2025 INSC 912

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL/ORIGINAL APPELLATE JURISDICTION

CIVIL APPEAL NOS._____OF 2025
(Arising out of SLP(C) Nos. 2353-54 of 2025)

PADI KAUSHIK REDDY ETC.
...APPELLANT(S)/PETITIONER(S)

VERSUS

THE STATE OF TELANGANA AND OTHERS ETC. **...RESPONDENTS**

WITH

WRIT PETITION (CIVIL) NO. 82 OF 2025

CIVIL APPEAL NO._____OF 2025
(Arising out of SLP(C) No. _____of 2025)
DIARY NO.14577 OF 2025

J U D G M E N T

B.R. GAVAI, CJI

1. Leave granted in SLP (C) Nos. 2353-2354 of 2025 and SLP (C) Diary No. 14577 of 2025.

2. The appeals in the present set of matters challenge the judgment and final order dated 22nd November 2024 passed by a Division Bench of the High Court for the State of Telangana at Hyderabad[1] in Writ Appeal Nos. 1157, 1158 and 1160 of

[1] **Hereinafter referred to as "the High Court".**

2024 whereby the Division Bench of the High Court *set aside* the judgment and final order dated 9th September 2024 passed by a learned Single Judge of the High Court in a batch of Writ Petitions.

FACTS

3. Shorn of unnecessary details, the facts leading to the appeals are as under:

3.1. On 3rd November 2023, on the recommendation of the Election Commission of India, the Hon'ble Governor of the State of Telangana issued the notification for General Election to the State Legislative Assembly.

3.2. Pursuant to the notification, one Danam Nagender filed his nomination as a candidate of the Bharat Rashtra Samithi[2] from the Khairatabad Assembly Constituency on 6th November 2023. Similarly, two others namely Venkata Rao Tellam and Kadiyam Srihari filed their nomination from Bhadrachalam Assembly Constituency and Ghanpur Station Constituency as candidates of BRS on 9th November 2023.

3.3. Thereafter, on 30th November 2023, the elections were held and the results were declared on 3rd December 2023.

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[2] Hereinafter referred to as "BRS".

3.4. The aforementioned Danam Nagender, Venkata Rao Tellam and Kadiyam Srihari won the election from their respective constituency. The Indian National Congress[3] emerged as the single largest party and it along with its ally formed the Government.

3.5. It is the allegation of the appellants that on 15th March 2024, Danam Nagender joined the INC. It is further their allegation that the other two BRS Members of Legislative Assembly[4] namely Kadiyam Srihari and Venkata Rao Tellam also joined the INC on 31st March 2024 and 7th April 2024 respectively.

3.6. Subsequently, the Appellants in the lead matter namely Padi Kaushik Reddy and Kuna Pandu Vivekanand, who are themselves MLAs belonging to BRS, filed separate petitions under Paragraph 2(1) of the Tenth Schedule read with Article 191(2) of the Constitution of India and Rules 6(1) and 6(2) of the *Members of Telangana Legislative Assembly (Disqualification on ground of Defection) Rules, 1986*[5] before the Telangana State Legislative Assembly on 18th March 2024,

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[3] Hereinafter referred to as "INC".
[4] Hereinafter referred to as "MLA".
[5] Hereinafter referred to as "Disqualification Rules 1986".

2nd April 2024 and 8th April 2024. The common prayer in all the three petitions was for a *declaration* from the Speaker of the Telangana Legislative Assembly that the MLAs from BRS who joined the INC be declared as *disqualified* from continuing as members of the Telangana Legislative Assembly.

3.7. The Appellant in the connected matter, namely Alleti Maheshwar Reddy, who is an MLA belonging to Bharatiya Janata Party[6], also filed a petition seeking the disqualification of Danam Nagender on 1st July 2024.

3.8. Thereafter, aggrieved by the inaction/delay on part of the Speaker in deciding the disqualification petitions, the Appellants filed three separate Writ Petitions before the High Court being Writ Petition Nos. 9472, 11098 & 18553 of 2024. The first two Writ Petitions were filed on 10th April 2024 and 24th April 2024 and the third Writ Petition was filed on 9th July 2024.

3.9. On 9th September 2024, the learned Single Judge of the High Court by a common judgment and order *directed* the Secretary of the Telangana Legislative Assembly to forthwith place the disqualification petitions before the Speaker for fixing

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[6] Hereinafter referred to as "BJP".

a schedule of hearing (filing of pleadings, documents, personal hearing etc.) within a period of four weeks. It was further directed that the schedule so fixed, shall be communicated to the Registrar (Judicial) of the High Court. It was further clarified by the learned Single Judge of the High Court that if nothing is heard within four weeks, then the matter would be reopened *suo motu* and appropriate orders would be passed.

3.10. Taking exception to the judgment and order passed by the learned Single Judge of the High Court, the Secretary of the Telangana Legislative Assembly preferred three separate intra-court appeals being Writ Appeal No. 1157, 1158 & 1160 of 2024.

3.11. On 22nd November 2024, the Division Bench of the High Court by a common judgment and final order *disposed of* the Writ Appeals by setting aside the judgment and order passed by the learned Single Judge of the High Court.

3.12. Aggrieved thereby, the present appeals pertaining to disqualification petitions pending against three MLAs came to be filed by way of special leave.

3.13. A Writ Petition has also been filed before this Court by the Appellants in the lead matter along with a few others

pertaining to disqualification petitions pending against another seven MLAs. The prayer in the Writ Petition is on the same lines as the prayer by the original writ-petitioners before the High Court i.e., to *direct* the Speaker to decide the disqualification petitions in a time-bound manner and preferably within an outer limit of 4 weeks. Accordingly, the Writ Petition was tagged and heard along with the present appeals.

SUBMISSIONS

4. We have heard Shri C. Aryama Sundaram, Shri Dama Seshadri Naidu and Shri Gandra Mohan Rao, learned Senior Counsel appearing on behalf of the Appellants/Petitioners and Shri Mukul Rohatgi, Dr. Abhishek Manu Singhvi, Shri Ravi Shankar Jandhyala, Shri Gaurav Agrawal, Shri S. Niranjan Reddy, learned Senior Counsel appearing on behalf of the Respondents.

5. Shri Sundaram, learned Senior Counsel appearing on behalf of the Appellants submitted that till the time the learned Single Judge of the High Court decided the writ petition on 9th September 2024 i.e., after a period of almost five months from the date of filing, the Speaker had not even issued a notice in

the disqualification petitions filed by the Appellants. It is submitted that taking into consideration this factual aspect of the matter, the learned Single Judge had issued a direction only to the effect that the Speaker should fix a schedule of hearing within a period of 4 weeks from the date of the said order. It is therefore submitted that, as such, there was no occasion for the learned Judges of the Division Bench to have interfered with the order of the learned Single Judge.

6. Shri Sundaram submitted that even after the order of the learned Single Judge, for a period of more than 4 months, the Speaker did not take any action. It is further submitted that only after the present set of appeals came to be filed before this Court on 15th January 2025, a notice has been issued to the delinquent MLAs on 16th January 2025. The learned Senior Counsel submitted that under Rule 7 of the *Disqualification Rules, 1986*, a copy of the Disqualification Petition is required to be forwarded to the member in relation to whom the petition has been made or the Leader of the Legislature Party to which the member belongs. It is submitted that in spite of a lapse of a period of more than 11 months from the filing of disqualification petitions, even the statutory requirement as

per Rule 7 of the *Disqualification Rules 1986* has not been complied with. It is further submitted that since the Speaker was acting in such a lackadaisical manner, the learned Single Judge of the High Court was completely justified in issuing directions to the Secretary of the Telangana Legislative Assembly to place the matter before the Speaker for fixing of the schedule of the hearing within a period of 4 weeks.

