

RAM CHANDRA PRASAD SINGH

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v.

SHARAD YADAV

(Civil Appeal No. 2004 of 2020)

MARCH 19, 2020

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**[ASHOK BHUSHAN AND M. R. SHAH, JJ.]**

*Constitution of India: Art.226 — Tenth schedule; Paragraph 6 – Respondent no.1 was elected as Member of Parliament (Rajya Sabha) on JD(U) ticket – Appellant, Member of Parliament (Rajya Sabha) and leader of JD(U) in Rajya Sabha filed a petition under Art.102(2) read with Paragraph 6 of the Tenth Schedule of the Constitution of India praying that respondent no.1 be disqualified under the Tenth Schedule and his seat be declared vacant in Rajya Sabha – Allegation was that respondent no.1 who was elected to Rajya Sabha on the ticket of JD(U), by his repeated conduct, public/press statements against JD(U) and its leadership and openly aligning with rival political party (RJD), voluntarily gave up his membership thus acquiring disqualification under the Tenth Schedule to the Constitution – The Chairman, Rajya Sabha after following the due procedure and after giving opportunity of hearing passed an order disqualifying the respondent as a member of the House in terms of paragraph 2(1)(a) of the Tenth Schedule of the Constitution – Aggrieved respondent filed writ petition before High Court – In the said writ petition, appellant filed application praying for seeking permission to place additional documents to demonstrate some purported post disqualification conduct of respondent which was denied by the respondent – High Court by impugned order dismissed application holding that the scope of writ petition is limited to examining the legality of the order passed by Chairperson disqualifying the respondent from being a member of the Rajya Sabha and any event subsequent to passing of the said order cannot be a consideration for High Court to test the legality of the said order – Impugned order challenged in the instant appeal – Held: In the instant case, the Chairman passed the order on 04.12.2017 on the application filed on 02.09.2017 by the appellant seeking disqualification of the respondent – The order*

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- A *passed by the Chairman was based on a petition dated 02.09.2017 as well as the material and evidence, which was brought on record before the Chairman – On 7.7.2019, appellant filed application for seeking permission to place additional documents – Additional evidence sought to be brought on record of the writ petition was*
- B *not the basis for seeking disqualification of the respondent, thus, there was no error in the order of the High Court rejecting the application – The order of the High Court is upheld, however, subject to observations that where subsequent event or conduct of member is relevant with respect to state of affairs as pertaining to the time when member has incurred disqualification, that*
- C *subsequent events can be taken into consideration by the High Court in exercise of its jurisdiction u/Art.226 – Thus, the observations made in paragraph 4 need not to be read as laying down a law that in any case subsequent event cannot be considered for testing the legality of the order impugned or for moulding the*
- D *relief in a writ petition u/Art.226.*

**Dismissing the appeal, the Court**

- HELD: 1. The facts and sequence of the events on the basis of which the Chairman came to the conclusion that a person has incurred disqualification under paragraph 2(1) (a) of the**
- E **Tenth Schedule are all facts, which had occurred prior to adjudication by the Chairman. The application which was filed by the appellant seeking disqualification of the respondent was filed on 02.09.2017 in which application, the foundation of disqualification of respondent was already laid down. The order**
- F **passed by the Chairman was based on a petition dated 02.09.2017 as well as the material and evidence, which was brought on record before the Chairman. Additional evidence sought to be brought on record of the writ petition was not the basis for seeking disqualification of the respondent, hence, there is no error in the order of the High Court rejecting the**
- G **application. [Paras 12, 14] [1071-C-D; 1072-B-D]**

- Rajendra Singh Rana and Others v. Swami Prasad Maurya and Others (2007) 4 SCC 270 : [2007] 2 SCR 591 ; Shrimanth Balasaheb Patil v. Hon'ble Speaker Karnataka Legislative Assembly and Others (2019) 15*
- H **SCALE 533 – followed.**

*Ravi S. Naik v. Union of India and Others* (1994) 2 Suppl. SCC 641 : [1994] 1 SCR 754 – relied on. A

