A DR. KASHINATH G. JALMI AND ANR. ETC. ETC.

v.

SPEAKER AND ORS.

MARCH 31, 1993

B [J.S. VERMA, P.B. SAWANT AND N.M. KASLIWAL, JJ.]

Constitution of India, 1950:

Article 226—Writ—Dismissal at admission stage on ground of laches—Whether valid.

C

Legislative Assembly—Speaker's order disqualifying members under Tenth Schedule—Review by Speaker—Setting aside disqualification orders—Writ in the nature of class action challenging review order after ten months—Allegation that disqualified members continue to hold public office—Dismissal by High Court on the ground of laches held unjustified—Analogy of limitation provided under Section 81(1) of People's Representation Act, 1951 held inapplicable—Distinction between writs enforcing personal rights and writs relating to assertion of public rights in the nature of class action held relevant—Motive and conduct of petitioner held relevant only for denying costs but not a justification to refuse examination of question of public concern on merits.

D

E

Doctrine of laches.

Tenth Schedule—Legislative Assembly—Order of Speaker disqualifying members on the ground of defection—Speaker whether has implied power to review—Disqualification order.

F

Article 136—Appeal by special leave—Dismissal of writ petitions by High Court on the ground of laches—Whether susceptible to interference.

G **R.S., R.M. and S.B. were elected as Members of the Goa Legislative Assembly in the Elections held in November, 1989. Subsequently, R.S. assumed office of Chief Minister and formed his Council of Ministers including R.M. and S.B. as Ministers. Thereafter, the appellant (In C.A. 1094/92), a Member of the Assembly, presented a petition to the Speaker of the Assembly seeking disqualification of R.S. on the ground that he had voluntarily given up the membership of his political party. By its order**

H

dated 15.2.91 the Speaker passed an order under Para 6 of the Tenth Schedule of the Constitution disqualifying R.S. on the ground of defection. R.S. filed a writ petition before the Goa Bench of the Bombay High Court challenging the order of disqualification and by an interim order the High Court stayed the operation of the disqualification order. During the pendency of the writ petition the Speaker was removed from office and a deputy speaker was elected in his place who began functioning as Speaker. R.S. filed an application before the Acting Speaker seeking review of his Disqualification order and on 8.3.91 the Acting Speaker passed an order, in purported exercise of his power of review under the Tenth Schedule, setting aside the Disqualification order dated 15.2.91. Consequently the writ petition filed by R.S. challenging his disqualification order was dismissed as not pressed, by the High Court on 8.1.92 the appellant filed a petition challenging the review order dated 8.3.91 passed by the Acting Speaker on the ground that the Speaker did not have any power to review the earlier order of disqualification. Without going into the merits of the case the High Court dismissed the petition at the admission stage on the ground of laches. The decision of the High Court was impugned before this Courts.

Subsequently, another member of the Assembly, appellant in C.A. 1096/92, also filed a writ petition challenging the review order dated 8.3.91 passed by the Acting Speaker setting aside the earlier order disqualifying R.S., on similar grounds. The High Court also dismissed the same at the admission stage for the same reason, i.e. laches. Against the order dismissing the writ petition an appeal was preferred in this Court.

In the connected appeal (C.A. 1095/92) the appellant applied to the Speaker seeking disqualification of R.M. and S.B. on the ground of defection and by his order dated 13.12.90 Speaker passed the order disqualifying R.M. and S.B. under the Tenth Schedule. Both of them filed petitions challenging the disqualification order and by an interim order the High Court stayed the disqualification orders. In the meantime, in a manner similar to that in the case of R.S., the Acting Speaker by his order dated 7.3.91, in purported exercise of the review. set aside the orders dated 13.12.90 disqualifying R.M. and S.B. The appellant filed a petition challenging the orders of review passed by the Acting Speaker. It was also dismissed by the High Court on the ground of laches. Against dismissal of the writ petition an appeal was filed before this Court.

A In appeals to this Court, it was contended on behalf of the appellants that (1) the mere delay in challenging the legality of the authority under which respondents continue to hold public office, after being disqualified as Members of the Assembly, was not a valid justification for the High Court to refuse to examine the main question of existence of power B of review in the Speaker acting under the Tenth Schedule, since the discretion of the High Court under Article 226 of the Constitution must be exercised judicially, so as not to permit perpetuation of an illegality; (2) the doctrine of laches does not apply where declaration sought is of nullity, in order to prevent its continuing operation, and laches is not relevant in the domain of public law relating to public office, where the C purpose is to prevent an usurper from continuing to hold a public office; (3) the power of review in the Speaker cannot be implied from the provisions in the Tenth Schedule, and the only remedy available to the aggrieved person is by judicial review of the order of the disqualification; and (4) that the motive and conduct of the petitioners-appellants in such D matters is not decisive or fatal to the enquiry claimed in the writ petition, inasmuch as the relief claimed by them was not for their personal benefit but for larger public interest and good governance of the State by persons holding public offices.

On behalf of the respondents it was contended that (1) even though E there is no statutory limitation for filing a writ petition; yet in a case like the present, the apt analogy is of an election petition challenging an election, which is to be filed within 45 days from the date of election of the returned candidate, under Section 81(1) of the Representation of the People Act, 1951, to indicate that unless such a challenge is made promptF ly the courts would refuse to examine such a question after the lapse of a reasonable period; hence petitions filed after ten months of the date of the order of review made by the Speaker were rightly rejected on the ground of laches; (2) the doctrine of laches applies as much to the writ of *quo warranto,* as it does to a writ of certiorari; (3) in view of the finality attaching to the order made by the Speaker under para 6 of the Tenth G Schedule the power of review inheres in the Speaker for preventing miscarriage of justice, in situations when the speaker himself is of the view that continuance of his earlier order of disqualification would perpetuate injustice; (4) the inherent power of review in the Speaker must be read in the Tenth Schedule, at least upto 12th November, 1991 when the Judgment H in Kihoto Hollohan was rendered declaring the availability of judicial

review against the Speaker's order of disqualification made under para 6 of the Tenth Schedule; (5) only a limited judicial review being available against the Speaker's order of disqualification, as held by the majority in Kihoto Hollohan, some power of review inheres in the Speaker even thereafter to correct palpable errors falling outside the limited scope of judicial review; and (6) the appellants were not only associated with R.S. at different times but also they obtained benefits from him, thus, in view of the oblique motive coupled with their conduct, the High Court was justified in refusing to exercise its discretionary powers under Article 226 of the Constitution at the behest of the appellants; the power under Article 136 also being discretionary this Court would also be justified in refusing to interfere with the discretion so exercised by the High Court.

