A DR. MAHACHANDRA PRASAD SINGH

v.

CHAIRMAN, BIHAR LEGISLATIVE COUNCIL AND ORS.

OCTOBER 27, 2004

B [R.C. LAHOTI, CJ., G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.]

Constitution of India, 1950—Tenth Schedule paragraph 2(1)(a) and Article 191 (2):

C *Bihar Legislative Council Members (Disqualification on ground of Defection) Rules, 1994—Rules 6 and 7:*

Disqualification on the ground of defection—Member of Legislative Council as candidate of one party—Subsequently, contesting parliamentary election as candidate of another party/independent candidate—Petition under the Rules—Disqualification from the membership of House by Chairman of the Council as having voluntarily given up membership of previous party—Copy of petition given to the member—Opportunity of personal hearing given but not availed by the member—Writ Petition—Plea of non-compliance of Rules and violation of principle of natural justice—Held: Member incurred disqualification under paragraph 2(1)(a) as he voluntarily gave up membership of his previous party—The Rules being directory in nature and being in the domain of procedure are intended to facilitate holding of inquiry and not to frustrate or obstruct the same by introduction of technicalities—Rules, being subordinate legislation and delegated legislation cannot have the effect of curtailing the content and scope of substantive provision i.e. Tenth Schedule—Hence petition cannot be rendered invalid affecting jurisdiction of Chairman on the ground of non-compliance of Rules—In the facts of the case principle of natural justice not violated—Administrative Law—Delegated Legislation.

Petitioner was elected as Member of Legislative Council (MLC) as a candidate of Congress party. Thereafter he contested parliamentary election as independent candidate. Secretary of the Legislative Council sent a letter to the petitioner that he had received information that he being a member of Congress party in the Council had contested parliamentary election as independent candidate and sought clarification from him. Thereafter a petition

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was given to the Chairman by a member of Legislative Council to the effect that in view of the above given facts petitioner had become disqualified for being a member of the House. The Secretary asked the petitioner to give reply to the petition. Copy of the petition was enclosed therewith. The Secretary twice afforded him opportunity for personal hearing, but the petitioner did not avail it. Chairman of the Council, thereafter passed the impugned judgment holding that the petitioner having contested parliamentary election as independent candidate being a member of the Legislative Council as a candidate of Congress party, had voluntarily given up his membership of the Congress party and therefore he was disqualified for being a member of the House in view of paragraph 2(1)(a) of the Tenth Schedule r/w Article 191(2) of the Constitution of India and the seat held by him in the House became vacant.

Petitioner filed Writ Petition under Article 32 of the Constitution. He contended that in absence of compliance of Rules 6 and 7 of Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994, the assumption of jurisdiction by the Chairman in initiating the proceedings was illegal; that there was violation of principles of natural justice as the material relied upon by the Chairman was not disclosed to the petitioner nor a proper opportunity of personal hearing was afforded to him; and that petitioner had not voluntarily given up membership of political party by contesting the parliamentary election as an independent candidate and, therefore, he had not incurred any disqualification within the meaning of Paragraph 2(1)(a) of the Tenth Schedule.

The other Writ Petitioner, a member of Legislative Council elected as a candidate of Congress Party had contested Parliamentary election as a candidate of Samajwadi Party. Petition for disqualification was filed and after giving him copy of petition and opportunity for personal hearing, Chairman of the Legislative Council held him disqualified for being member of the House under Paragraph 2(1)(a) of the Tenth Schedule r/w Article 191(2) of the Constitution.

Dismissing the Writ Petitions, the Court

HELD: 1.1. The petitioner has incurred the disqualification under Paragraph 2(1)(a) of Tenth Schedule of the Constitution of India and the decision of the Chairman is perfectly correct. In view of explanation (a) appended to sub-paragraph (1) of paragraph 2 of the Tenth Schedule, the

A petitioner shall be deemed to belong to Indian National Congress Party by which he was set up as a candidate for contesting the election for member of Legislative Council in the year 1998. By contesting the parliamentary election as an independent candidate, he voluntarily gave up the membership of the Congress Party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has B voluntarily given up his membership of the political party to which he belongs. [704-A-G]

1.2. Bihar Legislative Council Members (Disqualification on Ground of Defection) Rules, 1994 being delegated legislation are subject to certain C 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 D 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 E operation of the enactment but is strictly ancillary. It will authorize 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. The aforesaid principle will apply with greater rigour F 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. [707-C-G]