2. The observations made by the High Court in paragraph 4, i.e., “any event subsequent to the passing of the said order cannot be a consideration for this Court to test the legality of the said order” may be generally correct but there can be exception if the above statement is treated as statement of law. In a writ petition under Article 226 subsequent events can be taken note of for varied purposes. The observations made in paragraph 4 need not to be read as laying down a law that in any case subsequent event cannot be considered for testing the legality of the order impugned or for moulding the relief in a writ petition under Article 226. The order of the High Court is upheld subject to observations. [Paras 16-19] [1072-H; 1073-A-B-H; 1074-A] B C

*Mohd. Ikram Hussain v. State of Uttar Pradesh and Others* AIR 1964 SC 1625 : [1964] SCR 86 ; *Pasupuleti Venkateswarlu v. The Motor & General Traders* (1975) 1 SCC 770 : [1975] 3 SCR 958 – relied on. D

#### Case Law Reference

[1994] 1 SCR 754	relied on	Para 9	E
[2007] 2 SCR 591	followed	Para 10	
(2019) 15 SCALE 533	followed	Para 11	
[1964] SCR 86	relied on	Para 15	
[1975] 3 SCR 958	relied on	Para 17	F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2004 of 2020.

From the Judgment and Order dated 11.09.2018 of the High Court of Delhi at New Delhi in WP (C) No. 11102 of 2017. G

Ranjit Kumar, Sr. Adv., Gopal Singh, Manish Kumar, Shivam Singh, Jaideep Khanna, Harpreet Singh Gupta, Advs. for the Appellant.

Kapil Sibal, Devadatt Kamat, Sr. Advs., Javedur Rahman, Aditya Bhat, Nizam Pasha, Ali Asghar Rahim, Ms. Sneha Ravi Iyer, Gautam Talukdar, Advs. for the Respondent. H

A The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**

1. This appeal has been filed against the Interlocutory Order dated 11.09.2018 passed by the Delhi High Court in C.M. Application No. 27159 of 2018 filed by the appellant in Writ Petition No. 11102 of 2017.  
B By the said application, the appellant sought permission to submit additional documents and place material on record which has been rejected by the High Court.

2. Brief facts of the case giving rise to this appeal are: -

C 2.1 The respondent No.1 was elected as Member of Parliament (Rajya Sabha) from Bihar on a Janata Dal (United)[JD(U)] ticket for a term beginning from 08.07.2016 for a period of six years. The appellant, a Member of Parliament (Rajya Sabha) and leader of JD(U) in Rajya Sabha filed a petition before the Chairman, Rajya Sabha on 02.09.2017 under Article 102(2) read with paragraph 6 of the Tenth  
D Schedule of the Constitution of India praying that the respondent No.1, Member of Rajya Sabha be disqualified under the Tenth Schedule of the Constitution of India and his seat be declared vacant in Rajya Sabha. The appellant in his petition has averred that respondent No.1, who was elected to the Rajya Sabha on the ticket of Janata Dal (United) from  
E the State of Bihar had by his repeated conduct, public/press statements against the JD(U) and its leadership and openly aligning with the rival political party, Rashtriya Janata Dal (RJD), has voluntarily given up his membership, thus, acquiring disqualification under the Tenth Schedule to the Constitution.

F 2.2 The Chairman, Rajya Sabha got a copy of the petition filed by the appellant forwarded to the respondent, who was requested to furnish his comments thereon. The respondent after seeking extension of time filed his comments. The Chairman, Rajya Sabha after following the due procedure and after giving opportunity of oral hearing to the  
G respondent No.1 passed an order on 04.12.2017 disqualifying the respondent as a member of the House in terms of paragraph 2(1)(a) of the Tenth Schedule of the Constitution.

H 2.3 Against the order dated 04.12.2017 passed by the Chairman of the Rajya Sabha, respondent filed a Writ Petition No. 11102 of 2017 in Delhi High Court.