7. Shri Sundaram submitted that the learned Single Judge of the High Court had rightly applied the principles as laid down by the Constitution Bench of this Court in the cases of ***Kihoto Hollohan v. Zachillhu and Others***[7]***, Rajendra Singh Rana and Others v. Swami Prasad Maurya and Others***[8] and ***Subhash Desai v. Principal Secretary, Governor of Maharashtra and Others***[9]**.** The learned Senior Counsel further submitted that the facts in the present case are squarely identical to the facts in the case of ***Keisham Meghachandra Singh v. Speaker, Manipur Legislative Assembly and Others***[10]. It is submitted that applying the said case, the learned Single Judge of the High Court would have

[7] **1992 Supp (2) 651**
[8] **(2007) 4 SCC 270**
[9] **(2024) 2 SCC 719**
[10] **(2021) 16 SCC 503**

been justified even in directing the disqualification petitions to be decided within a specified period. However, the learned Single Judge of the High Court, exercising restraint and showing respect to the high constitutional functionary, had only issued a direction to the Secretary of the Telangana Legislative Assembly to place the matter before the Speaker for fixing up the schedule of the hearing.

8. It is submitted by the learned Senior Counsel that since the directions issued by the Constitution Bench of this Court on 11th May 2023 in the case of ***Subhash Desai*** (supra) were not complied with by the Speaker, a Full Bench of this Court in the case of ***Sunil Prabhu v. The Speaker, Maharashtra State Legislative Assembly***[11] on 18th September 2023, directed to place the proceedings before the Speaker within a period of one week from that date so as to issue procedural directions for completing the record and setting down a time schedule for hearing of the disqualification petitions. It is further submitted that thereafter vide an order dated 30th October 2023, this Court in the said case of ***Sunil Prabhu*** (supra) directed the pending proceedings under the Tenth

[11] **Writ Petition (C) No.685 of 2023**

Schedule to be concluded and final orders to be passed in respect of Group A petitions on or before 31st December 2023 and Group B petitions on or before 31st January 2024. The learned Senior Counsel further submitted that the said directions were issued by a Bench presided over by the same learned Judge (D.Y. Chandrachud, C.J.), who had authored the judgment in the case of ***Subhash Desai*** (supra).

9. Shri Sundaram submitted that the learned Judges of the Division Bench of the High Court, have erred in setting aside a well-reasoned and fairly balanced judgment of the learned Single Judge of the High Court. He further submitted that this is a fit case wherein this Court should issue directions to the Speaker to decide the disqualification petitions within a specified period of time. He, therefore, prayed that the appeals be allowed and appropriate directions be issued.

10. Shri Naidu, learned Senior Counsel appearing on behalf of the Appellants/Petitioners supported the arguments advanced by Shri Sundaram.

11. Additionally, Shri Naidu submitted that prolonging the disqualification proceedings and not taking them to a logical end would frustrate the very purpose of the Tenth Schedule to

the Constitution of India. He submitted that the fear with regard to the Speaker belonging to a particular political party and as a result acting in a partisan manner was apprehended when the Parliament was discussing the insertion of the Tenth Schedule in the Constitution. It is submitted that Shri A.K. Sen, the then Law Minister, had stated that the Speaker was expected to act in an impartial manner and decide the disqualification proceedings without any delay. Not only that but Shri A.K. Sen had stated that if the amendment to the Constitution was to be effective, and if the defection was to be outlawed effectively, then it was necessary to choose a forum which would decide the matter fearlessly and expeditiously. He further stated that the Speaker was the only forum that was possible. In that light, the learned Senior Counsel submitted that a situation has now arisen which would require this Court to reconsider the issue because in many cases the Speaker has been acting like a member of a political party and not acting like a Tribunal. He, therefore, reiterated that this Court should direct the Speaker to decide the disqualification petitions matter within a specified period of time.

12. Shri Rohatgi, learned Senior Counsel appearing on behalf of the respondents, *on the contrary*, submitted that the Division Bench of the High Court has rightly applied the legal position as emanating from the Constitution Bench decisions of this Court in the cases of ***Rajendra Singh Rana*** (supra), ***Kihoto Hollohan*** (supra) and ***Subhash Desai*** (supra) and held that a court cannot issue timelines to the Speaker for deciding the matter within a particular period. He submitted that the High Court does not have the power of judicial superintendence over the functioning of the Speaker as a Tribunal under Article 227 of the Constitution. He submitted that the only power of judicial review that is available with the High Court is under Article 226 of the Constitution. It is submitted that while exercising the power of judicial review under Article 226 of the Constitution, the High Court can only examine the decision arrived at by the Speaker. It is further submitted by the learned Senior Counsel that it is not permissible for the High Court to pass any order which would amount to *Quia Timet* action. It is submitted that this Court in the case of ***Kihoto Hollohan*** (supra) has categorically held that the High Court under Article 226 of the Constitution

cannot pass any order which would amount to *Quia Timet* action. It is, therefore, submitted that as such any petition prior to the decision made by the Speaker would not be tenable.

13. Shri Rohatgi further submitted that the three-Judges Bench of this Court has wrongly decided the case of ***Keisham Meghachandra Singh*** (supra). In that regard, it is submitted that this Court in the case of ***Keisham Meghachandra Singh*** (supra) did not take into consideration the law laid down by the Constitution Bench in the cases of ***Kihoto Hollohan*** (supra) and ***Rajendra Singh Rana*** (supra) in the correct perspective. It is, therefore, submitted that vide the impugned judgment and final order, the Division Bench of the High Court has rightly distinguished the judgment of this Court in the case of ***Keisham Meghachandra Singh*** (supra).

14. Shri Rohatgi further submitted that, in any case, judicial propriety demanded that this Court should not have delivered a judgment as was delivered in the case of ***Keisham Meghachandra Singh*** (supra) inasmuch as a Bench comprising of two learned Judges on an earlier occasion had referred the same issue to a larger Bench by an order dated 8th

November 2016 in the case of ***S.A. Sampath Kumar v. Kale Yadaiah and Others***[12]. He submitted that as a matter of fact the judgment in the case of ***Keisham Meghachandra Singh*** (supra) tries to nullify what has been held by the larger Benches of this Court in the cases of ***Kihoto Hollohan*** (supra) and ***Rajendra Singh Rana*** (supra).

15. Shri Rohatgi further submitted that even the Constitution Bench decision in the case of ***Subhash Desai*** (supra) does not lay down any timeline for the Speaker for deciding a disqualification petition. It is, therefore, submitted that the learned Division Bench of the High Court was right in reversing the direction of the learned Single Judge of the High Court to the Speaker to decide the disqualification petitions within a specified period.

16. Dr. Singhvi, Shri Ravi Shankar Jandhyala, and Shri Gaurav Agrawal, learned Senior Counsel supplemented the arguments of Shri Rohatgi on the similar lines.

17. Dr. Singhvi submitted that no judgment of this Court, including the three Constitution Bench judgments, has given directions to the Speaker for deciding the matter within a

[12] **(2021) 16 SCC 528**

specified period. It is submitted by Dr. Singhvi that the only exception in this regard is the case of ***Keisham Meghachandra Singh*** (supra), however, it is reiterated by the learned Senior Counsel that ***Keisham Meghachandra Singh*** (supra) does not lay down a good law.