G 1.3. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rules being in the domain of procedure, are intended to facilitate the H holding of inquiry and not to frustrate or obstruct the same by 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. There is no provision in the Tenth schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. [709-B-E] A B

1.4. There is no *lis* between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth Schedule. The object of Rule 6 is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered *ultra vires*. [709-F-G; 710-A] C D E

1.5. Provisions of Rules 6 and 7 are directory in nature and on account of non-filing of an affidavit as required by sub-rule (4) of Order VI Rule 15 CPC, the petition would not be rendered invalid nor the assumption of jurisdiction by the Chairman on its basis would be adversely effected or rendered bad in any manner. [710-E-F] F

Ravi S. Naik v. *Union of India,* [1994] Supp. 2 SCC 641, relied on.

1.6. The Chairman of the Bihar Legislative Council had afforded ample opportunity of personal hearing to the petitioner but he himself did not avail of it. Regarding the complaint of non-supply of the copy of the letter sent by leader of Indian National Congress in Bihar Legislative Council, whereby he had informed that the petitioner had ceased to be a member of Indian National Congress for violating the party discipline is concerned, the only relevant fact stated therein is that the petitioner had been elected as a member of the G H

Bihar Legislative Council on a Congress ticket but he had contested the parliamentary election as an independent candidate. These facts have never been disputed by the petitioner in his replies, which he submitted before the Chairman of the Legislative Council and have also been admitted in the present Writ Petition. Therefore, the non-supply of copy of the letter of the leader of the Congress Legislative Party has no bearing at all as no prejudice can be said to have been caused to the petitioner and consequently in the facts of the present case, no principle of natural justice can be said to have been violated. [712-E-G]

2. In the second Writ Petition, petitioner had admitted that he had been elected as member of the Legislative Council in the year 1998 as a candidate of the Indian National Congress party and that he filed his nomination papers for contesting the parliamentary election held in May 2004 as a candidate of Samajwadi Party. This factual position was not disputed by the petitioner in the replies given by him to the Chairman of the House. In such circumstances, there cannot be even a slightest doubt that the petitioner has voluntarily given up his membership of the Indian National Congress party. No exception can, therefore, be taken to the decision taken by the Chairman of the House that the petitioner has incurred the disqualification for being a member of the House under paragraph 2(1)(a) of the Tenth Schedule and Article 191(2) of the Constitution and the seat held by him had fallen vacant. [714-B-D]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 322 of 2004.

(Under Article 32 of the Constitution of India.)

WITH

W.P. (C) No. 370 of 2004.

P.S. Mishra, S.Chandra Shekhar, Upendra Mishra, Tathagat H. Vardhan, Amitesh Chandra Mishra, Dhruv Kr. Jha, Ms. Renuka Sharma and Ms. T. Swarupa Reddy with him for the Petitioner.

Dipankar P. Gupta, Navin Prakash, Anurag Sharma and Rituraj Biswas with him for the Respondent.

The Judgment of the Court was delivered by

G. P. MATHUR, J. 1. This petition, under Article 32 of the Constitution, has been filed for quashing the order dated 26th June, 2004 of Chairman of Bihar Legislative Council holding that the petitioner is disqualified for being a member of the House under paragraph 2(1)(a) of the Tenth Schedule read

with Article 191(2) of the Constitution and consequently the seat held by him in the Bihar Legislative Council had fallen vacant from the said date. A

2. The petitioner was elected as a member of the Bihar Legislative Council (MLC) from Tirhut Graduate Constituency as a candidate of Indian National Congress. The notification for holding elections to Fourteenth Lok Sabha was issued in March, 2001. The petitioner contested the said election B from Maharajganj Parliamentary Constituency as an independent candidate. Shri Salman Rageev, a member of Bihar Legislative Council, sent a petition to the Chairman of the Legislative Council on 10th June, 2004 stating, *inter alia*, that the petitioner, who was a member of the Congress Party, had contested the parliamentary election from Maharajganj Constituency as an independent C candidate and consequently in view of the provisions of the Tenth Schedule to the Constitution he had become disqualified for being a member of the House. The petitioner was asked to submit his explanation vide letter dated 12th June, 2004 of the Secretary of the Council. After considering the explanation offered by the petitioner, the Chairman of the Legislative Council passed the impugned order dated 26th June, 2004 holding that the petitioner D had contested the election for Bihar Legislative Council in the year 1998 as a candidate of the Congress Party and was a member of the said political party and that he had contested the Lok Sabha Election, 2004, as an independent candidate, and thus he had voluntarily given up his membership of the Congress party and, therefore, he was disqualified for being a member of the E House in view of paragraph 2(1)(a) of the Tenth Schedule read with Article 191 (2) of the Constitution and the seat held by him in the House has become vacant.