2.4 In paragraphs 27 and 28, the Chairman, Rajya Sabha has  
observed: - A

“27. After taking into account the facts of the case, the comments  
of the respondent and the petitioner, the respondent’s oral  
submission during the personal hearing on the 8<sup>th</sup> of November,  
2017 and the observations of the Committee of Privileges of the  
Eighth Lok Sabha and Hon’ble Supreme court’s Judgment in the  
1994 Ravi Naik Vs. Union of India case and observations in  
similar anti-defection cases, it is crystal clear that by his conduct,  
actions and speeches, the respondent, Shri Sharad Yadav, has  
voluntarily given up his membership of the political party, Janata  
Dal (United) by which he was set up as a candidate for election  
to the Rajya Sabha from the State of Bihar in 2016 and elected  
as such member. B C

28. I, therefore, hold that the Respondent Shri Sharad Yadav has  
incurred disqualification for being a Member of the House in  
terms of paragraph 2(1)(a) of the Tenth Schedule to the  
Constitution of India. He has thus ceased to be a Member of  
the Rajya Sabha with immediate effect. I decide and declare  
accordingly.” D

2.5 The appellant, who was respondent in the writ petition filed  
C.M. Application No. 27159 of 2018 dated 07.07.2018 praying for  
seeking permission to place additional documents Annexure 1 and  
Annexure 2 filed along with the application to be taken on record. E

2.6 An affidavit in reply to the above application was filed by  
the petitioner. In his affidavit, the writ petitioner denied averments  
made in the application. In paragraph 2 of the affidavit, following was  
stated: - F

“2. That I have gone through the contents of the application filed  
by the respondent No.1 seeking permission to place additional  
material on record to demonstrate some purported post  
disqualification conduct of the petitioner. I wish to deny each and  
every averment made therein and the contents of the said  
application may be deemed to be specifically traversed and denied  
by me unless expressly admitted by me hereinafter.” G

2.7 In the affidavit, the petitioner has denied that he has formed  
any new political party. He had further averred that he has been H

A wrongly disqualified. It was pleaded that High Court is not concerned with the subsequent event which do not form subject matter of the writ petition. The application filed by the appellant was opposed by the writ petitioner. The High Court vide its impugned judgment dated 11.09.2018 dismissed the application. After noticing the averments made in the application of the appellant and the reply given by the writ petitioner, B High Court gave its reason for rejecting the application in paragraph 4, which is to the following effect:-

C “4. The scope of the present petition is limited to examining the legality and the validity of the order dated 04.12.2017 passed by the Chairperson, Rajya Sabha, disqualifying the petitioner from being a member of the Rajya Sabha. Any event subsequent to the passing of the said order, cannot be a consideration for this Court to test the legality of the said order.”

D 2.8 The appellant aggrieved by the above order rejecting the application has come up in this appeal.

3. We have heard Shri Ranjit Kumar, learned senior counsel and Shri Gopal Singh, learned counsel for the appellant. Shri Kapil Sibal, learned senior counsel has appeared for the respondent.

E 4. Shri Ranjit Kumar, learned senior counsel submits that the subsequent conduct and actions of the respondent re-affirms the findings of the Chairman that the respondent has voluntarily given up his membership of JD(U) from which political party he was elected to Rajya Sabha. It is submitted that on the basis of subsequent conducts and actions of the respondent, the appellant cannot go to Chairman, Rajya F Sabha seeking disqualification of the respondent, hence, subsequent conducts and actions can be looked into in the writ petition and the High Court erred in rejecting application of the appellant bringing subsequent/ additional evidence on record. It is submitted that respondent himself has relied on subsequent events in his pleadings. It is submitted that G the respondent has subsequently contested the Lok Sabha Election from the political party Rashtriya Janata Dal (RJD), which clearly proves that he had voluntarily given up membership of JD(U) and had joined RJD. Seeking disqualification of respondent is a continuous cause of action. Shri Ranjit Kumar has also relied on Section 8 of the Evidence Act and submits that both previous and subsequent conducts are H relevant.

5. Shri Kapil Sibal, learned senior counsel appearing for the respondent refuting the submissions of the learned counsel for the appellant contends that High Court has rightly rejected the application praying for taking on record additional evidence regarding subsequent events. He submits that under Tenth Schedule, disqualification is incurred on the day when member has voluntarily given up his membership of political party from which he was elected. The respondent having been disqualified; he is not a member of JD(U) as on date. The disqualification incurred by member under paragraph 2(1)(a) of Tenth Schedule even though determined by the Speaker or Chairman subsequently, the said adjudication relates to previous date when member voluntarily gives up his membership. Shri Sibal submits that subsequent conducts and events, which has taken place after the order of the Chairman are neither germane nor relevant for disqualification, which has been pronounced by Hon'ble Chairman. He submits that it is the appellant, who has obtained adjournment of the hearing of the writ petition.