18. Insofar as the orders passed by the Full Bench of this Court dated 18th September 2023 and 30th October 2023 are concerned, Dr. Singhvi submitted that the said orders do not lay down a binding precedent. Next, Dr. Singhvi tried to distinguish the case of ***Rajendra Singh Rana*** (supra) by stating that the facts in the said case are totally different. It is submitted that in the case of ***Rajendra Singh Rana*** (supra), because the term of the Assembly was coming to an end, the Court was justified in directly deciding the disqualification petition itself. It is further submitted that, in the present case, there is still a long time for the term to expire and as such, there is no urgency which requires a direction to be issued to the Speaker to decide the matter within a particular period of time.

19. Shri Agrawal submitted that if the Parliament decides that a particular time limit is required to be laid down for

deciding the disqualification petitions, nothing prevents the Parliament from doing so. However, the Parliament has not yet chosen to do so and therefore it is neither the High Court nor this Court that can issue a writ directing the Speaker to decide the disqualification proceedings within a particular period.

20. Shri Agrawal further submitted that in any case, the learned Division Bench of the High Court vide the impugned judgment and final order has itself directed that the matter should be decided within a reasonable period and as such, no interference is warranted in the present proceedings.

21. Shri Sundaram, *in rejoinder*, submitted that in the present case, the facts are glaring. It is submitted that one of the MLAs, after being elected to the Legislative Assembly as a Member of the BRS, contested and lost the Lok Sabha Election as a Member of the INC but is still enjoying the Office of MLA, having contested for the same while belonging to the BRS party. It is submitted that if such a situation is permitted to continue only on account of not deciding the disqualification petitions within a particular period, it would be nothing less than playing a fraud on democracy. The learned Senior Counsel therefore reiterated that this is a fit case wherein this

Court should direct the Speaker to decide the disqualification petitions within a specified period of time.

22. Before we proceed to decide the matter on merits, we find it appropriate to revisit how the matter has reached the present stage.

23. When the matter was firstly listed on 31st January 2025, taking into consideration that the learned Division Bench of the High Court had directed the disqualification proceedings to be decided within a "reasonable period", we had asked Shri Rohatgi to take instructions from the Speaker as to within how much time he would decide the disqualification proceedings. Thereafter, when the matter was listed on 10th February 2025, Shri Rohatgi submitted that he was not in a position to make any statement in that regard. The matter, upon being mentioned on 20th February 2025, was directed to be kept for hearing on 4th March 2025. On the said date, when the matters were called out and after we had heard Shri Sundaram and Shri Naidu, learned Senior Counsel for the Appellants/Petitioners at some length, an objection was raised by Dr. Singhvi and Shri Rohatgi, learned Senior Counsel appearing for the Respondents that no "formal notice" was

issued in these matters and therefore the respondents could not file any reply. It will be relevant to refer to paras 5 and 6 of the order dated 4th March 2025, which read thus:

> "**5.** No doubt that the objection is hypertechnical, however we propose to adjourn the matter so that no objection is raised at a subsequent point of time by the respondents that the petitions were decided without following the principles of natural justice.
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> **6.** We, therefore, issue a formal notice to the respondents in both the matters, returnable on 25.03.2025."

24. Thereafter, the matter was called on 25th March 2025, 2nd April 2025 and finally on 3rd April 2025 when we concluded the hearing.

25. In this background, we proceed to consider the rival contentions.

DISCUSSION AND ANALYSIS

26. To appreciate the rival submissions, it would be apposite that we first take a close look at the judicial decisions which hold the field.

27. The Constitution Bench of this Court, in the case of ***Kihoto Hollohan*** (supra), had an occasion to consider the constitutional validity of the Tenth Schedule of the Constitution which was introduced by the *Constitution (Fifty-*

second Amendment) Act, 1985. The Constitution Bench, in the said case specifically considered the validity and scope of Paragraphs 6 and 7 of the Tenth Schedule to the Constitution. It will be relevant to refer to the following observations of this Court:

> "**13.** …. 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."
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> [emphasis supplied]

28. This Court, amongst other questions, framed the following two questions for its consideration:

> "**24.** …..
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> (E) That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts the immunity under Articles 122 and 212. The Speaker and the Chairman in relation to the exercise of the powers under the Tenth Schedule shall not be subjected to the jurisdiction of any Court.

The Tenth Schedule seeks to and does create a new and non-justiciable area of rights, obligations and remedies to be resolved in the exclusive manner envisaged by the Constitution and is not amenable to, but constitutionally immune from, curial adjudicative processes.

(F) That even if Paragraph 7 erecting a bar on the jurisdiction of Courts is held inoperative, the Courts' jurisdiction is, in any event, barred as Paragraph 6(1) which imparts a constitutional 'finality' to the decision of the Speaker or the Chairman, as the case may be, and that such concept of 'finality' bars examination of the matter by the Courts.

29. One of the arguments that was advanced before this Court was that the concept of "finality" given to the decision of the Speaker excluded the court's jurisdiction. This Court therefore considered the question as to whether the word "final" in paragraph 6(1) of the Tenth Schedule rendered the decision of the Speaker immune from judicial review. The majority judgment rendered by M.N. Venkatachaliah, J. (as His Lordship then was), after referring to various earlier judgments of this Court, observed thus:

"**94.** It is, therefore, inappropriate to claim that the determinative jurisdiction of the Speaker or the Chairman in the Tenth Schedule is not a judicial power and is within the non-justiciable legislative area. The classic exposition of Issacs J., in *Australian Boot Trade Employees Federation* v. *Whybrow & Co.* [(1910) 10 CLR 266, 317] as to what distinguishes a judicial power from

a legislative power was referred to with the approval of this Court in *Express Newspaper (P) Ltd.* v. *Union of India* [AIR 1958 SC 578, 611 : 1959 SCR 12 : (1961) 1 LLJ 339] . Issacs, J., stated: (CLR p. 317 quoted at AIR p. 611)

> "If the dispute is as to the relative rights of parties as they rest on past or present circumstances, the award is in the nature of a judgment, which might have been the decree of an ordinary judicial tribunal acting under the ordinary judicial power. There the law applicable to the case must be observed. If, however, the dispute is as to what shall in the future be the mutual rights and responsibilities of the parties — in other words, if no present rights are asserted or denied, but a future rule of conduct is to be prescribed, thus creating new rights and obligations, with sanctions for non-conformity — then the determination that so prescribes, call it an award, or arbitration, determination, or decision or what you will, is essentially of a legislative character, and limited only by the law which authorises it. If, again, there are neither present rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained necessary for the practical effectuation of admitted rights, the proceeding, though called an arbitration, is rather in the nature of an appraisement or ministerial act."

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

96. The fiction in Paragraph 6(2), indeed, places it in the first clause of Article 122 or 212, as the case may be. The words "proceedings in Parliament" or "proceedings in the legislature of a State" in

Paragraph 6(2) have their corresponding expression in Articles 122(1) and 212(1) respectively. This attracts an immunity from mere irregularities of procedures.

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

98. But then is the Speaker or the Chairman acting under Paragraph 6(1) a Tribunal? "All tribunals are not courts, though all courts are tribunals". The word "courts" is used to designate those tribunals which are set up in an organised State for the Administration of Justice. By Administration of Justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs"……."