3. Shri P.S. Mishra, learned senior counsel, has raised three contentions in assailing the order dated 26th June, 2004 passed by the Chairman, Bihar F Legislative Council. The first submission is that in absence of compliance of Rules 6 and 7 of the Bihar Legislative Council Members (Disqualification on ground of Defection) Rules, 1994, the assumption of jurisdiction by the Chairman in initiating the proceedings, whereunder the petitioner was held to be disqualified for being a member of the House, was illegal. The second submission is that there was violation of principles of natural justice as the G material relied upon by the Chairman was not disclosed to the petitioner nor a proper opportunity of personal hearing was afforded to him. The third and the last submission is that the petitioner had not voluntarily given up membership of a political party by contesting the Lok Sabha Election as an independent candidate and, therefore, he had not incurred any disqualification H

A within the meaning of paragraph 2(1)(a) of the Tenth Schedule.

4. Before examining the contentions raised by the learned counsel for the petitioner, it is necessary to look to the historical background in which the Tenth Schedule was added to the Constitution. On 8th December, 1967 the Lok Sabha passed a unanimous resolution constituting a Committee to B consider in all its aspects the problem of legislators changing their allegiance from one party to another and their frequent crossing of the Floor and make recommendations in this regard. This Committee known as "Committee on Defections" in its report dated 7th January, 1969 highlighted the alarming rise in change of party allegiance by legislators. Compared to roughly 545 cases C in the entire period between the First and Fourth General Elections, at least 438 defections occurred in a short period between March 1967 and February, 1968. Among independents, 157 out of a total of 376 elected joined various parties in this period. Out of 210 defecting legislators of the States of Bihar, Haryana, M.P., Punjab, Rajasthan, U.P. and West Bengal, 116 were included in the Council of Ministers which they helped to bring into being by defections. D The Committee noted multiple acts of defections by the same person or set of persons and the belief held by the people and expressed in the press that corruption and bribery were behind some of these defections. (See *Kihoto Hollohan* v. *Zachillhu and Ors.*, [1992] Supp. 2 SCC 651 paras 5 and 6).

E 5. Keeping in view the recommendations of the Committee on Defections several Bills were introduced for amending the Constitution, but they lapsed. Finally, a Bill which was enacted into Constitution (Fifty-second Amendment) Act, 1985 was passed by which Tenth Schedule was added with effect from 1.3.1985. The Statement of Objects and Reasons appended to the Bill read as under :

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> 1. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in G the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.
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> 2. The Bill seeks to amend the Constitution to provide that an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated H

member of Parliament or a State Legislature who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also makes suitable provisions with respect to splits in, and mergers of, political parties. A special provision has been included in the Bill to enable a person who has been elected as the presiding officer of a House to sever his connections with his political party. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House; where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

3. The Bill seeks to achieve the above objects.

The provisions of the Tenth Schedule to the Constitution which are relevant for the decision of the present case are being reproduced below :

1. *Interpretation.* In this Schedule, unless the context otherwise requires, -

(a) 'House' means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) 'legislative party', in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

A (c) 'original political party', in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(d) 'paragraph' means a paragraph of this Schedule.

B 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 C party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political D 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, -

E (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) (Omitted as not relevant)

F (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) .....(Omitted as not relevant)

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(4) .....(Omitted as not relevant)

6. *Decision on questions as to disqualification on ground of defection*—(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the

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question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final; A

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final. B

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212. C

7. *Bar of jurisdiction of courts.*—Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule. D

6. The underlying object and the purpose which the Tenth Schedule seeks to achieve were explained as under in *Kihoto Hollohan* (supra) and it will be useful to keep them in mind while interpreting its provisions : E

"Para 13 : These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election." F G

7. Paragraph 2 of the Tenth Schedule lays down the contingencies under which a member of the House belonging to any political party shall be H