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6. We have considered the submissions of the learned counsel for the parties and have perused the record. The points which arise for consideration in this appeal lie in a very narrow compass.

7. Whether C.M.P. No. 27159 of 2018 filed by the appellant has been erroneously rejected by the High Court is the question to be answered. The writ petition filed by the respondent, which is pending in the High Court is the writ petition challenging the order of Hon'ble Chairman (Rajya Sabha) dated 04.12.2019 holding that respondent has incurred disqualification for being member of House in terms of paragraph 2(1)(a) of the Tenth Schedule of the Constitution. The grounds on which petition was filed by the appellant on 02.09.2017 for disqualifying the respondent have been noticed in the order of the Hon'ble Chairman (Rajya Sabha) to the following effect: -

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“In his petition, the petitioner averred that the respondent, Shri Sharad Yadav, who was elected to the Rajya Sabha on the ticket of Janata Dal (United) from the State of Bihar on the 8<sup>th</sup> of July, 2016, had by his repeated conduct, public/press statements against the JD(U) and its leadership and openly aligning with a rival political party, namely, the Rashtriya Janata Dal(RJD), proved that he has voluntarily given up the membership of the party, thus becoming subject to disqualification under the Tenth

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A Schedule to the Constitution. The main contention of the petitioner is that the respondent instead of adhering to the unanimous decision taken on the 26<sup>th</sup> of July, 2017 by the JD(U) and its President, Shri Nitish Kumar to withdraw from the Mahagathbandhan and the coalition Government formed in Bihar in 2015, started anti-party activities by publicly denouncing the party's decision. He campaigned with RJD leaders and workers between the 10<sup>th</sup> and the 12<sup>th</sup> of August, 2017 in different districts of Bihar and attended the public rally called by the rival political party, i.e., RJD, in Patna on the 27<sup>th</sup> of August, 2017 despite written directive from Shri K.C. Tyagi, Secretary-General of the party advising him not to attend the rally and also conveying to him that his participation in the rally would be construed not only against the principles of high morality but also as voluntarily giving up the membership of the JD(U). The petitioner had annexed newspaper clippings, media reports and videos as proof of the allegations."

D 8. Paragraph 2(1) of the Tenth Schedule is to the following effect: -

E **"2. Disqualification on ground of defection.** — (1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

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

F (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;"

G 9. The disqualification is incurred by member of the House as soon as he has voluntarily given up his membership of such political party. This Court in **Ravi S. Naik Vs. Union of India and Others, 1994 Supp (2) SCC 641** had occasion to consider the expression "voluntarily given up his membership". Referring to paragraph 2(1)(a), this Court laid down following: -

H "11..... The said paragraph provides for disqualification of a member of a House belonging



to a political party “if he has voluntarily given 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 from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.”

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10. A Constitution Bench of this Court in **Rajendra Singh Rana and Others Vs. Swami Prasad Maurya and Others, (2007) 4 SCC 270** had occasion to consider paragraph (2) of Tenth Schedule of the Constitution. In the above case, the Constitution Bench held that decision by the Speaker taken at a subsequent point of time cannot and does not postpone his incurring of disqualification by the act of the legislature. In paragraph 34, this court held: -

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

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The fact that in terms of para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (*sic* it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the

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A snowballing effect, will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the legislature party is alleged to have been voluntarily given up.”

11. A recent Three Judge Bench judgment of this Court in **Shrimanth Balasaheb Patil Vs. Hon’ble Speaker Karnataka Legislative Assembly and Others, (2019) 15 Scale 533** had occasion to consider paragraph 2 of the Tenth Schedule of the Constitution of India. In the above case, this Court noticed the objects and reasons of the Constitution (Fifty-second Amendment) Act, 1985. This Court categorically held that decision of the Speaker that a member is disqualified relates back to the date of the disqualifying action complained of. In paragraphs 54 and 55, this court laid down following:-

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

34. As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other

paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex post facto...”

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(emphasis supplied) B

55. As such, there is no doubt that the disqualification relates to the date when such act of defection takes place.....”