[emphasis supplied]

30. It can thus be seen that this Court, in unequivocal terms, has held that it was inappropriate to claim that the determinative jurisdiction of the Speaker/Chairman in the

Tenth Schedule to the Constitution was not a judicial power and was within the non-justiciable legislative area. This Court, in no unclear terms, held that the power to decide disputed disqualification under Paragraph 6(1) of the Tenth Schedule to the Constitution was pre-eminently of a judicial complexion. This Court, thereafter, referred to the provision of Articles 122(1) and 212(1) of the Constitution and the fiction in Paragraph 6(2) of the Tenth Schedule to the Constitution. This Court observed that these provisions attract immunity from mere irregularities of procedures. Then, in paragraph 98, this Court posed a question as to whether the Speaker/Chairman, acting in Paragraph 6(1) of the Tenth Schedule to the Constitution, is a Tribunal or not.

31. Thereafter, this Court referred to various judgments distinguishing between the Courts and Tribunals and observed thus:

> "**100.** By these well known and accepted tests of what constitute a Tribunal, the Speaker or the Chairman, acting under Paragraph 6(1) of the Tenth Schedule is a Tribunal."

32. It can thus be seen that this Court, in unequivocal terms, has held that the Speaker/Chairman, acting under Paragraph 6(1) of the Tenth Schedule to the Constitution is a Tribunal.

The Constitution Bench thereafter insofar as Questions (E) and (F) are concerned, came to the following conclusion:

> "**109.** In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, **the scope of judicial review under Articles 136, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.**
>
> **110.** In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, **judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a *quia timet* action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence**.
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> **111.** In the result, we hold on contentions (E) and (F):
>
> > That the Tenth Schedule does not, in providing for an additional grant (*sic* ground) for disqualification and for adjudication of disputed disqualifications, seek to create a non-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/Chairmen is valid. **But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned**.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in *Keshav Singh case* [(1965) 1 SCR 413 : 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.

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

However, having regard to the Constitutional Schedule in the Tenth

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

33. The Constitution Bench therefore held that in light of the decisions referred to above and the nature of function that was exercised by the Speaker/Chairman under Paragraph 6 of the Tenth Schedule to the Constitution, the scope of judicial review under Articles 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 of the Tenth Schedule to the Constitution would be confined to jurisdictional errors only i.e., infirmities based on violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity.

34. This Court thereafter held that in view of the limited scope of judicial review on account of the finality clause in Paragraph 6 of the Tenth Schedule to the Constitution and

having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e., the Speaker/Chairman, judicial review could not be available at a stage prior to the making of a decision by the Speaker/Chairman and a *Quia Timet* action would not be permissible. It held that any interference would not be permissible at an interlocutory stage of the proceedings. This Court, however, excluded the cases where disqualification or suspension was imposed during the pendency of the proceedings and such disqualification or suspension was likely to have grave, immediate and irreversible repercussions and consequences.

35. In the present case, heavy reliance is sought to be placed on paragraph 110 of ***Kihoto Hollohan*** (supra) by both the sides. On the side of the Appellants/Petitioners, it is contended that judicial restriction against *Quia Timet* actions does not interdict in any manner against the judicial review in aid of Speaker/Chairman to arrive at a prompt decision of the disqualification petition. *Per contra*, it is argued on behalf of the Respondents that no interference would be warranted by

the High Court or this Court at any time prior to the final decision being rendered by the Speaker/Chairman.

36. Insofar as Shri Rohatgi's submission that the High Courts cannot exercise powers under Article 227 of the Constitution is concerned, the said contention, in our view, lacks merit inasmuch as in Paragraph 109 of ***Kihoto Hollohan*** (supra) itself, the Constitution Bench has referred to Article 227 along with Articles 136 and 226 of the Constitution. In any case, the difference between the jurisdictional exercise under Article 227 of the Constitution and the jurisdiction of the High Court to issue a writ of certiorari under Article 226 of the Constitution is very thin as per the judgment of this Court in the case of ***Surya Devi Rai v. Ram Chander Rai and Others***[13].

37. The next judgment of the Constitution Bench which is required to be considered by us is the case of ***Rajendra Singh Rana*** (supra).

38. In the said case, on 27th August 2003, 13 MLAs from the Bahujan Samaj Party[14] approached the Hon'ble Governor of the State of Uttar Pradesh and requested him to call upon the

[13] **(2003) 6 SCC 675**
[14] **Hereinafter referred to as "BSP".**

Leader of Opposition i.e., Samajwadi Party to form the Government. This was despite the fact that the ruling coalition Government led by BSP had recommended the dissolution of the Assembly on 25th August 2003. The leader of BSP Legislature Party on 4th September 2003 filed a petition in terms of Article 191 read with Paragraph 2 of the Tenth Schedule of the Constitution for disqualification of the said 13 MLAs. Thereafter, on 6th September 2003, 37 MLAs from BSP, including the original 13 MLAs, claimed to have "split" from the BSP. They claimed protection under Paragraph 3 of the Tenth Schedule to the Constitution since they formed one-third of the BSP (37 out of 109). The Speaker, instead of deciding the disqualification petition relating to the original 13 MLAs, decided that the said 37 MLAs had met the requirements of Paragraph 3 of the Tenth Schedule to the Constitution and therefore did not incur disqualification under Paragraph 2 of the Tenth Schedule to the Constitution. However, the Speaker had kept the petition relating to disqualification of original 13 MLAs pending.

39. Challenging the decision of the Speaker in accepting this split while keeping the issue with regard to the disqualification

of the original 13 MLAs pending, a writ petition came to be filed before the Allahabad High Court. The matter was adjourned in the High Court on a number of occasions. At the same time, the petition for disqualification of the original 13 MLAs which was pending was adjourned by the Speaker on the ground that the matter was pending before the High Court. The said petition was pending before the High Court from 29th September 2003 on one pretext or the other. In the meantime, on 7th September 2005, the Speaker passed an order rejecting the petition filed for disqualification of the original 13 MLAs. Thereafter, the appellants therein moved an application for amendment of the writ petition before the High Court. It appears that there were certain unpleasant happenings as recorded in paragraph 9 of the said judgment between two Members of the Bench. Thereafter, the matter was assigned to the Full Bench. Ultimately, the matter was decided on 14th February 2007. The learned Chief Justice had dismissed the appeals while the other two learned Judges quashed the order of the Speaker and directed him to reconsider the matter with particular reference to the petition for disqualification of the original 13 MLAs. The learned Chief Justice took the view that

the Speaker was justified in finding a split on the basis of a claim of split in the original political party and one-third members of the legislature party separating, by taking into account all events up to the time of his taking a decision on the question of split. However, the other two learned Judges took a view that the Speaker was in error in not deciding the petition seeking disqualification of the original 13 MLAs first and in proceeding to decide the application for recognition of a split made by the 37 MLAs which included the original 13 MLAs already subject matter of the disqualification petition before him.

40. Aggrieved by the decision of the Full Bench of the High Court to remit the matter to the Speaker, the set of 37 MLAs filed various appeals before this Court. There was also an appeal before this Court by the original writ petitioner wherein it was contended that instead of remanding the matter, the High Court, on the basis of pleadings and material, ought to have allowed the writ petition and disqualified the original 13 MLAs. This is how the matter reached this Court.