A disqualified for being a member of the House and they are enumerated in sub-paras (1), (2) and (3). Sub-para (2) deals with a situation where a member of the House elected as an independent candidate joins any political party after such election and sub-para (3) deals with a situation where a nominated member of the House joins any political party after the expiry of six months from the date on which he takes a seat. Sub-para (1) deals with a situation B where a member of a House belonging to any political party voluntarily gives up his membership of such political party. It also deals with a situation where he votes or abstains from voting in the House, contrary to any direction issued by the political party to which he belongs, without obtaining prior permission of such political party and such voting or abstention has not been C condoned by such political party within fifteen days from the said voting or abstention. The scrutiny of the provisions of sub-para (2) would show that a member of a House belonging to any political party becomes disqualified for being a member of the House if he does some positive act which may be either voluntarily giving up his membership of the political party to which he belongs or voting or abstention from voting contrary to any direction issued D by the political party to which he belongs and in the case of an independent or nominated member on his joining a political party. On the plain language of paragraph 2, the disqualification comes into force or becomes effective on the happening of the event. Paragraph 4 is in the nature of an exception to paragraph 2 and provides for certain contingencies when the rule of E disqualification will not apply in the case of merger of political parties. Paragraph 6 says that where any question arises as to whether a member of the House has become subject to disqualification under the Schedule, the same shall be referred for the decision of the Chairman or, as the case may be, the Speaker of the House and his decision shall be final. Therefore, the final authority to take a decision on the question of disqualification of a F member of the House vests with the Chairman or the Speaker of the House. It is to be noted that the Tenth Schedule does not confer any discretion on the Chairman or Speaker of the House. Their role is only in the domain of ascertaining the relevant facts. Once the facts gathered or placed show that a member of the House has done any such act which comes within the G purview of sub-paragraph (1), (2) or (3) of Paragraph 2 of the Tenth Schedule, the disqualification will apply and the Chairman or the Speaker of the House will have to make a decision to that effect.

8. Paragraph 6 of Tenth Schedule attaches finality to the decision of the Chairman or the Speaker of the House on a question as to whether a H member of a House has become subject to disqualification under the Schedule.

Paragraph 7 excludes the jurisdiction of the Court in respect of any matter connected with disqualification of a member of a House under the Schedule. as it says that notwithstanding anything in the Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of House under this Schedule. This provision being in the Constitution itself, unlike a statutory provision, it effects the power of judicial review of the High Court and Supreme Court under Articles 226, 227 and 136 of the Constitution. Further, in view of the provision contained in sub-paragraph (2) of paragraph 6 the proceedings in relation to disqualification of a member of the House shall be deemed to be proceedings in Parliament within the meaning of Article 122 or in the Legislature of a State within the meaning of Article 212, as the case may be. These are identical provisions which provide that validity of any proceedings in Parliament or Legislature shall not be called in question on the ground of any alleged irregularity in procedure. The vires of Tenth Schedule was challenged on several grounds including the ground that the power of judicial review being part of the basic structure of the Constitution, cannot be taken away by a constitutional amendment. The issue was considered by a Constitution Bench in *Kihoto Hollohan* v. *Zachillhu and Ors.*, [1992] Supp 2 SCC 651, where Venkatachaliah, J. speaking for the majority held as under in para 111 of the reports :

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

That the Tenth Schedule does not, in providing for an additional ground, for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

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

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 112(1) and 212(1) of the Constitution as understood and explained in *Keshav Singh*

A case (AIR 1965 SC 745) to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words 'be deemed to be proceedings in Parliament' or 'proceedings in the legislature of a State' confines the scope of the fiction accordingly."

B 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.

C 9. The question as to when a member of a House belonging to a political party can be said to have given up his membership of such political party has been considered in two later decisions of this Court. In *Ravi S. Naik* v. *Union of India,* [1994] Supp. 2 SCC 641 two M.L.A.s, Bandekar and Chopdekar, had been elected on the ticket of MGP party, but they accompanied D the leader of Congress (I) Legislative Party when he met the Governor to show that he had the support of 20 MLAs. On this conduct alone, the Speaker held that they had given up membership of the MGP party and disqualified them for being a member of the House. The decision of the Speaker under which he held that the two MLAs shall be disqualified for being a member of the House under paragraph 2(1)(a) of the Schedule was E upheld by this Court. The scope and amplitude of paragraph 2(1)(a) was explained as under in para 11 of the reports :

> "11.....The said paragraph provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given F up his membership of such political party". The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn G from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs".