12. The decision taken by the Speaker, thus, has to be on the basis of conduct or actions taken by member, which may amount to voluntarily giving up his membership. The facts and sequence of the events on the basis of which Hon’ble Chairman came to the conclusion that a person has incurred disqualification under paragraph 2(1)(a) of the Tenth Schedule are all facts, which had occurred prior to adjudication by the Hon’ble Chairman. In the facts of the present case, the Chairman of Rajya Sabha has passed the order on 04.12.2019 on the claim of the appellant praying for disqualification as noticed above. The foundation of order of the Chairman are the facts and events, which took place after 26.07.2017. The petition having been filed by the appellant on 02.09.2017, petition has to be treated to be founded on facts and events, which took place on or before 02.09.2017.

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13. Now, reverting to the C.M. Application No. 27159 of 2018, we need to note as to what was the additional evidence, which was sought to be brought on record of the writ petition. Paragraph 4 and 5 of the application contains the details of Annexure 1 and Annexure 2, which is sought to be brought on record, which is as follows: -

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“4. That it is respectfully submitted that during the pendency of the above matter, the petitioner has formed/launched a new political party called the “Loktantrik Janata Dal” on 18.05.2018 at the Talkatora Stadium. Photographs, video clippings, posters and banners are proof of this formation and his active role therein.

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Photocopies of the pictures of the petitioner are annexed hereto as Annexure 1 collectively. Video recording of the speeches by the petitioner in the said event as also some more photographs have been extracted in a CD which is annexed hereto as Annexure-2.

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A 5. That the annexures are the true copies of their respective originals.”

B 14. Paragraph 4 and the Annexures 1 and 2 referred therein clearly indicate that what was sought to be taken on record was an event which took place on 18.05.2018 in which event a new political party called the Loktantrik Janata Dal was formed/launched. The application which was filed by the appellant seeking disqualification of the respondent was filed on 02.09.2017 in which application, the foundation of disqualification of respondent was already laid down. The order passed by the Chairman is based on a petition dated 02.09.2017 as well as the material and evidence, which was brought on record before the Chairman. Additional evidence, which is sought to be brought on record of the writ petition was not the basis for seeking disqualification of the respondent, hence, we do not find any error in the order of the High Court rejecting the C.M. Application No. 27159 of 2018. While upholding the order of the High court rejecting the C.M. Application No. 27159 of 2018, we, however, make few observations.

E 15. An event or a conduct of a person even though subsequent to passing of an order of Speaker or Chairman ordinarily may not be relevant for determining the validity of the order of the Speaker or Chairman but in a case where subsequent event or conduct of member is relevant with respect to state of affairs as pertaining to the time when member has incurred disqualification, that subsequent events can be taken into consideration by the High Court in exercise of its jurisdiction under Article 226. Justice Hidayatullah, (as he then was) speaking for this Court in **Mohd. Ikram Hussain Vs. State of Uttar Pradesh and Others, AIR 1964 SC 1625** has made a very pertinent observation with regard to acceptance of evidence. It observed that if the Court requires an evidence that can always be received. In paragraph 19, following was laid down: -

G “(19).....All procedure is always open to a Court which is not expressly prohibited and no rule of this Court has laid down that evidence shall not be received, if the Court requires it.....”

H 16. The observations made by the High Court in paragraph 4, i.e., “any event subsequent to the passing of the said order cannot be

a consideration for this Court to test the legality of the said order” may be generally correct but there can be exception if the above statement is treated as statement of law. A

17. In a writ petition under Article 226 subsequent events can be taken note of for varied purposes. We are reminded of the weighty observation of Justice V.R. Krishna Iyer in **Pasupuleti Venkateswarlu Vs. The Motor & General Traders, (1975) 1 SCC 770**, where following was observed: - B

“4..... It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.....” C D E F G

18. The observations made in paragraph 4 as quoted above need not to be read as laying down a law that in any case subsequent event cannot be considered for testing the legality of the order impugned or for moulding the relief in a writ petition under Article 226. H

A           19. In view of the foregoing conclusions, we uphold the order of the High Court subject to observations as made above. The writ petition before the High Court being held up due to pendency of this appeal, we request the High Court to dispose of the writ petition at an early date.

B           20. The appeal is dismissed subject to the observation as made above.

Devika Gujral

Appeal dismissed.