold the sanctity of the Constitution. It is further stated that there was no merger of Sikkim Krantikari Morcha with the Sikkim Democratic Front, the ruling party, to escape from clutches of the anti-defection law.

6. Referring to the judicial pronouncement in *Speaker, Orissa Legislative Assembly vs. Utkal Keshari Parida*², laid down by the Supreme Court, wherein it was made clear that not only a member of the House, but any person interested, would also be entitled to bring to the notice of the Speaker the fact that a member of the House had incurred disqualification under the Tenth Schedule to the Constitution of India, learned counsel would contend that the Speaker ought to have admitted the petition and decided on merit. Dismissal of it at threshold for non-compliance of rules is illegal and as such relevant provisions of Rules 6 and 7 deserve to be read down to facilitate all the

² (2013) 11 SCC 794



persons who are interested in upholding the values of Constitution of India, in this petition seeking disqualification of defaulting members.

7. To garner support, Mr. Chatterjee referred and relied on the observations made by the Supreme Court in Ravi S. Naik vs. Union of India and others³, Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council and others⁴, Jagjit Singh vs. State of Haryana and others⁵, Rajendra Singh Rana and others vs. Swami Prasad Maurya and others⁶ and Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi and others⁷.

8. Contesting, Mr. A. Mariarputham, learned Advocate General, appearing for the 2nd and 3rd respondents, referring to the counter affidavit filed by the 3rd respondent would contend that the Members of the Sikkim Legislative Assembly (Disqualification on ground of Defection) Rules, 1985 was made in exercise of powers conferred on the Speaker of the House under paragraph 8 of the Tenth Schedule to the Constitution to regulate the procedure to work out the provisions of the Tenth Schedule on 20th December 1985, gazetted on 23rd December 1985. The petition of the 1st and 2nd petitioners along with three

³ 1994 Supp (2) SCC 641

⁴ (2004) 8 SCC 747

⁵ (2006) 11 SCC 1

⁶ (2007) 4 SCC 270

⁷ (2015) 12 SCC 381



others, who have not approached this Court, was not admitted on the ground that it was not in accordance with the requirement of Rules 6 and rejected in terms of Rule 7 Clauses (1) and (2) of the Rules of 1985. It is further submitted by the learned Advocate General that out of three petitioners herein, only 1st and 2nd petitioners have joined with other three persons in the so called petition before the Speaker. Out of five petitioners, one had chosen not to sign the petition before the Speaker and only 1st and 2nd petitioners have approached this Court under this writ petition, along with third petitioner, who was not before the Speaker.

9. Mr. Mariarputham would next urge that Clause (1) of Rule 7 of the Rules of 1985 prescribes that the Speaker shall consider whether the petition complies with the requirements of Rule 6. Clause (2) of Rule 7 of the Rules of 1985 contemplates dismissal of the petition at the threshold, if the same does not comply with the requirements of Rule 6. Rule 6 of the Rules of 1985 provides that no reference of any question in respect of disqualification of a member shall be made by a petition without compliance of requirement of provisions of Rules. The Rules provides firstly that it be made in writing by any other member addressed to the Speaker. Further, the petition shall contain a concise statement of the material facts on which the petitioner



relies, be accompanied by copies of the documentary evidence, if any, on which the petitioner relies. It should be duly signed and verified by the petitioner in the manner laid down in the Code of Civil Procedure, 1908. Every annexure shall also be signed and verified by the petitioner in the same manner as the petition. The petition dated 25th January 2017 was defective, as firstly it was not made by a member of the House; secondly, it was not duly signed and verified by all the petitioners while making the petition and also the documentary evidence duly signed and verified was not annexed with the petition. Thus, the petition was rightly not admitted at the threshold itself and the Additional Secretary was authorized to duly communicate the order to the petitioners.