Allowing the appeals, this Court,

HELD: 1. The judgment of the High Court that the writ petitions were liable to be dismissed, merely on the ground of laches cannot be sustained. [834-C]

2. The exercise of discretion by the Court even where the application is delayed, is to be governed by the objective of promoting public interest and good administration; and on that basis it cannot be said that discretion would not be exercised in favour of interference where it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. [839-F]

3. In the present case the claim is for the issue of a writ of *quo warranto* on the ground that respondents are holding public offices, having suffered disqualification as Member of the Assembly subsequent to their election, and one of them, continues to hold the high public office of Chief Minister. The relief claimed in the present case in not the conferment of a personal benefit to the petitioners, but for cessation of the usurpation of public offices held by respondents. Thus, the relief claimed by the appellants in their writ petitions filed in the High Court being in the nature of a class action, without seeking any relief personal to them, should not have been dismissed merely on the ground of laches. [837 C-D, 839-H, 840-A]

3.1. The motive or conduct of the appellants, as alleged by the respondents, can be relevant only for denying them the costs even if their claim succeeds, but it cannot be a justification to refuse to examine the

A merits of the question raised therein, since that is a matter of public concern and relates to the good governance of the State itself. [840 A-B]

4. The remedy of an election petition is statutory, governed by the limitation prescribed therein, unlike the remedy under Article 226 of the Constitution. That apart, the analogy which is more apposite, is the decision B on questions as to the disqualification of Members in accordance with Article 103 in the case of a Member of Parliament or Article 192 in the case of a Member of a House of a Legislature of a State. For raising a dispute, giving rise to any question whether a Member of a House has become subject to any of the disqualification mentioned in clause (1) of Article 102 or 191, as C the case may be, there is no prescribed limitation, and so also for challenging the decision rendered under Article 103 or 192 by a writ petition. The question of the disqualification of a Member on the ground of defection and the Speaker's order thereon, rendered under the Tenth Schedule, is of a similar nature and not based on the result of an election which can be challenged only by an election petition in accordance with the provisions of D Representation of the People Act, 1951. [834 F-H, 835-A]

A.G. v. *Proprietor of the Bradford Canal,* (1866) L.R. 2 Equity Cases 71, relied on.

E *Brundaban Nayak* v. *Election Commission of India and Anr.,* [1965] 3 S.C.R. 53, explained and held inapplicable.

The Lindsay Petroleum Company v. *Prosper Armstrong Hurd, Abram Farewell and John Kemp,* (1874) L.R. 5 P.C. 221; *The Moon Mills Ltd.* v. *M.R. Meher, President, Industrial Court, Bombay and Ors.,* A.I.R. 1967 S.C. F 1450; *Maharashtra State Road Transport Corporation* v. *Shri Balwant Regular Motor Service Amravati & Ors.,* [1969] 1 S.C.R. 808; *M/s. Tilokchand & Motichand & Ors.* v. *H.B. Munshi & Anr.,* [1969] 1 S.C.C. 110; *Shri Vallabh Glass Works Ltd. & Anr.* v. *Union of India & Ors.,* [1984] 3 S.C.C. 362; *M/s Dehri Rohtas Light Railway Company Ltd.* v. *District Board, Bhojpur & Ors.,* [1992] 2 S.C.C. 598; *Emile Erlanger and Ors.* v. *The New* G *Sombrero Phosphate Company and Ors.,* (1878) 3 Appeal Cases 1218; *Anachuna Nwakobi, The Osha of Obosi and Ors.* v. *Eugene Nzekwu & Anr.,* (1964) 1 W.L.R. 1019; *Everett* v. *Griffiths,* (1924) 1 K.B. 941; *R.* v. *Stratford-on-Avon District Council and Anr. ex parte Jackson,* (1985) 3 All E.R. 769 and *Caswell and Anr.* v. *Dairy Produce Quota Tribunal for England and* H *Wales,* (1990) 2 W.L.R. 1320, held inapplicable.

5. The Speaker has no power of review under the Tenth Schedule, and an order of disqualification made by him under para 6, thereof is subject to correction only by judicial review. [841-F] A

***Kihoto Hollohan* v. *Zachillu and Ors.,* [1992] Supp. 2 S.C.C. 651, referred to.**

B

Observations in *Patel Narshi Thakershi & Ors.* v. *Pradyumansinghji Arjunsinghji,* A.I.R. 1970 S.C. 1273 to the effect that the power to review is not inherent power and must be conferred by law either specifically or by necessary implications, relied on.

C

5.1. There is no scope for reading into the Tenth Schedule any of the powers of the Speaker which he otherwise has while functioning as the Speaker in the House, to clothe him with any such power in his capacity as the statutory authority functioning under the Tenth Schedule of the Constitution. Accordingly any power of the Speaker, available to him while functioning in the House, is not to be treated as his power of privilege as the authority under the Tenth Schedule. [842 G-H, 843-A] D

Rule 7(7) of the Members of the Goa Legislative Assembly (Disqualification on grounds of Defection) Rules, 1986 and Rule 77 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly held inapplicable. E

6. Para 7 has to be treated as non-existent in the Tenth Schedule from the very inception. As held by the majority in *Kihoto Hollohan* judicial review is available against an order of disqualification made by the Speaker under para 6 of the Tenth Schedule, notwithstanding the finality mentioned therein. It is on account of the nature of finality attaching by virtue of para 6, that the judicial review available against the Speaker's order has been labelled as limited in *Kihoto Hollohan* and the expression has to be understood in that sense distinguished from the wide power in an appeal, and no more. Thus the Speaker's order is final being subject only to judicial review, according to the settled parameters of the exercise of power of judicial review in such cases. The existence of judicial review against the Speaker's order of disqualification made under para 6 is itself a strong indication to the contrary that there can be no inherent power of review in the Speaker, read in the Tenth Schedule by necessary implication. [845 B-E] F G H

7. There is no merit in the submission that the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his jurisdiction to decide the question of disqualification; or that such a power existed till 12th November, 1991 when the decision in *Kihoto Hollohan* was rendered; or at least a limited power of review inheres in the Speaker to correct any palpable error outside the scope of judicial review. [845 F-G]

Kihoto Hollohan **v.** *Zachillhu and Ors.,* **[1992] Suppl. 2 S.C.C. 651, explained.**

Shivdeo Singh & Ors. **v.** *State of Punjab & Ors.,* **A.I.R. 1963 S.C. 1909 and** *Grindlays Bank Ltd.* **v.** *Central Government Industrial Tribunal & Ors.,* **[1981] 2 S.C.R. 341, distinguished.**

8. The impugned orders of the High Court, dismissing writ Petitions are set aside. The orders made by the Acting Speaker in purported exercise of power of review are nullity and liable to be ignored. [847 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1094 of 1992.

WITH

Civil Appeal No.1095 of 1992.

AND

Civil Appeal No. 1096 of 1992.

From the Judgment and Order dated 4.2.92 & 24.2.92 of the Bombay High Court in W.P. Nos.11, 8 & 70 of 1992.

R.K. Garg, Ram Jethmalani, V.A. Bobde, Harish N. Salve, K.J. John, Ms. Deepa Dixit, Rakesh Gosain, Ms. Rani Jethmalani, P.K. Dey and Ms. Shanta Ramchand for the Appellants.

Ashok Desai, F.S. Nariman, R.F. Nariman, P.H. Parekh, Sunil Dogra, J.D. Dwarka Das and S.C. Sharma for the Respondents.

The Judgment of the Court was delivered by

VERMA, J. These appeals, by special leave, arise from writ petition Nos.11 of 1992, 8 of 1992 and 70 of 1992, all dismissed by the Bombay High Court at the Goa Bench merely on the ground of laches; and they involve for decision the common question relating to the power of review, if any, of the Speaker to review his decision on the question of disqualification of a Member of the House, rendered under the Tenth Schedule to the Constitution. In those writ petitions, the orders passed by the Speaker, in purported exercise of the power of review, setting aside the earlier orders of disqualification of certain Members made on merits by the Speaker, were challenged on the ground that the Speaker has no such power of review. The High Court took the view, that the writ petitions were filed after considerable delay, and, therefore, upholding the preliminary objection, had to be dismissed merely on the ground of laches; and, therefore, merits of the contention that the Speaker had no such power of review was not considered. The main questions which arise for decision in these appeals are, therefore, two; namely

(1) *LACHES* - Are the impugned orders of the High Court dismissing the writ petitions merely on the ground of laches susceptible to interference under Article 136 of the Constitution in the present case; and

(2) *POWER OF REVIEW* - If so, does the Speaker, acting as the authority under the Tenth Schedule of the Constitution, have no power of review, so that any order made by him in purported exercise of the power of review is a nullity?