10. In *G. Viswanathan and Ors.* v. *Hon'ble Speaker Tamil Nadu Legislative Assembly and Ors.,* [1996] 2 SCC 353 the appellants had been elected as members of the Legislative Assembly in 1991 as candidates of H

AIDMK party but they were expelled from the said party on 8th January, 1994. The Speaker declared them as unattached members of the Assembly on 16th March, 1994. Sometime thereafter, an MLA informed the Speaker that the appellants had joined MDMK party and, therefore, they should be disqualified from membership of the Assembly. After calling for their explanation the Speaker held that they had incurred the disqualification under paragraph 2(1)(a) of the Tenth Schedule and had ceased to be members of the Assembly. The main contention raised on behalf of the appellants was that paragraph 2(1)(a) of the Tenth Schedule comes into play only to disqualify a member who voluntarily gives up his membership of that political party that had set him up as a candidate, and not when he is expelled from the party and declared "unattached" i.e. not belonging to any political party. It was further contended that para 2(a) will apply only when a member himself of his own volition gives up his membership of the party. Any member thrown out will cease to be a member of the party that had set him up as a candidate and if he joins another party thereafter, it will not be a case of "voluntary giving up his membership of the political party" that had set him up as a candidate for the election. It was held that if the contention urged on behalf of the appellants is accepted, it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief, namely, breach of faith of the electorate. The principle on which such a view was taken was explained as under in para 11 of the reports :

> "11. It appears that since the explanation to para 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person "voluntarily give up" his membership of such political party, as provided in para 2(1)(a)? The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate

for election as such member."

11. In the present case, the Chairman of the Legislative Council has held that the petitioner had been elected to the Legislative Council on the ticket of the Indian National Congress but he contested the parliamentary election as an independent candidate. On these facts a conclusion has been drawn that he has given up his membership of Indian National Congress. This being a matter of record, the petitioner could not possibly dispute them, and that is why he has admitted these facts in the writ petition as well. In such a situation there can be no escape from the conclusion that the petitioner has incurred the disqualification under paragraph 2(1)(a) of the Schedule and the decision of the Chairman is perfectly correct.

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.
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> (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.
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> (2) .....
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> (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.

14. Shri Mishra has submitted that as provided in sub-rule (6) of Rule 6 of the Rules, the petition filed by Shri Salman Rageev had to be signed and verified in the manner laid down in the Code of Civil Procedure (for short 'CPC') for verification of pleadings and, therefore, in terms of sub-rule (4) of Order VI Rule 15 CPC an affidavit in support of the petition had to the filed.

A Since the requisite affidavit had not been filed, the requirement of the Rule had not been complied with, and the petition was liable to be dismissed in view of sub-rule (2) of Rule 7 of the Rules. The Chairman of the House had, therefore, no authority or jurisdiction to initiate any proceedings or to hold that the petitioner had become disqualified for being a member of the House. The question which requires consideration is whether the provisions of Rules
B 6 and 7 are so mandatory in nature that even a slight infraction of the Rules would render the entire proceedings initiated by the Chairman invalid, or without jurisdiction.

15. It may be noticed that the nature and degree of inquiry required to
C be conducted for various contingencies contemplated by paragraph 2 of Tenth Schedule may be different. So far as clause (a) of paragraph 2 (1) is concerned, the inquiry would be a limited one, namely as to whether a member of the House belonging to any political party has voluntarily given up his membership of such political party. The inquiry required for the purpose of clause (b) of paragraph 2(1) may, at times, be more elaborate. For attracting
D clause (b) it is necessary that the member of the House (i) either votes or abstains from voting (ii) contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf; (iii) without obtaining the prior permission of such political party, person or authority; and (iv) such voting or abstention has not been condoned
E by such political party, person or authority within fifteen days from the date of such voting or abstention. Therefore, for the purpose of clause (b), inquiry into several factual aspects has to be conducted. It may be noticed that clause (b) does not say that the prior permission has to be in writing and, therefore, it can be oral as well. Similarly, the manner in which condonation has to be expressed has not been indicated. Therefore, for holding that a
F member of a House has incurred a disqualification under Clause (b) of paragraph 2(1) findings on several aspects will necessarily have to be recorded. Similarly, for application of paragraph 4, inquiry has to be made whether the original political party merged with another political party, whether the member of the House has become member of such other political party or, as the case
G may be, of a new political party formed by such merger or whether he has not accepted the merger and opted to function as a separate group.