10. The Advocate General would further submit that this Court may not interfere with the petition at this stage, when the Speaker has not decided the petition on merit in the light of Article 212 of the Constitution of India. The non-admission of petition, which was not in accordance with the prescribed Rules, is a legislative proceeding, which may not be examined by this Court unless it is ultra vires, in violation of principles of natural justice, mala fide or having been made in colourable exercise of power based on extraneous material. The question as to whether the petitioners were competent to make a petition



before the Speaker, came up for consideration in Speaker, Orissa Legislative Assembly, wherein the Supreme Court read down the Rule 6 holding that not only a member of the House, but any person interested, would also be entitled to bring to the notice of the Speaker the fact of disqualification incurred by a member. The other provisions of Rules are strictly in accordance with the principles of natural justice, thus, the same may not be read down, as pleaded by the petitioners. It is further contended that the petitioners have not placed any material on record to indicate that the procedural rules framed therein which facilitates proper examination and inquiry are meant to destroy the objectives and purpose of the Tenth Schedule, thus, the relief seeking reading down of Rules 6 and 7 of the Rules 1985, be rejected.

11. Mr. D.K. Siwakoti, learned counsel appearing for the Speaker adopts the arguments put forth by the learned Advocate General.

12. Mr. Tashi Raptan Barfungpa, learned counsel appearing for the Election Commission of India states that the Election Commission of India has nothing to say in the matter at this stage.

13. Mr. N. Rai, learned Senior Counsel appearing for the private 5th to 11th respondents submits that the petition made by



the 1st and 2nd petitioners along with three others was filed before the Speaker not with the purpose to uphold the constitutional provision but to gain the publicity and also it was in the nature of complaint, as it was sent to other high constitutional functionaries. The motive was not fair and proper, thus, the same was rightly rejected by the Speaker. Mr. Rai, learned Senior Counsel, adopting the arguments advanced by the learned Advocate General on the other issues, submitted that the petition was not in accord with the procedure and as such it was rightly not admitted at the threshold itself. There was no irregularity or illegality in not considering the petition on the part of the Speaker, thus, this Court may not entertain this petition at this stage.

14. On anxious and conscientious consideration of pleadings and submissions put forth by the learned counsel appearing for the parties, it is found that the 1st and 2nd petitioners were the petitioners before the Speaker. Out of five petitioners, two have chosen to file the present writ petition and three have chosen not to join the present petition. Out of three, one has not signed even the petition filed before the Speaker, Sikkim Legislative Assembly. It is also manifest that a copy of the petition was endorsed to several constitutional functionaries and also to press and media, which was not the requirement of



the procedure or of the constitutional provisions. On further examination of the original petition produced before us, it is established that the petition was signed by four petitioners and it was not duly verified, as required under the Rules. There were no documents except a newspaper report which gave reasons to the applicants therein to believe that 5th to 11th respondents have switched over from the original party to the new party. Newspaper report was neither authenticated nor duly signed and verified. Even other annexures were also neither authenticated nor duly signed and verified, as required under Rule 6 of the Rules of 1985. Thus, it does not meet the requirement of Rule 6.

15. The Constitution (Fifty-second Amendment) Act, 1985 was enacted by the Parliament incorporating Article 191 (2), providing for disqualification of a person for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule. The Tenth Schedule was also incorporated by the said Amendment Act.

16. Paragraph 2 of the Tenth Schedule prescribes for "Disqualification on ground of defection", which reads as under: -

"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.

Explanation.— For the purposes of this sub-paragraph,—

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,—

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

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

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

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,—

(i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the



purposes of sub-paragraph (3) of this paragraph.”

17. Paragraph 3 provided for non-application of qualification in case of split in original political party consisting of more than one-third of the members of such legislature party. Paragraph 3 was omitted subsequently by the Constitution (Ninety-first Amendment) Act, 2003 and also paragraphs 4 and 5 were reframed as under:

“4. Disqualification on ground of defection not to apply in case of merger.— (1) A member of a 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-paragraph (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.

5. Exemption.— Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,—

- (a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or



- (b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office."

18. On bare perusal of the relevant paragraphs 2, 4 and 5 of the Tenth Schedule, it is evident that a member of a House stands disqualified, if he has voluntarily given up his membership of such political party or if he votes or abstain from voting in such House contrary to any direction issued by the political party to which he belongs or an elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

19. Paragraph 4 contemplates disqualification on ground of defection not to apply in case of merger of original party with another political party. 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. It is pleaded that there was no merger of the political party on defection of two-thirds of the members of the concerned legislature party i.e. Sikkim Krantikari Morcha. The contesting respondents 5th to 11, who are more than two-thirds of the members of the concerned legislature party, have not formed



any separate party to merge with another political party. Thus, Article 191 (2) clearly mandates that disqualification incurred by a member under the Tenth Schedule to the Constitution shall be disqualified for being a member of the Legislative Assembly.