The further question of the consequence and nature of relief to be granted, would arise only if these questions are answered in favour of the appellants.

Ravi S. Naik, Ratnakar M. Chopdekar and Sanjay Bandekar were duly elected Members of the Goa Legislative Assembly in the elections held in November, 1989. On 25.1.1991, Ravi S. Naik assumed the office of the Chief Minister of the State of Goa and he formed his Council of Ministers, which included Chopdekar and Bandekar as Ministers. On the same day, i.e. on 25.1.1991, Dr. Kashinath Jalmi, also a Member of the Legislative Assembly, presented a petition to the Speaker, Surendra V. Sirsat seeking disqualification of Ravi S. Naik as a Member of the Legis-

A lative Assembly on the ground that he had voluntarily given up the Membership of his political party. On 16.2.1991, the Speaker, Surendra V. Sirsat passed an order under para 6 of the Tenth Schedule to the Constitution, disqualifying Ravi Naik on the ground of defection. On 16.2.1991, Ravi Naik filed writ petition No.48 of 1991 at the Goa Bench of the Bombay
B High Court challenging the order of his disqualification, made by the Speaker under the Tenth Schedule to the Constitution. On 18.2..1991, the High Court passed an interim order in that writ petition staying operation of the order of disqualification made by the Speaker. During the pendency of this writ petition, on 27.2.1991, Simon Peter D'Souza was elected Deputy Speaker of the Goa Legislative Assembly; on 4.3.1991 Surendra V. Sirsat
C was removed from the office of Speaker and the Deputy Speaker, Simon Peter D'Souza began functioning as the Speaker in place of Surendra V. Sirsat. The same day, i.e. on 4.3.1991, Ravi S. Naik made an application to Simon Peter D'Souza, the Deputy Speaker functioning as the Speaker of the Goa Legislative Assembly, for review of the order dated 15.2.1991 of
D his disqualification made by the Speaker, Surendra V. Sirsat under the Tenth Schedule. On 8.3.1991, the Acting Speaker, Simon Peter D'Souza made an order, in purported exercise of the power of the review under the Tenth Schedule, setting aside the order dated 15.2.1991 made by the Speaker, Surendra V. Sirsat disqualifying Ravi S. Naik as a Member of the Goa Legislative Assembly. Thereafter, Writ Petition No.48 1991 filed by
E Ravi Naik challenging the order of the his disqualification made by the Speaker on 15.2.1991 was dismissed as not pressed by him, on 22.4.1991.

On 8.1.1992, Writ Petition No.11 of 1992 was filed by Dr. Kashinath Jalmi and Ramakant Khalap challenging the order of review dated 8.3.1991
F passed by the Acting Speaker, *inter alia* on the ground that the Speaker did not have any power to review the earlier order of disqualification made under the Tenth Schedule to the Constitution of India. The High Court by the order dated 4.2.1992 upheld the preliminary objection of Ravi S. Naik that the writ petition filed ten months after the date of the impugned order, was liable to be dismissed at the admission stage on the ground of laches.
G This order, dismissing the writ petition for this reason alone, is challenged in Civil Appeal No. 1094 of 1992.

After the dismissal of writ petition No.11 of 1992, another Member of the Goa Assembly, Churchill Alemao filed writ petition No.70 of 1992,
H also challenging the order of review dated 8.3.1991 made by the Acting

Speaker setting aside the earlier order dated 15.2.1991 made by the Speaker disqualifying Ravi Naik, on similar grounds. The High Court dismissed writ petition No.70 of 1992 also at the admission stage, for the same reason, on the ground of laches. Civil Appeal No.1096 of 1992 by Churchill Alemao is against the order dated 24.2.1992 dismissing writ petition No.70 of 1992.

On 10.12.1990, Ramakant D. Khalap applied to the Speaker, Surendra V. Sirsat seeking disqualification of Sanjay Bandekar and Ratnakar Chopdekar as Members of the Goa Legislative Assembly, for the defection under the Tenth Schedule. On 11.12.1990, the Speaker served notices on these Member. On 13.12.1990, Bandekar and Chopdekar filed writ petition No.321 of 1990 at the Goa Bench of the Bombay High Court challenging the show cause notices issued to them by the Speaker. On the same day i.e. on 13.12.1990, the Speaker, Surendra V. Sirsat made the orders disqualifying Bandekar and Chopdekar as Members of the Assembly, under the Tenth Schedule. On 14.12.1990. Writ Petition No.321 of 1990 was amended to challenge the orders of disqualification dated 13.12.1990 made by the Speaker against Bandekar and Chopdekar. The Writ Petition was admitted by the High Court, and an interim order made staying the orders of disqualification dated 13.12.1990 made by the Speaker. Unlike the writ petition No.48 of 1991 by Ravi Naik which was dismissed as not pressed on 22.4.1991 after the order of review made by the Deputy Speaker, writ petition No.321 of 1990 by Bandekar and Chopdekar is still pending in the High Court with the interim order made therein subsisting.

In the meantime, in a manner similar to that in the case of Ravi Naik, the Deputy Speaker functioning as the Speaker, on applications made to him for the purpose, passed orders on 7.3.1991, purporting to exercise the power of review, whereby the orders dated 13.12.1990 made by the Speaker disqualifying Bandekar and Chopdekar under the Tenth Schedule have been set aside. This led to the filing of writ petition No. 8 of 1992 by Ramakant D. Khalap on 7.1.1992 at the Goa Bench of the Bombay High Court, challenging the orders of the review dated 7.3.1991 passed by the Acting Speaker. This writ petition also, has been similarly dismissed merely on the ground of laches on 4.2.1992. Civil Appeal No.1095 of 1992 has, therefore, been filed against dismissal of writ petition No.8 of 1992.

A This is how the same questions relating to laches justifying dismissal of these writ petitions, and the power of review, if any, of the Speaker under the Tenth Schedule, arise for decision in these appeals.