16. Sub-rule (1) of Rule 6 says that 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
H in accordance with the provisions of the said Rule and sub-rule (6) of the

same Rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The heading of Rule 7 is 'PROCEDURE". Sub-rule (1) of this Rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said Rule and sub-rule (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rule being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by 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. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no *lis* between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, *viz.* the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2,

A B C D E F G H

A would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered *ultra vires.*

B 17. The petition filed by Shri Salman Rageev was signed and verified in the following manner :

> "All the facts stated in this petition are true and correct to my knowledge and belief and no part of it is false.
>
> C Sd
>
> (Salman Rageev)
> M.L.C.
> 10.06.2004"

D "18.....There cannot be any dispute that sub-rules (1), (2) and (3) of Order VI Rule 15 CPC were complied with. Learned counsel for the petitioner has, however, laid great emphasis on the fact that Shri Salman Rageev had not filed any affidavit in support of his petition and consequently the provisions of sub-rule (4) of Order VI Rule 15 CPC which provides that the person verifying the pleadings shall also E furnish an affidavit in support of his pleadings were not complied with. For the reasons stated earlier, we are of the opinion that the provisions of Rules 6 and 7 are directory in nature and on account of non-filing of an affidavit as required by sub-rule (4) of Order VI Rule 15 CPC, the petition would not be rendered invalid nor the assumption of jurisdiction by the Chairman on its basis would be F adversely effected or rendered bad in any manner. A similar contention was raised before a Bench presided by Venkatachaliah, C.J. in *Ravi S. Naik* v. *Union of India,* [1994] Supp. 2 SCC 641, but was repelled. The relevant portion of para 18 of the reports is being reproduced below

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> "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 H 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 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."

19. Shri Mishra has next submitted that the Chairman of the Bihar Legislative Council did not afford an opportunity of personal hearing to the petitioner and he also relied upon certain material, copy of which was not furnished to the petitioner and consequently the rules of natural justice have been violated. We do not find any substance in the contention raised. Initially, the Secretary of the Bihar Legislative Council sent a letter dated 19th May, 2004 to the petitioner stating that the petitioner had contested the election for Bihar Legislative Council as a candidate of Indian National Congress and that information had been received that he had contested the Parliamentary Election, 2004 as an independent candidate. Attention of the petitioner was invited to Article 191 (2) and Tenth Schedule to the Constitution of India and he was asked to submit his clarification within seven days. The petitioner gave a reply to this letter on 25th May, 2004 wherein he requested to supply him a photocopy of the information received by the Secretariat of Bihar Legislative Council and prayed for 15 days' time to explain his position after obtaining advice from legal experts. Thereafter, Shri Salman Rageev gave a petition to the Chairman on 10th June, 2004, details of which have already been given earlier. In pursuance of this petition, the Secretary of the Bihar Legislative Council sent a letter dated 12th June, 2004 to the petitioner stating

A the relevant facts and asking him to submit his written reply to the Chairman of the Council within one week. The copy of the petition submitted by Shri Salman Rageev was enclosed. The petitioner gave a reply to this petition on 18th June, 2004, wherein he only raised objection about the maintainability of the petition alleging non-compliance of sub-rule (6) of Rule 6 of the Rules and prayed for its dismissal under sub-rule (2) of Rule 7 of the Rules. He also B prayed for opportunity of personal hearing on the aforesaid points. He sent another letter to the Secretary of the Legislative Council on 19th June, 2004, wherein he reiterated the same grounds. A communication was then sent by the Secretary on 19th June, 2004 informing the petitioner that he should appear in the office of the Chairman at 1.30 p.m. on 22nd June, 2004 for a C personal hearing. The petitioner then addressed a letter to the Secretary on 22nd June, 2004, wherein he again pressed for rejection of the petition under sub-rule (2) of Rule 7 of the Rules and also sought 15 days' time in order to obtain advice from legal experts. A reply was then sent by the Secretary on 22nd June, 2004 informing him that the Chairman had fixed 1.30 p.m. on 25th June, 2004 for personal hearing and he should appear in his office at the said D time. On 25th June, 2004, the petitioner sent a letter to the Secretary that he had fallen sick and prayed for 10 days' further time. The facts stated above would show that the Chairman of the Bihar Legislative Council had afforded ample opportunity of personal hearing to the petitioner but he himself did not avail of it. Regarding the complaint of non-supply of the copy of the letter E sent by Prof. Arun Kumar, leader of Indian National Congress in Bihar Legislative Council, whereby he had informed that the petitioner Shri Mahachandra Prasad Singh had ceased to be a member of Indian National Congress for violating the party discipline is concerned, the only relevant fact stated therein is that the petitioner had been elected as a member of the Bihar Legislative Council on a Congress ticket but he had contested the parliamentary F election as an independent candidate. These facts have never been disputed by the petitioner in his replies, which he submitted before the Chairman of the Legislative Council and have also been admitted in paragraphs 5 and 7 in the present writ petition. Therefore, the non-supply of copy of the letter of the leader of the Congress Legislative Party has no bearing at all as no G prejudice can be said to have been caused to the petitioner and consequently in the facts of the present case, no principle of natural justice can be said to have been violated.