41. Before this Court, it was sought to be urged on behalf of the 37 MLAs who claimed to have split from the BSP that the

two learned Judges who had set aside the decision of the Speaker had exceeded their jurisdiction. A reliance was sought to be placed on the judgment of this Court in the case of ***Kihoto Hollohan*** (supra) in support of the said argument. Justice P.K. Balasubramanyan, speaking for the Constitution Bench, however, observed thus:

> "**40.** Coming to the case on hand, it is clear that the Speaker, in the original order, left the question of disqualification undecided. Thereby he has failed to exercise the jurisdiction conferred on him by para 6 of the Tenth Schedule. Such a failure to exercise jurisdiction cannot be held to be covered by the shield of para 6 of the Schedule. He has also proceeded to accept the case of a split based merely on a claim in that behalf. He has entered no finding whether a split in the original political party was prima facie proved or not. This action of his, is apparently based on his understanding of the ratio of the decision in *Ravi S. Naik case* [1994 Supp (2) SCC 641 : (1994) 1 SCR 754] . He has misunderstood the ratio therein. Now that we have approved the reasoning and the approach in *Jagjit Singh case* [(2006) 11 SCC 1 : (2006) 13 Scale 335] and the ratio therein is clear, it has to be held that the Speaker has committed an error that goes to the root of the matter or an error that is so fundamental, that even under a limited judicial review the order of the Speaker has to be interfered with. We have, therefore, no hesitation in agreeing with the majority of the High Court in quashing the decisions of the Speaker."

42. It can thus be seen that the Constitution Bench came to the conclusion that since the Speaker in the original order had

left the question of disqualification undecided, he had failed to exercise the jurisdiction conferred on him by Paragraph 6 of the Tenth Schedule to the Constitution. This Court held that such a failure to exercise jurisdiction could not be held to be covered by the shield of Paragraph 6 of the Tenth Schedule to the Constitution. This Court also came to a finding that the Speaker had committed an error that goes to the root of the matter or an error that was so fundamental that it would enable this Court to interfere with the order of the Speaker even under a limited judicial review.

43. After observing the aforesaid, this Court itself, in the peculiar facts and circumstance, proceeded to decide the question of disqualification. This Court took note of the fact that the term of the Assembly was coming to an end and an expeditious decision by the Court was warranted for protection of the constitutional scheme and constitutional values. This Court found that the very fact that the original 13 MLAs gave a letter to the Hon'ble Governor requesting him to call upon the Leader of Opposition to form the Government was sufficient enough to incur a disqualification under Paragraph 2(1)(a) of the Tenth Schedule to the Constitution.

This Court therefore took an unprecedented step of holding those 13 MLAs as disqualified.

44. The last of the Constitution Bench judgments which is required to be considered for the present purpose is that of ***Subhash Desai*** (supra).

45. Insofar as the said case is concerned, the Constitution Bench firstly held that the finding of another Constitution Bench in the case of ***Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly and Others***, to the effect that a notice for the removal of a Speaker restricts him from adjudicating disqualification proceedings under the Tenth Schedule to the Constitution, was in conflict with another Constitution Bench judgment in the case of ***Kihoto Hollohan*** (supra) and therefore referred the same to a larger Bench of seven Judges.

46. Thereafter, it can be seen that one of the issues framed by this Court in the reference order leading to the Constitution Bench judgment in the said case of ***Subhash Desai*** (supra) was as under:

"**32.** …… The following questions were framed for consideration:

…….

32.2. (*b*) Whether a petition under Article 226 or Article 32 lies, inviting a decision on a disqualification petition by the High Courts or the Supreme Court, as the case may be;"

47. The petitioners therein had urged before this Court that this Court itself should decide the disqualification petitions at the first instance. While considering the argument in that regard, the Constitution Bench observed thus:

"**76.** In *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] , this Court held that the Speaker is a Tribunal for the purposes of the Tenth Schedule. Therefore, the exercise of power under the Tenth Schedule is subject to the jurisdiction of courts under Articles 136, 226 and 227 of the Constitution. This Court further observed that the finality clause contained in Para 6(2) did not completely exclude the jurisdiction of courts. However, it was held that such a clause limits the scope of judicial review because the Constitution intended the Speaker or the Chairman to be "the repository of adjudicatory powers" under the Tenth Schedule. This Court held that judicial review is not available at a stage prior to the decision of the Speaker or Chairman, save in certain exceptional circumstances detailed in that case. Thus, *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] makes it evident that the exclusive power to decide the question of disqualification under the Tenth Schedule vests with the Speaker or Chairman of the House.

……

80. This Court should normally refrain from deciding disqualification petitions at the first instance, having due regard to constitutional intendment. The question of disqualification ought to be adjudicated by the constitutional authority concerned, namely, the Speaker of the Legislative Assembly, by following the procedure prescribed. Disqualification of a person for being a Member of the House has drastic consequences for the Member concerned and by extension, for the citizens of that constituency. Therefore, any question of disqualification ought to be decided by following the procedure established by law. In *Kshetrimayum Biren Singh* [*Kshetrimayum Biren Singh* v. *Speaker, Manipur Legislative Assembly*, (2022) 2 SCC 759], a three-Judge Bench of this Court set aside the order of the Speaker disqualifying MLAs under Para 2(1)(*a*) for not granting an opportunity to them to lead evidence and present their case. The Speaker was directed to decide the disqualification petitions afresh by complying with the principles of natural justice. **Even in cases where the Speaker decides disqualification petitions without following the procedure established by law, this Court normally remands the disqualification petitions to the Speaker. Therefore, absent exceptional circumstances, the Speaker is the appropriate authority to adjudicate petitions for disqualification under the Tenth Schedule**.

.....

82. In a parliamentary democracy, the Speaker is an officer of the Assembly. The Speaker performs the function of presiding over the proceedings of the House and representing the House for all intents and purposes. In *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] , it was contended that the Speaker does not represent an independent adjudicatory machinery since they are elected by the majority of the

Assembly. Rejecting the argument, this Court emphasised that the office of the Speaker is held in high respect in parliamentary tradition. The Court held that the Speaker embodies propriety and impartiality and that it was therefore inappropriate to express distrust in the office of the Speaker : (SCC p. 714, para 118)

> "*118*. It would, indeed, be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy. *It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. The robes of the Speaker do change and elevate the man inside.*"
>
> (emphasis supplied)

.....

84. A similar submission was made before this Court in *Keisham Meghachandra Singh* v. *Manipur Legislative Assembly* [*Keisham Meghachandra Singh* v. *Manipur Legislative Assembly*, (2021) 16 SCC 503 : 2020 SCC OnLine SC 55] , wherein it was submitted that this Court should issue a writ of quo warranto against the appointment of an MLA as a minister when disqualification petitions are pending. Rejecting the submission, this Court held as under : (SCC pp. 513 & 527, paras 10 & 33)

> "*10.* Shri Kapil Sibal, learned Senior Advocate appearing on behalf of the Appellant, in the Civil Appeal arising out of SLP (C) No. 18659 of 2017, has argued that the Speaker in the present case has deliberately refused to decide the disqualification petitions before

him. ... In these circumstances, he has exhorted us to issue a writ of quo warranto against Respondent 3 stating that he has usurped a constitutional office, and to declare that he cannot do so. ...