B The rival contentions may now be mentioned. Shri Ram Jethmalani for the appellant in C.A. No.1094 of 1992, Shri Harish Salve for the appellant in C.A. No.1095 of 1992 and Shri R.K. Garg for the appellant in C.A. No.1096 of 1992 advanced substantially similar arguments, to contend that dismissal of the writ petitions by the High Court on the ground of laches is insupportable, in the present context, where challenge to the order C of review made by the Speaker under the Tenth Schedule is on the ground of nullity, since the Speaker has no power of review under Tenth Schedule, and that the the order of review being a nullity, must be so declared. In reply, Shri F.S. Nariman for respondent Ravi S. Naik in Civil Appeal Nos. 1094 and 1096 of 1992, and Shri Ashok Desai for respondents Bandekar D and Chopdekar in Civil Appeal No.1095 of 1992, strenuously urged that the exercise of power under Article 226 of the Constitution being discretionary, the refusal to exercise that power at the instance of the writ petitioners was a proper exercise of the discretion, which does not call for any interference by this court in exercise of its power under Article 136 of the Constitution. Both the learned counsel, in their reply, further sub- E mitted, that by the very nature of the high office of the Speaker and the finality attaching to the order made by the Speaker under para 6 of the Tenth Schedule, the power of the review inheres in the Speaker for preventing miscarriage of justice, in situations when the Speaker himself is of the view that continuance of his earlier order of disqualification would F perpetuate injustice. It was further submitted by them, in the alternative, that in view of the limited scope of judicial review of the Speaker's order of disqualification made under para 6 of the Tenth Schedule, as held in the majority opinion in *Kihoto Hollohan* v. *Zachillhu and Ors.*, [1992] Supp. 2 SCC 651, it is implicit that at least a limited power of review inheres in the Speaker, to correct palpable errors outside the scope of the limited G judicial review available against the order of disqualification made by the speaker under the Tenth Schedule. It was urged by them, that the alleged infirmities in the orders of disqualification made in the present case by the Speaker fell within, at least this limited power of review which inheres in the Speaker. Shri Nariman, as well as Shri Desai, strongly relied on the H majority opinion in *Kihoto Hollohan* to support these submissions.

The last alternative submission of Shri Nariman was, that in case there is no power of review in the Speaker under the Tenth Schedule, as a result of which the orders made by the Acting Speaker in purported exercise of that power have to be declared nullity and ignored, then writ petition No.48 of 1991 by Ravi S. Naik being dismissed as not pressed on 22.4.1991 because the order of his disqualification had been set aside by the order of review, must be revived along with the interim stay granted therein to enable Ravi S. Naik to pursue the remedy which he had invoked, to challenge the order of his disqualification which is open to judicial review. This submission of last resort made by Shri Nariman, was strongly opposed by Shri. R.K. Garg appearing for the appellant Church Alemao. On the other hand, Shri Ram Jethmalani appearing for the appellants in C.A. No.1094, not only did not oppose such a direction being given, but in his opening address itself suggested this as the equitable course to adopt. But for the stand taken on this aspect, there was no difference in the submissions of Shri Garg and Shri Jethmalani.

Both sides attempted to refer to the facts leading to the making of the orders of disqualification of the Members, and the merits thereof. However, we do not propose to advert to them, as we had indicated to the learned counsel at the hearing, since those aspects will have to be gone into, in the first instance by the High Court, on the view we are taking in these appeals and, therefore, we would like to avoid the likelihood of any possible prejudice to either side resulting from any reference made by us to the same. Accordingly, we are confining ourselves only to the facts and the arguments relating to the aforesaid two questions, which alone arise before us. We may add, that for the purpose of these appeals, it has been assumed by both sides that the Deputy Speaker functioning as the Speaker would have the powers of the Speaker under the Tenth Schedule including that of review, if any. The further question whether the Deputy Speaker, who discharging the functions of the Speaker, has all the powers of the Speaker under the Tenth Schedule is, therefore, undisputed for the present purpose.

We shall now consider the aforesaid two main questions which arise for decision in the present case. Any further question arising for decision, in case both these questions are answered in favour of the appellants, will be considered thereafter.

A *LACHES* -

The High Court has taken the view that the impugned orders of review having been made by the Acting Speaker on 7th and 8th March, 1991, the writ petitions challenging them filed on 7.1.1992, 8.1.1992 and B 10.2.1992 were highly belated and, therefore, liable to be dismissed merely on the ground of laches. It is for this reason that they were dismissed at the admission stage itself, sustaining the preliminary objection taken on this ground by Ravi S. Naik, Chopdekar and Bandekar, in whose favour the orders of review had been made. The High Court has referred to certain decisions of this Court for applying the doctrine of laches, and declined to C consider the merits of the main point raised in the writ petitions, that the Speaker does not have any power of review acting under the Tenth Schedule. The High Court has also held as untenable, the explanation given by the writ petitioners that uncertainty of the law settled only by the decision of this Court in *Kihoto Hollohan* (supra) rendered on 12th D November, 1991 was the reason for not filing those writ petitions earlier. Learned counsel for the appellants have assailed application of the doctrine of laches in the present situation, and also contended that if any explanation was needed for the intervening period, pendency of the question of constitutional validity of Tenth Schedule itself in this Court was sufficient to explain the period up to the date of the decision, and the writ E petitions were filed soon thereafter. It was also submitted by learned counsel for the appellants, that the continuance in office of disqualified persons, even now, provides recurring cause of action, since the continuance in office without lawful authority of these persons, one of whom is the Chief Minister of the State of Goa, is against public policy and good F administration. It was submitted, the Court cannot decline to examine the validity of the authority under which they continue to hold office. On this basis it was urged that the mere delay, if any, in challenging the legality of the authority under which these three persons continue to hold office, after being disqualified as Members of the Assembly, could not be a valid justification for the High Court to refuse to examine the main question of G existence of power of review in the Speaker acting under the Tenth Schedule, since the discretion of the High Court under Article 226 of the Constitution must be exercised judicially, so as not to permit perpetuation of an illegality. Shri Jethmalani also submitted, that the doctrine of laches does not apply where declaration sought is of nullity, in order to prevent H its continuing operation, and laches is not relevant in the domain of public

law relating to public office, where the purpose is to prevent an usurper from continuing to hold a public office. A

Shri Harish Salve adopted these arguments and further submitted that Dr. Kashinath Jalmi and Ramakant Khalap had consistently taken the stand, that the Speaker's order of disqualification is final and not open to review by anyone. He submitted, that for this reason no prevarication in their stand can be attributed to either of them, as has been done against Churchill Alemao, by the learned counsel for the respondents, for his support to Ravi Naik during the intervening period. It was further urged by the learned counsel for the appellants, that the motive and conduct of the writ petitioners in such matters is not decisive or fatal to the enquiry claimed in the writ petition, in as much as the relief claimed in the writ petition was not for personal benefit of the writ petitioner but for larger public interest and good governance of the State of Goa by persons holding public offices, including that of the Chief Minister, only by lawful authority. B C D

Both Shri F.S. Nariman and Shri Ashok Desai supported the Judgment of the High Court, and strenuously urged that the High Court in exercise of its discretionary power under Article 226 of the Constitution was justified in refusing to exercise that power at the behest of the writ petitioners who were disentitled to grant of the relief on account of their conduct and motive for filing the writ petition. It was submitted by them that the writ petitioners, namely, Churchill Alemao, Dr. Kashinath Jalmi and Ramakant Khalap are all persons who, at different times, were associated with Ravi S.Naik as Chief Minister and were also obtaining benefit from him, which conduct coupled with their motive of getting more political power to themselves, disentitled them from claiming the relief. Shri Nariman submitted that the doctrine of laches applies equally to a writ of *quo warranto,* as it does to a writ of certiorari. It was also submitted by learned counsel for the respondents that the explanation given for the delay in filing the writ petitions, challenging the orders of review made by the Acting Speaker, is facile and untenable It was submitted, that notwithstanding the pendency of the question of the validity of the Tenth Schedule in this Court, writ petitions were being filed challenging the orders made by the Speakers under the Tenth Schedule. It was submitted that all the writ petitioners, in view of their status in life, were fully aware that the Speaker's order of review could be challenged by a writ petition, even before the decision rendered by this Court on 12th November, 1991 E F G H

A in Kihota Hollohan. The main thrust of the argument of the counsel for the respondents was, that in these circumstances the High Court was justified in dismissing the writ petitions at the threshold in exercise of its discretionary power under Article 226 of the Constitution, and, therefore, the power under Article 136 of the Constitution also being discretionary, this Court would be justified in refusing to interfere with the discretion so B exercised by the High Court.