20. The third submission of Shri Mishra has hardly any substance. In view of explanation (a) appended to sub-paragraph (1) of paragraph 2 of the H Tenth Schedule, the petitioner shall be deemed to belong to Indian National

Congress Party by which he was set up as a candidate for contesting the election for member of Legislative Council in the year 1998. By contesting the parliamentary election as an independent candidate, he voluntarily gave up the membership of the Congress Party. In *G. Viswanathan and Ors.* v. *Hon'ble Speaker Tamil Nadu Legislative Assembly and Ors.*, (supra), the Bench quoted with approval the observations made in *Ravi S. Naik* v. *Union of India,* (supra) in para 11 of the reports that even in the absence of a formal resignation from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which be belongs. On the facts of the present case, it cannot be said that the finding arrived at by the Chairman of the Legislative Council that the petitioner gave up the membership of the Indian National Congress Party to which he belonged is one which could not reasonably and possibly have been arrived at.

21. For the reasons discussed above, there is no merit in the writ petition and the same is hereby dismissed with costs.

CIVIL WRIT PETITION NO. 370 OF 2004

Shiva Nandan Prasad Singh .....Petitioner

v.

Hon. Chairman, Bihar Legislative Council and Ors. ... Respondents

1. The petitioner was elected as member of Bihar Legislative Council as a candidate of Indian National Congress Party in 1998. He filed his nomination papers for contesting the parliamentary election held in May, 2004 as a candidate of Samajwadi party. The Secretary of the Legislative Council sent a letter dated 19th May, 2004 asking the petitioner to clarify his position. On 12th June, 2004, another letter was sent to him asking him to submit his explanation on the basis of a petition filed by Shri Salman Rageev on 10th June, 2004. The letter was accompanied by the copy of the petition. The petitioner gave a reply on 18th June, 2004 raising objection regarding non-compliance of Rules 6 and 7(2) of the Rules. The Chairman fixed 22nd June, 2004 for personal hearing, on which date the petitioner appeared and made request for some more time, on which 25th June, 2004 was fixed. Thereafter, the Chairman passed the impugned order dated 26th June, 2004 holding that the petitioner is disqualified for being a member of the House under paragraph 2(1)(a) of the Tenth Schedule and Article 191(2) of the Constitution and the

A seat held by him in the Council had become vacant.

2. No new point has been urged by Shri P.S. Mishra in the present case. It is admitted in paras 4 and 6 of the writ petition that the petitioner had been elected as member of the Legislative Council in the year 1998 as a candidate of the Indian National Congress party and that he filed his B nomination papers for contesting the parliamentary election held in May 2004 as a candidate of Samajwadi Party. This factual position was not disputed by the petitioner in the replies given by him to the Chairman of the House. In such circumstances, there cannot be even a slightest doubt that the petitioner has voluntarily given up his membership of the Indian National C Congress party. No exception can, therefore, be taken to the decision taken by the Chairman of the House that the petitioner has incurred the disqualification for being a member of the House under paragraph 2(1)(a) of the Tenth Schedule and Article 191(2) of the Constitution and the seat held by him had fallen vacant.

D 3. The writ petition lacks merit and is dismissed with costs.

K.K.T. Writ Petitions dismissed.