20. The Defection Rules of Goa Legislative Assembly, akin to the present one, which were framed to regulate the procedure, had fallen for consideration in *Ravi S. Naik vs. Union of India*³, wherein the Supreme Court held as under: -

"18. 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 [1992 Supp (2) SCC 651] . 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 [1992 Supp (2) SCC 651] is confined to breaches of the constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in *Kihoto Hollohan* case [1992 Supp (2) SCC 651] ."

21. In *Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council and others*⁴, the Supreme Court held as under: -



"8.1. This authoritative pronouncement clearly lays down that the decision of the Chairman or the Speaker of the House can be challenged on very limited grounds, namely, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity and further a mere irregularity in procedure can have no bearing on the decision.

X X X

12. Paragraph 8 gives the rule-making powers and it provides that the Chairman or the Speaker of a House may make rules for giving effect to the provisions of the Tenth Schedule. Clause (d) of sub-para (1) of this rule provides that the rule may provide the procedure for deciding any question referred to in sub-para (1) of Paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question. In exercise of the power conferred by Paragraph 8 of the Tenth Schedule, the Chairman, Bihar Legislative Council has made the Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994 (hereinafter referred to as "the Rules"). Rule 3 of the Rules provides that the leader of each legislature party shall furnish to the Chairman a statement in writing containing the names of members of such political party. Sub-rules (1) and (6) of Rule 6 and sub-rules (1) and (2) of Rule 7 read as under:

"6. *References to be by petitions.*—(1) No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this rule.

(2)-(5) * * *
(6) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

7. *Procedure.*—(1) On receipt of a petition under Rule 6, the Chairman shall consider whether the petition complies with the requirements of that rule.

(2) If the petition does not comply with the requirements of Rule 6, the Chairman shall dismiss the petition and intimate the petitioner accordingly."

13. It may be noted that under Paragraph 8, the Chairman or the Speaker of a House is empowered to make rules for giving effect to the provisions of the Tenth Schedule. The rules being delegated legislation are subject to certain fundamental factors. Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is to lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining



true to it. That is the rule of primary intention. Power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. (See Section 59 in chapter "Delegated Legislation" in Francis Bennion's *Statutory Interpretation*, 3rd Edn.) The aforesaid principle will apply with greater rigour where rules have been framed in exercise of power conferred by a constitutional provision. No rules can be framed which have the effect of either enlarging or restricting the content and amplitude of the relevant constitutional provisions. Similarly, the rules should be interpreted consistent with the aforesaid principle."

22. In *Jagjit Singh vs. State of Haryana and others*⁵, the Supreme Court again examined the powers of the Speaker vis-à-vis the procedural rule prescribed therein and observed 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.

12. The requirement to comply with the principles of natural justice is also recognised in rules made by the Speaker in exercise of powers conferred by para 8 of the Tenth Schedule. The Speaker, Haryana Legislative Assembly, made the Haryana Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 in exercise of power conferred by para 8 of the Tenth Schedule. Rule 7(7), inter alia, provides that neither the Speaker nor the Committee shall come to any finding that a Member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such Member to represent his case and to be heard in person."

23. In *Speaker, Orissa Legislative Assembly vs. Utkal Keshari Parida*², the Supreme Court examined an identical



provision of Rule 6 of the Members of the Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 and held as under:

"18. The conundrum presented on account of the provisions of the Tenth Schedule in addition to Rules 6(1) and (2) of the 1987 Rules had fallen for consideration in *Mahachandra Prasad Singh case* [(2004) 8 SCC 747] . Speaking for the Bench, G.P. Mathur, J. (as His Lordship then was), observed in para 16 of the judgment that the purpose and object of the Rules framed by the Chairman in exercise of the power conferred by Para 8 of the Tenth Schedule was to facilitate the Chairman in discharging his duties and responsibilities in resolving any dispute as to whether the Member of the House had become subject to disqualification under the Tenth Schedule. It was also observed that: (SCC pp. 761-62, para 16)

"16. ... The Rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by the introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule."