Having given our anxious consideration to the forceful submissions of learned counsel for the both sides, we find ourselves unable to sustain the judgment of the High Court that the writ petitions were liable to be C dismissed, merely on the ground of laches.

One of the submissions of Shri Nariman was, that even though there is no period of limitation prescribed by statute for filing a writ petition, yet in a case like the present, the apt analogy is of an election petition calling D in question an election, which is required to be filed within 45 days from the date of election of the returned candidate, as provided in Section 81(1) of the Representation of the People Act, 1951, to indicate that unless such a challenge is made promptly the courts would refuse to examine such a question after the lapse of a reasonable period. On this basis, he argued that a writ petition filed after ten months of the date of the order of review E made by the Speaker acting under the Tenth Schedule, must be treated as unduly delayed and is liable to rejection on the ground of laches, as has been done by the High Court in the present case. We are unable to accept this part of the submission since it is not an apt analogy.

F The remedy of an election petition is statutory, governed by the limitation prescribed therein, unlike the remedy under Article 226 of the Constitution. That apart, the analogy which is more apposite, is the decision on questions as to the dis-qualification of Members in accordance with Article 103 in the case of a Member of Parliament or Article 192 in the case of a Member of a House of a Legislature of a State. For raising G a dispute, giving rise to any question whether a Member of a House has become subject to any of the disqualification mentioned in clause (1) of Article 102 or 191, as the case may be, there is no prescribed limitation, and so also for challenging the decision rendered under Article 103 or 192 by a writ petition. The question of the disqualification of a Member on the H ground of defection and the Speaker's order thereon, rendered under the

Tenth Schedule, is of a similar nature and not based on the result of an election which can be challenged only by an election petition in accordance with the provisions of Representation of the People Act, 1951.

The decision by a constitution bench in *Brundaban Nayak* v. *Election Commission of India and another,* [1965] 3 SCR 53 indicates the significance of deciding the question of disqualification of a Member as soon as it arises, even at the instance of a citizen, since 'the whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status, and if any member forfeits that status by reason of a subsequent disqualification, it is in public interest,' ....., that the matter was decided.

There is no indication in *Brundaban Nayak,* that the delay in raising the question of disqualification provides justification for refusing to decide the same, and the emphasis really is on a prompt decision by the competent authority on the question being raised, since it is not the interest of the constituency which such a Member represents, to delay the decision. This decision is an indication that the authority competent to decide the question of disqualification must act promptly in deciding the same, once it is raised even by a citizen, in order to prevent a disqualified Member from representing the constituency after incurring a disqualification subsequent to his election, so long as the question remains a live issue during the tenure of the Member. This aspect is significant for dealing with the question of laches in the present case.

In order to justify dismissal of the writ petitions for laches Shri Nariman placed reliance on certain decisions, some of which have been referred by the High Court. Shri Nariman argued that the doctrine of laches applies as much to the writ of *quo warranto,* as it does to a writ of certiorari, and that the oblique motives of the petitioner together with his conduct may disentitled him to grant of the relief claimed by such a petition. We now refer to some of these decisions.

The basic decision for submission on the doctrine of laches, relied on, is *The Lindsay Petroleum Company* v. *Prosper Armstrong Hurd, Abram Farewell and John Kemp,* 1874 L.R. 5 PC 221 which has been followed in the decisions of this Court in *The Moon Mills Ltd.* v. *M.R. Meher, President, Industrial Court, Bombay and Ors.,* AIR 1967 SC 1450 and *Maharashtra State Road Transport Corporation* v. *Shri Balwant Regular Motor Service*

A *Amravati & Ors.*, [1969] 1 SCR 808. In *The Moon Mills Ltd.*, a writ of certiorari was sought to challenge a decision affecting the rights of the Petitioner, wherein the question arose whether the petitioner could be denied the relief on the ground of acquiescene or laches. In that context it was observed that the issue of a writ of certiorari is a matter of sound B discretion, and that 'the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party.' It was observed, that the exercise of discretion under Article 226 to issue a writ of certiorari is based on the principle to a great extent, though not identical with, similar to the exercise C of discretion in the Court of Chancery.' For this principle, involving the doctrine of laches in courts of equity, reference was made to the observation of Sir Barnes Peacock in *Lindsay Petroleum Co.* The decision was followed in, and the principle reitered in *Maharashtra State Road Transport Corporation* again in the context of the discretion under Art. 226 of the D Constitution to issue a writ of certiorari. Like all equitable principles, the doctrine of laches applies where it would be unjust to give a remedy to the petitioner, who is disentitled to grant of the same by his conduct or any other relevant circumstances, including the creation of third party rights during the intervening period, which are attributable to the laches of the petitioner.

E

Strong reliance was placed on the decision in *M/s Tilokchand & Motichand & Ors.* v. *H.B. Munshi & Anr.*, [1969] 1 SCC 110, wherein relief under Article 32 of the Constitution was refused on the ground of delay, to contend that if delay can be fatal under Article 32, itself a fundamental F right, it is more so in a petition under Article 226 of the Constitution, wherein grant of the relief is discretionary. The decision of this Court in *Shri Vallabh Glass Works Ltd. and Anr.* v. *Union of India and Ors.*, [1984] 3 SCC 362 and *M/s Dehri Rohtas Light Railway Company Ltd.* v. *District Board, Bhojpur and Ors.*, [1992] 2 SCC 598 were also cited on the point. In *Shri Vallabh Glass Words Ltd.*, a writ petition by way of alternative G remedy was filed after expiry of statutory period of limitation prescribed for filling suit for the same claim, and yet that alone was not held to be fatal taking the view that reasonableness of delay in filing the writ petition is to be assessed having regard to the facts and circumstances of the case, since grant of the relief under Article 226 of the Constitution is a matter H of sound judicial discretion and governed by the doctrine of laches.

In *M/s Dehri Rohtas Light Railway Company Limited, Tilokchand Motichand's* case was distinguished and it was indicated that 'the test is not to physical running of time' and 'the real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created.' A

It is significant that all these decisions relate to enforcement of personal rights, wherein a writ of certiorari was claimed for quashing some decision adverse to the petitioner and neither of them related to assertion of a public right in the nature of a class action. In the present case the claim is for the issue of a writ of *quo warranto* on the ground that Ravi S. Naik, Chopdekar and Bandekar are holding public office, having suffered disqualification as Member of the Assembly subsequent to their election, and of them, Ravi S. Naik continues to hold the high public office of Chief Minister of Goa. The relief claimed in the present case is not the conferment of a personal benefit to the petitioners, but for cessation of the usurpation of public offices held by these persons, if the contention of the petitioners be right that orders of review setting aside the earlier orders of disqualification made by the Speaker under the Tenth Schedule are nullity B C D