***

33. It is not possible to accede to Shri Sibal's submission that this Court issue a writ of quo warranto quashing the appointment of Respondent 3 as a minister of a cabinet led by a BJP Government. Mrs Madhavi Divan is right in stating that a disqualification under the Tenth Schedule from being an MLA and consequently minister must first be decided by the exclusive authority in this behalf, namely, the Speaker of the Manipur Legislative Assembly. It is also not possible to accede to the argument of Shri Sibal that the disqualification petition be decided by this Court in these appeals given the inaction of the Speaker. It cannot be said that the facts in the present case are similar to the facts in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] . In the present case, the life of the Legislative Assembly comes to an end only in March 2022 unlike in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] where, but for this Court deciding the disqualification petition in effect, no relief could have been given to the petitioner in that case as the life of the Legislative Assembly was about to come to an end. The only relief that can be given in these appeals is that the

> Speaker of the Manipur Legislative Assembly be directed to decide the disqualification petitions pending before him within a period of four weeks from the date on which this judgment is intimated to him. In case no decision is forthcoming even after a period of four weeks, it will be open to any party to the proceedings to apply to this Court for further directions/reliefs in the matter."

85. The incumbent Speaker of the Maharashtra Legislative Assembly has been duly elected by the MLAs in terms of the procedure laid down under the Maharashtra Assembly Rules, 1960. The petitioners have referred to the decision of the Speaker to cancel the recognition of Mr Sunil Prabhu as the Chief Whip of the Shiv Sena on 3-7-2022 to argue that the Speaker is biased and impartial. The decision of the Speaker to cancel the recognition of Mr Prabhu has also been challenged in the instant proceedings. Even if this Court sets aside the decision of the Speaker cancelling the recognition of Mr Prabhu on merits, it would not be a sufficient reason for this Court to decide the disqualification petitions. We are also unable to accept the alternative submission of the petitioners to direct the Deputy Speaker to adjudicate the question of disqualification for the simple reason that the Maharashtra Legislative Assembly has duly elected the Speaker, who has been entrusted with the authority to decide disqualification petitions under the Constitution. The Deputy Speaker can perform the duties of the Speaker only when the office of the Speaker is vacant. [Article 180 of the Constitution.] As observed in *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] and *Shrimanth Balasaheb Patil* [*Shrimanth Balasaheb Patil* v. *Karnataka Legislative Assembly*, (2020) 2 SCC 595] , the Speaker is expected to act fairly, independently, and impartially while adjudicating the disqualification

petitions under the Tenth Schedule. **Ultimately, the decision of the Speaker on the question of disqualification is subject to judicial review. Therefore, this Court is of the opinion that the Speaker of the Maharashtra Legislative Assembly is the appropriate constitutional authority to decide the question of disqualification under the Tenth Schedule.**"

[emphasis supplied]

48. Finally, in conclusion, this Court observed thus:

"**213.** In view of the discussion above, the following are our conclusions:

.....

213.2. This Court cannot ordinarily adjudicate petitions for disqualification under the Tenth Schedule in the first instance. There are no extraordinary circumstances in the instant case that warrant the exercise of jurisdiction by this Court to adjudicate disqualification petitions. The Speaker must decide disqualification petitions within a reasonable period;

........"

49. It can thus be seen that even in the case of ***Subhash Desai*** (supra), this Court reiterated the position that the Speaker is a Tribunal for the purposes of the Tenth Schedule to the Constitution and that the exercise of powers under the Tenth Schedule to the Constitution was subject to the jurisdiction of courts under Articles 136, 226 and 227 of the Constitution. This Court reiterated that the finality clause

contained in Paragraph 6(2) of the Tenth Schedule to the Constitution did not completely exclude the jurisdiction of courts. This Court further reiterated that judicial review is not available at a stage prior to the decision of the Speaker/Chairman, save in certain exceptional circumstances. The Constitution Bench held that this Court should normally refrain from deciding disqualification petitions at the first instance, having regard to the constitutional intendment. It held that the question of disqualification ought to be adjudicated by the constitutional authority concerned i.e., the Speaker.

50. This Court also noticed that in the case of ***Rajendra Singh Rana*** (supra), this Court decided to adjudicate the disqualification petition since, the Speaker of the Legislative Assembly had *inter-alia* failed to decide the same in a time-bound manner and also took into consideration the necessity of an expeditious decision.

51. Though the Constitution Bench also noticed the judgment of three learned Judges in the case of ***Keisham Meghachandra Singh*** (supra), it did not disapprove the view taken in the said case and in subsequent paragraphs observed

that the Speaker should act fairly, independently, and impartially while adjudicating the disqualification petitions under the Tenth Schedule to the Constitution. This Court, therefore, observed that the Speaker of the Maharashtra Legislative Assembly was the appropriate constitutional authority to decide the question of disqualification under the Tenth Schedule to the Constitution which decision was ultimately subject to judicial review.

52. Having considered the ratio of the Constitution Bench judgments of this Court, we also find it appropriate to refer to the judgment of the three learned Judges of this Court in the case of ***Keisham Meghachandra Singh*** (supra).

53. In the said case, Respondent No.3, in one of the appeals, contested as a candidate nominated and set up by the INC and was duly elected as such. Immediately after declaration of the results on 12th March 2017, said Respondent No. 3 along with various BJP MLAs met the Hon'ble Governor of the State of Manipur in order to stake a claim for forming a BJP-led Government. On 15th March 2017, the Governor invited the group led by the BJP to form the Government in the State. Respondent No. 3, along with others, was sworn in as a

Minister in the BJP-led Government. As many as thirteen applications for the disqualification of Respondent No.3 were filed before the Speaker of the Manipur Legislative Assembly between April and July 2017. Since no action was taken on any of the said petitions by the Speaker, a writ petition came to be filed in July 2017 before the High Court of Manipur at Imphal seeking a direction to the Speaker to decide the disqualification petition within a reasonable time. On 8th September 2017, the High Court observed that since the issue as to whether a High Court can direct a Speaker to decide a disqualification petition within a certain time-frame is pending before a Bench of Five Judges of this Court, it was unable to pass any order in the matter. Another writ petition seeking disqualification of Respondent No. 3 met the same fate. As a result, the writ petitioners preferred appeals by way of special leave.

54. Since the facts in the present case are somewhat similar to the facts in the case of ***Keisham Meghachandra Singh*** (supra), we find it appropriate to refer to the arguments advanced on behalf of the appellants therein which are

recorded in paragraph 10 of the said judgment and which read thus:

> "**10.** Shri Kapil Sibal, learned Senior Advocate appearing on behalf of the appellant, in the civil appeal arising out of SLP (C) No. 18659 of 2017, has argued that **the Speaker in the present case has deliberately refused to decide the disqualification petitions before him. This is evident from the fact that no decision is forthcoming till date on petitions that were filed way back in April 2017. Further, it is clear that notice in the present disqualification petition was issued by the Speaker only on 12-9-2018, long after the petition had been filed, and as correctly stated by the High Court, it cannot be expected that the Speaker will decide these petitions at all till the life of the Assembly of 5 years expires.** In these circumstances, he has exhorted us to issue a writ of *quo warranto* against Respondent 3 stating that he has usurped a constitutional office, and to declare that he cannot do so. For this purpose, he has cited several judgments of this Court. He has also argued that though it is correct to state that whether a writ petition can at all be filed against inaction by a Speaker is pending before a Bench of five Judges of this Court, yet, it is clear from a reading of para 110 of *Kihoto Hollohan* v. *Zachillhu* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] , that all that was interdicted by that judgment was the grant of interlocutory stays which would prevent a Speaker from making a decision and not the other way around. For this purpose, he read to us *Black's Law Dictionary* on the meaning of a *quia timet* action, and argued that the judgment read as a whole would make it clear that if the constitutional objective of checking defections is to be achieved, judicial review in aid of such goal can obviously not be said to be interdicted. He also

strongly relied upon the observations of this Court in *Rajendra Singh Rana* v. *Swami Prasad Maurya* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] and exhorted us to uphold the reasoning contained in the impugned judgment [*Mohd. Fajur Rahim* v. *Speaker, Manipur Legislative Assembly*, 2019 SCC OnLine Mani 127] and then issue a writ of *quo warranto* against Respondent 3."