19. The aforesaid observation is precisely what we too have in mind, as otherwise, the very object of the introduction of the Tenth Schedule to the Constitution would be rendered meaningless. The provisions of sub-rules (1) and (2) of Rule 6 of the 1987 Rules have, therefore, to be read down to make it clear that not only a Member of the House, but any person interested, would also be entitled to bring to the notice of the Speaker the fact that a Member of the House had incurred disqualification under the Tenth Schedule to the Constitution of India. On receipt of such information, the Speaker of the House would be entitled to decide under Para 6 of the Tenth Schedule as to whether the Member concerned had, in fact, incurred such disqualification and to pass appropriate orders on his findings."

24. In *Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi and others*⁷, the Supreme Court held as under: -

"43. Under the scheme of Schedule X the Speaker does not have an independent power to decide that there has been split or merger as contemplated by Paras 3 and 4 respectively and such a decision can be taken only when the question of disqualification arises in a proceeding under Para 6. It is only after a final decision is rendered by the Speaker under Para 6 of Schedule X to the Constitution that the jurisdiction of the High Court under Article 226 of the Constitution can be invoked.



44. We have to keep in mind the fact that these appeals are being decided in the background of the complaint made to the effect that the interim orders have been passed by the High Court in purported exercise of its powers of judicial review under Articles 226 and 227 of the Constitution, when the disqualification proceedings were pending before the Speaker. In that regard, we are of the view that since the decision of the Speaker on a petition under Para 4 of Schedule X concerns only a question of merger on which the Speaker is not entitled to adjudicate, the High Court could not have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under Para 6 of Schedule X to the Constitution. It is in fact in a proceeding under Para 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order which is amenable to the writ jurisdiction of the High Court. It is in such proceedings that the question relating to the disqualification is to be considered and decided. Accordingly, restraining the Speaker from taking any decision under Para 6 of Schedule X is, in our view, beyond the jurisdiction of the High Court, since the Constitution itself has vested the Speaker with the power to take a decision under Para 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order."

25. The principle of reading down deducible from the aforestated promulgation of judicial pronouncements, is that the statutory provision which fails to effectuate the objective and purpose of the enactment may be read down to further objective of the enactment as well as the Constitution. Rules 6 and 7 of the Rules of 1985 are in the domain of procedure and intended to facilitate the holding of inquiry and not to defeat or destruct the objective of the Tenth Schedule by introducing the technicality. Indisputably the rules are in the nature of subordinate delegated legislation and cannot supplant the very object of the Tenth Schedule, as the Tenth Schedule was added to the Constitution to remove the evil of political defection which became a matter of



national concern and undermines the very foundation of the democracy.

26. The Supreme Court in *Speaker, Orissa Legislative Assembly*², read down the provisions of sub-rules (1) and (2) of Rule 6 of the Members of Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987, holding that not only a member of the House, but any person interested, would also be entitled to bring to the notice of the Speaker the fact that a Member of the House had incurred disqualification.

27. Applying the well-settled principles of law to the facts of the instant case, wherein the Rules of 1985 was framed by the Speaker in exercise of the power conferred by paragraph 8 of the Tenth Schedule to the Constitution of India, we proceed to examine the relevant provisions of the Rules of 1985. Rules 6 and 7 are extracted hereunder: -

"**6** (1) No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this rule.

(2) A petition in relation to a member may be made in writing to the Speaker by any other member:

Provided that a petition in relation to the Speaker shall be addressed to the Secretary.

(3) The Secretary shall,

(a) as soon as may be after the receipt of a petition under the proviso to sub-rule (2) make a report in respect thereof to the House, and

(b) as soon as may be after the House has elected a member in pursuance of the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule place the petition before such member.



(4) Before making any petition in relation to any member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.

(5) Every petition –

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

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

(7) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

7 (1) On receipt of a petition under rule 6, the Speaker shall consider whether the petition complies with the requirements of that rule.

(2) If the petition does not comply with the requirements of rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly.

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

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

(4) After considering the comments, if any in relation to the petition, received under sub-rules (3) within the period allowed (whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient to do so, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him.

(5) The Speaker shall, as soon as may be after referring a petition to the Committee under sub-rule (4) intimate the petitioner accordingly and make an announcement with respect to such reference in the House or, if the House is not then in session, cause the information as to the reference to be published in the Bulletin.