The decision of the Privy Council in the *Lindsay Petroleum Company* was followed by the House of Lords in *Emile Erlanger and Ors.* v. *The New Sombrero Phosphate Company and Ors.*, [1878] 3 Appeal Cases 1218 wherein reliance on the doctrine of laches by Courts of Equity for refusing relief where it would be practically unjust to grant the same, was reiterated. It was also reiterated that two circumstances always important in such cases are the length of the delay and the nature of the acts done during the interval, which might affect the justice of the cause. E F

Once again this principle was reiterated by the Privy Council in *Anachuna Nwakobi, The Osha of Obosi and Ors.* v. *Engene Nzekwu and Anr.*, [1964] 1 WLR 1019 quoting the same passage from *The Lindsay Petroleum Company.* G

None of these cases relate to the writ of *quo warranto* and in them the relief claimed was only for the personal benefit of the claimant. We are not persuaded to hold that on the basis of these decisions, some of which are referred by the High Court, the writ petitions in the present case could have been dismissed merely on the ground of laches of the petitioners. H

A We would now refer to the contention of Shri Nariman that this principle attracting the doctrine of laches equally applies to a writ of *Quo Warranto,* sought in the present case. For this purpose, Shri Nariman placed reliance on the decision in *Everett* v. *Griffiths,* [1924] 1 K.B. 941 at 959 in addition to Halsbury's *Law of England,* Fourth Edition, Reissue, B Volume 16, Para 926.

In Halsbury's *Law of England* the statement of law is based primarily on the decision of the Privy Council in *The Lindsay Petroleum Company* and those following it. We have already indicated the inapplicability of those decisions in the present case. At the same place one of the decisions C referred to, in foot note 3 of para 926, is *A.G.* v. *Proprietors of the Bradford Canal* (1866) LR 2 Equity Cases 71) for the proposition that "Laches is not imputable to the Crown or to the Attorney General suing on behalf of the public." In this decision distinction was drawn between the claim on behalf of the public and that by an individual plaintiff indicating that even though delay or laches may be attributable to an individual plaintiff, it may not be D so to an action brought on behalf of the public. This is more so, when the grievance made is that a person continues to hold a public office without the authority of law.

Shri Nariman laid great stress on *Everett* v. *Griffiths,* (1924) 1 K.B. E 941 at page 959 where it is stated:

> "It is plain, however, that in *quo warranto* proceedings the Court can and will inquire into the conduct and motives of the relator."

F Reference is made to a passage from Halsbury's *Laws of England* and some earlier decisions which have been referred for treating the point as well settled. These observations were made after examining the claim on merits, and in view of the fact that the plaintiff was known for his frequent persistent and fruitless litigation proceedings, having commenced primarily with the motive of resentment. In spite of these strong observations in the G judgment about the conduct and motive of the plaintiff the court did not refuse to go into the points raised, for that reason alone. In our opinion this decision can not persuade us to hold that the dismissal at the admission stage of the present petitions by the High Court, on the ground merely of laches can be sustained, when the alleged usurpation of the public offices, H including that of the Chief Minister of the State of Goa, continues.

Reference was made by Shri Nariman as well as Shri Ashok Desai to Rules 1 and 4 of Order 53 of the Rules of Supreme Court and Section 30 of the Supreme Court Act, 1981 (England) wherein limitation is prescribed for application for judicial review and delay in applying for relief is a ground for denying the relief, unless the Court considers that there is good reason for extending the period of making the application. It was urged that these provisions are substantially the same as the earlier English Practice according to which, as held in *Everett* v. *Griffiths* (supra) the order is not issued as of course, and the conduct and motives of the applicant may be enquired into. Reference was also made to *R.* v. *Stratford-on-Avon District Council and Anr., ex parte Jackson* (1985) 3 All ER 769 which was followed by the House of Lords in *Caswell and Another* v. *Dairy Produce Quota Tribual for England and Wales* [1990] 2 WLR 1320.

In our opinion, the position remains the same. Emphasis in these decisions is on public interest and good administration, and the jurisdiction of the Court to extend time in suitable cases for making such an application. In *Caswell,* the House of Lords took into account the larger public interest for the view that the interest of good administration required non-interference with the decision which was challenged after a lapse of a considerable time, since any interference at that stage, when third party interests had also arisen, would be detrimental to good administration.

In our opinion the exercise of discretion by the court even where the application is delayed, is to be governed by the objective of promoting public interest and good administration; and on that basis it cannot be said that discretion would not be exercised in favour of interference where it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality.

We may also advert to a related aspect. Learned counsel for the respondents were unable to dispute, that any other member of the public, to whom the oblique motives and conduct alleged against the appellants in the present case could not be attributed, could file such a writ petition even now for the same relief, since the alleged usurpation of the office is continuing, and this disability on the ground of oblique motives and conduct would not attach to him. This being so, the relief claimed by the appellants in their writ petitions filed in the High Court being in the nature of a class action, without seeking any relief personal to them, should not

A have been dismissed merely on the ground of laches. The motive or conduct of the appellants, as alleged by the respondents, in such a situation can be relevant only for denying them the costs even if their claim succeeds, but it cannot be a justification to refuse to examine the merits of the question raised therein, since that is a matter of public concern and relates to the good governance of the State itself.

B

Shri R.K. Garg submitted that laches of the appellants can not legitimise usurpation of office by Ravi S. Naik, Chopdekar and Bandekar; and Shri Jethmalani submitted that manifest illegality will not be sustained solely on the ground of laches when it results in continuance in a public C office of a person without lawful authority. The fact that the situation continues unaltered, since these persons continue to hold the public offices, to which they are alleged to be disentitled, is in our opinion sufficient to hold that the writ petitions ought not to have been dismissed merely on the ground of laches at the admission stage, without examining the contention on merits that these offices including that of the Chief Minister of the State, D are being held by persons without any lawful authority. The dismissal of the writ petitions by the High Court merely on this ground can not, therefore, be sustained.

The further question now is of the availability of power of review in E the Speaker under the Tenth Schedule.

POWER OF REVIEW

The challenge to the orders dated 7th and 8th March, 1991 made by the Acting Speaker under the purported exercise of power of review, F setting aside the earlier orders of the Speaker disqualifying Ravi S. Naik, Chopdekar and Bandekar under the Tenth Schedule, is made by the appellants on the ground that the Speaker does not have any power of review under the Tenth Schedule. It was stated in *Patel Narshi Thakershi and Ors.* v. *Pradyumansinghji Arjunsinghji,* AIR 1970 SC 1273, thus -

G

> "It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication."