55. It will also be relevant to refer to paragraph 12 of the said judgment which sets out the Reference Order made in the case of ***S.A. Sampath Kumar*** (supra) referring the issue to a larger Bench:

"**12.** Having heard the learned counsel for both the parties, it is important to first set out the reference order of this Court dated 8-11-2016 in *S.A. Sampath Kumar* v. *Kale Yadaiah* [*S.A. Sampath Kumar* v. *Kale Yadaiah*, (2021) 16 SCC 528] . A Division Bench of this Court after referring to *Speaker, Haryana Vidhan Sabha* v. *Kuldeep Bishnoi* [*Speaker, Haryana Vidhan Sabha* v. *Kuldeep Bishnoi*, (2015) 12 SCC 381] , and *Speaker, Orissa Legislative Assembly* v. *Utkal Keshari Parida* [*Speaker, Orissa Legislative Assembly* v. *Utkal Keshari Parida*, (2013) 11 SCC 794] , then held : (*S.A. Sampath Kumar case* [*S.A. Sampath Kumar* v. *Kale Yadaiah*, (2021) 16 SCC 528] , SCC p. 532, paras 3-4)

> "*3.* We have considered the aforesaid submissions of both the learned Attorney General and the learned counsel appearing on behalf of the petitioner. We feel that a substantial question as to the interpretation of the Constitution arises on the facts of the present case. It is true that this Court

in *Kihoto Hollohan case* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] laid down that a *quia timet* action would not be permissible and Shri Jayant Bhushan, learned Senior Counsel appearing on behalf of some of the respondents has pointed out to us that in P. Ramanatha Aiyar's *Advanced Law Lexicon* a *quia timet* action is the right to be protected against anticipated future injury that cannot be prevented by the present action. Nevertheless, we are of the view that it needs to be authoritatively decided by a Bench of five learned Judges of this Court, as to whether the High Court, exercising power under Article 226 of the Constitution, can direct a Speaker of a Legislative Assembly (acting in quasi judicial capacity under the Tenth Schedule) to decide a disqualification petition within a certain time, and whether such a direction would not fall foul of the *quia timet* action doctrine mentioned in para 110 of *Kihoto Hollohan case* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] . We cannot be mindful of the fact that just as a decision of a Speaker can be corrected by judicial review by the High Court exercising jurisdiction under Article 226, so prima facie should indecision by a Speaker be correctable by judicial review so as not to frustrate the laudable object and purpose of the Tenth Schedule, which has been referred to in both the majority and minority judgments in *Kihoto Hollohan case* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] .

4. The facts of the present case demonstrate that disqualification

> petitions had been referred to the Hon'ble Speaker of the Telangana State Legislative Assembly on 23-8-2014, and despite the hopes and aspirations expressed by the impugned judgment [*Errabelli Dayakar Rao* v. *Talasani Srinivas Yadav*, 2015 SCC OnLine Hyd 418] , the Speaker has chosen not to render any decision on the said petitions till date. We, therefore, place the papers before the Hon'ble Chief Justice of India to constitute an appropriate Bench to decide this question as early as possible.""

56. It will also be relevant to refer to paragraph 13 of the said judgment, which reads thus:

> "**13.** We would have acceded to Mrs Madhavi Divan's plea that in view [*S.A. Sampath Kumar* v. *Kale Yadaiah*, (2021) 16 SCC 528] of this order of a Division Bench of this Court, the hearing of this case ought to be deferred until the pronouncement by a five-Judge Bench of this Court on the issues raised in the present petition. However, we find that this very issue was addressed by a five-Judge Bench judgment in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] and has already been answered. Unfortunately, the decision contained in the aforesaid judgment was not brought to the notice of the Division Bench which referred [*S.A. Sampath Kumar* v. *Kale Yadaiah*, (2021) 16 SCC 528] the matter to five Hon'ble Judges of this Court, though *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] was sought to be distinguished in *Kuldeep Bishnoi* [*Speaker, Haryana Vidhan Sabha* v. *Kuldeep Bishnoi*, (2015)

12 SCC 381] , which was brought to the notice of the Division Bench of this Court."

57. It is pertinent to note that R.F. Nariman, J. who had authored the judgment in the case of ***Keisham Meghachandra Singh*** (supra) was also a Member of the Bench which passed the Reference Order in the case of ***S.A. Sampath Kumar*** (supra). A perusal of paragraph 13 of the judgment in the case of ***Keisham Meghachandra Singh*** (supra) would clearly reveal that the judgment in the case of ***Rajendra Singh Rana*** (supra) was not brought to the notice of the Bench that made the Reference Order.

58. This Court, in the said case, thereafter, extensively referred to the Constitution Bench judgment in the cases of ***Kihoto Hollohan*** (supra) and ***Rajendra Singh Rana*** (supra), which we have already referred to hereinabove. This Court, thereafter, observed thus:

"**25.** Indeed, the same result would ensue on a proper reading of *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] . Paras 110 and 111 of the said judgment when read together would make it clear that what the finality clause in Para 6 of the Tenth Schedule protects is the exclusive jurisdiction that vests in the Speaker to decide disqualification petitions so that nothing should come in the way of deciding such petitions. The exception that is made is also of importance in

that interlocutory interference with decisions of the Speaker can only be qua interlocutory disqualifications or suspensions, which may have grave, immediate, and irreversible repercussions. Indeed, the Court made it clear that judicial review is not available at a stage prior to the making of a decision by the Speaker either by a way of *quia timet* action or by other interlocutory orders.

26. A *quia timet* action has been described in *Black's Law Dictionary* as follows:

> "*Quia Timet.*— Because he fears or apprehends. In equity practice, the technical name of a bill filed by a party who seeks the aid of a court of equity, because he fears some future probable injury to his rights or interests, and relief granted must depend on circumstances."

27. The leading judgment referred to insofar as *quia timet* actions are concerned is the judgment in *Fletcher* v. *Bealey* [*Fletcher* v. *Bealey*, (1884) LR 28 Ch D 688 : 54 LJ Ch 424 : 52 LT 541] . In this case, a *quia timet* action was asked for to interdict the tort of nuisance in order to prevent noxious liquid from flowing into a river. Pearson, J. after referring to earlier judgments on *quia timet* action then held : (Ch D p. 698)

> "… I do not think, therefore, that I shall be very far wrong if I lay it down that there are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed,

> the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action."