(6) Where the Speaker makes a reference under sub-rule (4) to the Committee, he shall proceed to determine the question as soon as may be after receipt of the report from the Committee.

(7) The procedure which shall be followed by the Speaker for determining any question and the procedure which shall be followed by the Committee for the purpose of making a preliminary inquiry under sub-rule (4) shall be, so far as may be same as the procedure for enquiry and determination by the Committee of any question as to breach of privilege of the House by a member, and neither the Speaker nor the Committee shall come to any finding that a member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

(8) The provisions of sub-rule (1) to (7) shall apply with respect to a petition in relation to the Speaker as they apply with respect to a petition in relation to any other member and for this purpose, reference to the Speaker in these sub-rules shall be construed as including references to the member elected by the House under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule."

28. Rule 6 (2) of the Rules of 1985 prescribes that only any other member of the Assembly may make petition in relation to a member in writing to the Speaker. Rule 6 (3) (4) (5) (6) and (7) deal with how a petition be made. Under Rule 6 (3) (a), the Secretary, Legislative Assembly is required to make a report in respect of making of petition to the House. Under clause (3) (b) of Rule 6, a copy of the petition be supplied to such member against whom a petition is made. Rule 6 (4) contemplates that the petitioner making a petition must indicate reasonable reasons for believing that a question has arisen in respect of a member who has become subject to disqualification under the Tenth Schedule. Rule 6 (5) provides for making a petition containing a concise statement of the material facts and also the same be accompanied by relevant documentary evidence. Rule 6 (6) and



(7) is made to ensure authenticity of the facts and documents laid down by prescribing that the petition as well as the annexures be duly signed and verified by the petitioner.

29. Rule 7 (1) provides that the Speaker shall consider whether the petition complies with the requirements of the Rule 6. Sub-rule (2) of Rule 7 contemplates dismissal of the petition if it is not in accord with Rule 6. Sub-rule (3) (4) (5) (6) (7) and (8) of Rule 7 deal with requirements after admission of petition while adjudicating the issue.

30. On examination, we are of the view that Rule 6 (2) does not achieve the object of the Tenth Schedule, as examined by the Supreme Court in various cases and as such it may be read down making clear that not only a member of the Legislative Assembly but any other person interested is competent to make a reference (petition) to the Speaker for initiating a process of disqualification of a member, who has incurred it under Tenth Schedule. The other provisions of Rule 6 are mere procedural and do not obstruct or impede the objective of the Tenth Schedule. Thus, it does not need any reading down. Rule 7 (1) and (2) also need consideration.

31. Indisputably, the procedural rules are in the domain of procedure and may not supplant the constitutional provision. If



there is any irregularity in compliance of the procedure, the defect is curable and the petitioners are entitled to an opportunity to make good the defect before rejecting the petition under Rule 7 (2) of the Rules of 1985. Thus, Rule 7 (2) of the Rules of 1985 is also read down to this effect that if a petition fails to comply with the requirement of Rule 6, the petitioner be granted an opportunity to cure the defect before dismissing the petition at the threshold.

32. At this stage, it is apt to state that the High Court is competent to exercise its powers of judicial review under Article 226 and 227 of the Constitution, when the validity of the order of the Speaker is in question in writ jurisdiction, as laid down by the Constitution Bench in *Kihoto Hollohan vs. Zachillhu*⁸, when the challenge is made on the ground of ultra vires or mala fides or having been made in colourable exercise of power based on extraneous and irrelevant considerations. That situation has not arisen in this case, as no decision has been taken by the Speaker yet on merit.

33. As a sequitur, Rule 6 (2) and Rule 7 (2) are explained hereinabove. The impugned order dated 02nd February 2017 is not faulted with, as the same was rendered

⁸ 1992 Supp (2) SCC 651



in accordance with rules as it stood at the relevant time, thus, no interference is warranted. Consequently the other reliefs sought cannot be ordered at this stage, thus, rejected.

34. Resultantly, the writ petition is disposed of. No order as to costs.

Judge
19.06.2018

Chief Justice
19.06.2018

jk/ Approved for Reporting : Yes/~~No.~~
Internet : Yes/~~No.~~