This position is not disputed before us. Admittedly, there is no H express provision conferring the power of review on the Speaker in the

Tenth Schedule. The only question therefore, is whether the Speaker acting as the authority under the Tenth Schedule has the power of review by necessary implication, empowering him to set aside the earlier order of disqualification made by him on merits. A

On behalf of the appellants it was contended that such a power of review in the Speaker can not be implied from the provisions in the Tenth Schedule, and the only remedy available to the aggrieved Member is by judicial review of the order of disqualification. In reply it was contended on behalf of the respondents, that the power of review inheres in the Speaker under the Tenth Schedule, in view of the finality attaching to the order made under para 6 of the Tenth Schedule. It was submitted that this inherent power of review in the Speaker must be read in the Tenth Schedule, at least up to 12th November, 1991 when the Judgment in *Kihoto Hollohan* was rendered declaring the availability of judicial review against the Speaker's order of disqualification made under para 6 of the Tenth Schedule. It was further submitted by learned counsel for the respondents, that only a limited judicial review being available against the Speaker's order of disqualification, as held by the majority in *Kihoto Hollohan,* some power of review inheres in the Speaker even thereafter to correct palpable errors falling outside the limited scope of judicial review. It was then submitted, that the defects in the orders of disqualification made by the Speaker in the present case, which were corrected by review, were such defect which come within the ambit of the limited power of review available to the Speaker in addition to availability of judicial review as declared in *Kihoto Hollohan.* Both sides referred to the merits of the orders of disqualification made by the Speaker but we refrain from adverting to this aspect as indicated earlier, in view of the conclusion reached by us that the Speaker has no power of review under the Tenth Schedule, and an order of disqualification made by him under para 6 is subject to correction only by judicial review as held in *Kihoto Hollohan.* Accordingly, the alleged defects would require examination by judicial review in the writ petitions filed in the High Court challenging the orders of disqualification. B C D E F G

Shri Nariman contended that the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his otherwise plenary jurisdiction to decide the question of disqualification. He submitted that according to the majority in *Kihoto Hollohan* only 'limited scope of judicial review' is available, and, therefore, the power of review H

A inheres in the Speaker to review his own orders on grounds analogous to those in Order 47, Rule 1, Code of Civil Procedure. In support of this submission Shri Nariman placed reliance on the decisions in *Shivdeo Singh and Ors.* v. *State of Punjab and Ors.*, AIR 1963 SC 1909 and *Grindlays Bank Ltd.* v. *Central Government Industrial Tribunal and Ors.* [1981] 2 SCR 341.

B Another limb of Shri Nariman's submission is that the majority opinion in *Kihoto Hollohan* does not declare para 7 of the Tenth Schedule to be unconstitutional from the inception, and Article 13 having no application to a constitutional amendment, the existence of para 7 in the Tenth Schedule till the judgment was rendered in *Kihoto Hollohan* on 12th November, 1991 must be accepted, and the provisions in the Tenth

C Schedule, including para 7 therein, must be examined for determining the implied power of review in the Speaker till 12th November, 1991. On this basis, it was submitted that the finality declared in para 6 of the Tenth Schedule coupled with the ouster of judicial review in para 7 re-enforces existence of the implied power of review in the Speaker at least till 12th

D November, 1991, prior to which the impugned orders of review were made in the present case. A further submission made by Shri Nariman was that by virtue of para 6(2) read with para 8 of the Tenth Schedule, the general rules of procedure as well as Rule 7(7) of the Members of the Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 applied, under which the Speaker ordinarily has the power of review.

E In this connection, reference was made particularly to Rule 77 of the Rule of Procedure and Conduct of Business of the Goa Legislative Assembly, regarding breach of privilege which enables the Speaker to reconsider his earlier decision, and Rule 7(7) of the Members of the Goa Legislative Assembly (Disqualification on grounds of defection) Rules, 1986, relating

F to the procedure. It was submitted that these general rules relating to Speaker's power while dealing with a breach of privilege can be read to confer an express power of review.

The last limb of Shri Nariman's contention may be disposed of, at

G the outset. There is no scope for reading into the Tenth Schedule any of the powers of the Speaker which he otherwise has while functioning as the Speaking in the House, to clothe him with any such power in his capacity as the statutory authority functioning under the Tenth Schedule of the Constitution. This is well settled by the decisions of the Court relating to Speaker's orders under the Tenth Schedule. Accordingly, any power of the

H Speaker, available to him while functioning in the House, is not to be

treated as his power or privilege as the authority under the Tenth Schedule. A

The majority opinion in *Kihoto Hollohan* was pressed into service by Shri Nariman as well as Shri Ashok Desai to support several aspects of their submissions. We may now refer to that opinion.

B

In *Kihoto Hollohan* there was no difference between the majority and minority opinions on the nature of finality attaching to the Speaker's order of disqualification made under para 6 of the Tenth Schedule, and also that para 7 therein was unconstitutional in view of the non-compliance of the proviso to clause 2 of Article 368 of the Constitution, by which judicial review was sought to be excluded. The main difference in the two opinions C was, that according to the majority opinion this defect resulted in the constitution standing amended from the inception with insertion of the Tenth Schedule minus para 7 therein, while according to the minority the entire exercise of constitutional amendment was futile and an abortive attempt to amend the constitution, since Para 7 was not severable. Accord- D ing to the minority view, all decisions rendered by the several Speakers under the Tenth Schedule were, therefore, nullity and liable to be ignored. According to the majority view, para 7 of the Tenth Schedule being unconstitutional and severable, the Tenth Schedule minus para 7 was validly enacted and, therefore, the orders made by the Speaker under the Tenth Schedule were not nullity but subject to judicial review. On the basis E of the majority opinion, this Court has exercised the power of judicial review over the orders of disqualification made by the speakers from the very inception of the Tenth Schedule, and the exercise of judicial review has not been confined merely to the orders of disqualification made after 12th November, 1991 when the judgment in *Kihoto Hollohan* was rendered. F Venkatachaliah, J (as he then was) wrote the majority opinion and, thereafter, on this premise, exercised the power of judicial review over orders of disqualification made prior to 12.11.1991. The basic fallacy in the submission made on behalf of the respondents that para 7 must be treated as existing till 12th November, 1991 is that on that view there would be no power of judicial review against an order of disqualification made by the G Speaker prior to 12th November, 1991 since para 7 in express terms totally excludes judicial review.

Accepting the submission of learned counsel for the respondents that para 7 must be read in the Tenth Schedule till 12th November, 1991 when H

A the judgment in *Kihoto Hollohan* was rendered, for which submission they place reliance on the majority opinion in *Kihoto Hollohan,* would amount to taking a view contrary to the decision in *Kihoto Hollohan* itself, as indicated.

B At one stage, Shri Nariman also attempted to read the majority opinion in *Kihoto Hollohan* as not expressly declaring para 7 in the Tenth Schedule as unconstitutional, adding that such a declaration was made only in the minority opinion which declared the entire Tenth Schedule to be unconstitutional. We are unable to read the majority opinion in this manner. Any attempt to find support for the submissions of the responents, in C the majority opinion in *Kihoto Hollohan,* is futile.

The Constitution Bench decision in *Shivdeo Singh and Ors.* v. *State of Punjab and Ors.* (supra) is distinguishable and of no assistance to the respondents in the present case. That was a case, wherein the High Court D had exercised its power in a second writ petition filed under Article 226 of the Constitution by a person who was not made a party in the earlier writ petition, the order made in which was adverse to him. This court held that the second writ petition by such a person was maintainable, and the High Court had not acted without jurisdiction in reviewing its previous order at the instance of a person who was not a party to the previous writ proceed- E ings. That decision has no application in this situation.

Strong reliance was placed by Shri Nariman as well as Shri Ashok Desai on the decision of a two Judge bench in *Grindlays Bank Ltd.* It was submitted by learned counsel, that in the present case the defects in the F orders of disqualification fell in the first of the two categories mentioned at page 347 (SCR), to which extent there is inherent power of review in the Speaker. It may be mentioned that the decision in *Patel Narshi Thakershi & Ors.* v. *Pradyumansinghji Arjunsinghji,* AIR 1970 SC 1273 is referred and distinguished at page 347 SCR on the facts of that case. In that decision the question was, whether the Industrial Tribunal constituted under Section G 7A of the Industrial Disputes Act, 1947 had the power to set aside an exparte award made by it. It was held with the aid of Rule 24(b), Industrial Disputes (Central) Rules, 1957 that the Tribunal had the power of a civil court under Order XVII of the Code of Civil Procedure relating to grant of adjournments and therefore, as a necessary corollary the power under H Order IX, Rule 13 was attracted to enable the Tribunal to set aside an ex

parte award. In our opinion, the decision in *Grindlays Bank Ltd.*, wherein certain statutory rules attracted the power under Order XVII read with Order IX, Rule 13 of the Code of Civil Procedure in the Tribunal to set aside an ex parte award, is clearly distinguishable and is of no assistance in the present case.

The power of review which, it is suggested by counsel for the respondents, inheres in the Speaker by necessary implication has to be found in the provisions made in the Tenth Schedule alone, and not elsewhere. Para 7 has to be treated as non-existent in the Tenth Schedule from the very inception, as earlier indicated. As held by the majority in *Kihoto Hollohan*, judicial review is available against an order of disqualification made by the Speaker under para 6 of the Tenth Schedule, notwithstanding the finality mentioned therein. It is on account of the nature of finality attaching by virtue of para 6, that the judicial review available against the Speaker's order has been labelled as limited in para 110 (at page 711 of SCC) of the decision in *Kihoto Hollohan* [1992] Supp 2 SCC 651, and the expression has to be understood in that sense distinguished from the wide power in an appeal, and no more. As held in *Kihoto Hollohan*, the Speaker's order is final being subject only to judicial review, according to the settled parameters of the exercise of power of judicial review in such cases, which it is not necessary to elaborate in the present context. The existence of judicial review against the Speaker's order of disqualification made under para 6 is itself a strong indication to the contrary that there can be no inherent power of review in the Speaker, read in the Tenth Schedule by necessary implication. The need for correction of errors in the Speaker's order made under the Tenth Schedule is met by the availability of judicial review against the same, as held in *Kihoto Hollohan*.

In our opinion there is no merit in the submission that the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his jurisdiction to decide the question of disqualification; or that such a power existed till 12th November, 1991 when the decision in *Kihoto Hollohan* was rendered; or at least a limited power of review inheres in the Speaker to correct any palpable error outside the scope of judicial review.

CONSEQUENCE

On the above view taken by us, the orders dated 7th and 8th March, 1991 made by the Acting Speaker in purported exercise of the power of

A review are liable to be declared nullity and to be ignored, with the result that the order dated 13th December, 1990 disqualifying Chopedekar and Bandekar and dated 15th February, 1991 disqualifying Ravi S.Naik as Members of Goa Legislative Assembly would continue to operate.

Writ petition No.321 of 1990 filed by Chopdekar and Bandekar
B challenging the orders of their disqualification is pending in the High Court wherein an interim order staying the operation of their orders of disqualification is subsisting. Chopdekar and Bandekar can pursue that remedy to challenge their disqualification and no further order is required to be made by this Court for that purpose.

C

However, writ petition No.48 of 1991 which was filed in the High Court by Ravi S. Naik challenging his disqualification, wherein also an interim order was made staying the operation of the order of his disqualification, was not pressed by Ravi S.Naik after the order in purported exercise of power of review was made in his favour on 8th March, 1991
D and, therefore, that writ petition was dismissed as not pressed on 22.4.1991. The question is of the order, if any, required to be made by this Court in this situation.

Shri Ram Jethmalani appearing for the appellants in C.A. No.1094/92
E suggested that, in all fairness writ petition No.48 of 1991 should be revived in the High Court to enable Ravi S.Naik to pursue his remedy of seeking judicial review against his disqualification. On the other hand, Shri R.K. Garg, learned counsel for the appellant in Civil Appeal No.1096/92 opposed the making of such an order. Both the learned counsel, however. submitted that the interim order of stay made therein would not revive even
F if that writ petition is revived and the High Court will have to consider afresh the question of making an interim order, at the behest of Ravi S. Naik. On the other hand, Shri F.S. Nariman appearing for Ravi S. Naik in both these appeals submitted that it would be just in the circumstances of the case, to revive writ petition No.48 of 1991 for decision on merits by the
G High Court and the interim order of stay should also enure to the benefit of Ravi S. Naik during the pendency of the writ petition, more so when he is the Chief Minister of the State and refusal of stay would result in uncertainty in the State.

Having given our anxious consideration to the matter we have no
H doubt that the fact to Ravi S. Naik being the Chief Minister of the State

of Goa is a wholly irrelevant circumstance for this purpose. All the same an order which would be just and proper to make in the circumstances of this case has to be made, taking into account also the fact that the law was declared and came to be settled only by the decision of this Court in *Kihoto Hollohan*, after making of the orders of review by the Acting Speaker in the present case, where after writ petition No.48 of 1991 was dismissed as not pressed. We have no doubt that Article 142 of the Constitution enables us, if necessary, to enlarge the powers of this Court for making an order which would be just in the facts and circumstances of this case.

In our opinion, it would be appropriate to revive writ petition No.48 of 1991 for hearing on merit by the High Court as suggested even by Shri Ram Jethmalani, and to also order interim stay of the operation of the order of disqualification dated 15.2.1991 made by the Speaker, which was the situation prevailing till that writ petition was dismissed as not pressed. It is, however, necessary that writ petition No.48 of 1991 and also writ petition No.321 of 1990 should be heard and disposed of at the earliest, on account of their expediency.

RELIEF

Accordingly, we allow these appeals in the following manner :-

(1) The impugned orders of the High Court, dated 4.2.1992 dismissing writ petition No.11 of 1992; dated 24.2.1992 dismissing writ petition No.70 of 1992; and dated 4.2.1992 dismissing writ petition No.8 of 1992 are set aside;

(2) Writ petition Nos.11 of 1992, 70 of 1992 and 8 of 1992 are allowed declaring that orders dated 7.3.1992 and 8.3.1992 made by the Acting Speaker in purported exercise of power of review are nullity and liable to be ignored.

(3) Consequently, orders dated 13.12.1990 made by the Speaker disqualifying Ratnakar Chopdekar and Sanjay Bandekar continue to operate and writ petition No.321 of 1990 pending in the High Court has to be heard and decided on merits, in accordance with law;

(4) Similarly, order dated 15.2.1991 made by the Speaker disqualifying Ravi S. Naik continues to operate and writ petition No.48 of 1991 filed in the High Court by him is revived by setting aside the High Court's order

A dated 24.2.1991 dismissing that writ petition as not pressed. The High Court will proceed to decide that writ petition also on merits, in accordance with law;

(5) The interim order staying the order of disqualification in writ petition No.48 of 1991 is revived. However, the parties would be at liberty B to apply to the High Court for modification or cancellation of the said interim order or for any other interim relief or direction, if so advised;

(6) The High Court should hear and dispose of the writ petition No.48 of 1991 itself on merits as expeditiously as possible, preferably by 30th April, 1993;

C

(7) Writ Petition No.321 of 1990 filed by Ratnakar M. Chopdekar and Sanjay Bandekar pending in the High Court be also heard and disposed of as expeditiously as possible, preferably by 30th April, 1993.

(8) Parties are directed to appear at the Goa Bench of the Bombay D High Court on 6th April, 1993, without any further notice, for obtaining further directions in this behalf.

(9) In the circumstances of the case, the parties will bear their own costs.

T.N.A. Appeals allowed.