28. This statement of the law has subsequently been followed by recent English decisions reported as *London Borough of Islington* v. *Margaret Elliott* [*London Borough of Islington* v. *Margaret Elliott*, 16 2012 EWCA Civ 56] (see para 30) and *Vastint Leeds BV* v. *Persons unknown* [*Vastint Leeds BV* v. *Persons unknown*, (2019) 4 WLR 2 : 2018 EWHC 2456 (Ch)] in which a *quia timet* injunction was described in the following terms : (*Vastint Leeds BV case* [*Vastint Leeds BV* v. *Persons unknown*, (2019) 4 WLR 2 : 2018 EWHC 2456 (Ch)] , WLR para 26)

> "*26.* Gee describes a *quia timet* injunction in the following terms [Gee, *Commercial Injunctions*, 6th Edn. (2016) at [2-035]]:
>
> 'A *quia timet* (since he fears) injunction is an injunction granted where no actionable wrong has been committed, to prevent the occurrence of an actionable wrong, or to prevent repetition of an actionable wrong.' "

The decision in *Fletcher* [*Fletcher* v. *Bealey*, (1884) LR 28 Ch D 688 : 54 LJ Ch 424 : 52 LT 541] was referred to in approval in para 30 of the aforesaid judgment.

29. The decision in *Fletcher* [*Fletcher* v. *Bealey*, (1884) LR 28 Ch D 688 : 54 LJ Ch 424 : 52 LT 541] was also referred to by this Court in *Kuldip Singh* v. *Subhash Chander Jain* [*Kuldip Singh* v. *Subhash Chander Jain*, (2000) 4 SCC 50] as follows : (*Kuldip Singh case* [*Kuldip*

Singh v. *Subhash Chander Jain*, (2000) 4 SCC 50] , SCC p. 55, para 6)

> "*6.* A *quia timet* action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process.
> In *Fletcher* v. *Bealey* [*Fletcher* v. *Bealey* , (1884) LR 28 Ch D 688 : 54 LJ Ch 424 : 52 LT 541] , Pearson, J. explained the law as to actions *quia timet* as follows : (Ch D p. 698)
>
> ' ... there are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action.' "

30. A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in para 110 of *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp

(2) SCC 651] are *quia timet* actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. **Paras 110 and 111 of *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] do not, therefore, in any manner, interdict judicial review *in aid of* the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period. What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided if the constitutional objective of disqualifying persons who have infracted the Tenth Schedule is to be adhered to. This period has been fixed keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is 5 years and the fact that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for a single day, as found in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] , if they have infracted the provisions of the Tenth Schedule**."

[emphasis supplied]

59. Thereafter, in paragraph 33 in the case of ***Keisham Meghachandra Singh*** (supra), this Court considered and rejected the contention of the appellants therein for deciding the disqualification petition itself and observed that the facts in the said case are not similar to the facts in the case of ***Rajendra Singh Rana*** (supra). This Court also observed that the life of the Legislative Assembly in the said case would come to an end only in March 2022. It, therefore, granted relief to the extent of directing the Speaker of the Manipur Legislative Assembly to decide the disqualification petitions pending before him within a period of four weeks from the date on which that judgment was intimated to him. It also reserved a remedy to the parties to approach the Court in the event the decision was not taken within a period of four weeks.

60. Having considered the position of law as has been laid down by this Court in various judgments, we will now consider the issue that falls for consideration before us.

61. Noticing the evil of political defections, the Parliament had found it appropriate to amend the Constitution by the Constitution (Fifty-Second Amendment) Act, 1985 so as to provide for the Tenth Schedule to the Constitution of India.

The Statement of Objects and Reasons of the Constitution (Fifty-Second Amendment) Bill, 1984 reads thus:

> "**Statement of Objects and Reasons**
>
> 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 the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance."

62. By the said amendment, certain changes were made to Articles 101, 102, 190 and 191. Most importantly, the Tenth Schedule which provided for disqualification on the ground of defection, came to be added by the said Amendment Act.

63. It will be relevant to note that, when the Bill came up for discussion before both the Houses of Parliament, the question as to "*whether the adjudication of disqualification petitions should be left to the discretion of the Speaker/Chairman or to some other authority*" was also extensively debated.

64. It will be relevant to refer to the speech of Shri A.K. Sen, the then Law Minister, delivered on 30th January 1985 before the Lok Sabha, which reads thus:

> "**Shri A.K. Sen** - ..... Once it goes outside the control of the House, it will take years and years for the court to come to a decision, because there will be appeals and further appeals and the matter will be forgotten, like the Anti-Defection Bills of the past. Therefore, if we mean business, we must give authority to decide this serious matter to the Speaker or the chairman of the House concerned, who has been elected by the majority vote of the Hose concerned. With these words, I recommend to the House the unanimous acceptance of this Bill."

65. It can thus be seen that the reason for entrusting this important task to the Speaker/Chairman was that, once such a disqualification petition goes outside the control of the House, it might take years and years for the courts to come to a decision due to appeals and further appeals ultimately leading to the matter being forgotten.

66. It will be relevant to refer to the speech of the then Member of Parliament Shri Rajesh Pilot, made during the same Lok Sabha debate, which reads thus:

> "**Shri Rajesh Pilot** - ..... I would also like to make a submission that when we go through this legislation and analyse it, there is a lurking fear that the Speaker may have been given authoritarian powers. The Speaker or the Chairman is elected through due process and he belongs to a party. He is elected on the ticket of a particular party and when he seeks re-election, he has to look to that party again. A legislation should be brought in the Parliament that in future nobody would contest against the Speaker and once his

non-political character has been recognized, he will have to sever all connections with his political party so that nobody may contest election against him. Then he will contest election as an independent candidate and return as an independent candidate to this House. Otherwise, if such privileges are not given to the Speaker and he is under pressure from the ruling party, it is feared that the rights of the Opposition may be adversely affected."

67. The then learned Member of Parliament expressed his fear that the Speaker may have been given authoritarian powers. He expressed that the Speaker/Chairman belongs to a particular party and is elected through due process. He also expressed his fear that, such a Speaker/Chairman has to be supported by that particular party when he seeks re-election. He, therefore, suggested enacting a legislation providing for re-election of the Speaker/Chairman without contest. He expressed that it was necessary that the Speaker/Chairman severs all connections with his political party so that nobody would contest elections against him and that he contests the election as an independent candidate and return as an independent candidate to the House. The learned Member of Parliament expressed that if such privileges were not given to the Speaker and if he was under pressure from

the ruling party, the rights of the members of the Opposition may be adversely affected.

68. It will also be relevant to refer to the speech made by one of the Members Shri Priya Ranjan Das Munshi, wherein he expressed his apprehension that the petition before the Speaker could face undue delay, which reads thus:

> "**Shri Priya Ranjan Das Munshi** : .....Now, in regard to a dispute regarding a member, the matter will be referred to the Presiding Officer, but no time limit has been fixed. I would request in the next session the time limit should be fixed within which the Speaker has to announce his decision. If he keeps it pending for three to four months, it should not be allowed."

69. The learned Member had expressed that no time limit had been fixed for the Presiding Officer to decide the issue. He suggested that a time-limit should be fixed, within which the Speaker must announce his decision. He also expressed that the Speaker/Chairman should not be allowed to keep the matter pending for three to four months.

70. It will be relevant to refer to another extract from the speeches of Shri A.K. Sen, the then Law Minister delivered during the same debate, which reads thus:

> "**Shri A.K. Sen** : .....The other questions are about the Speaker's authority. It was our clear intention from the very beginning that we are not going to allow this matter to be dilly-dallied and tossed about in the courts of law or in the Election Commission's office. I had myself appeared in the Courts along with late Kanhaiya Lal Mishra Ji for winning our symbol. Babuji is there. He was the President of our party then. We used to go very regularly and Shri Siddhartha Shankar Ray was assisting me at that time. But the time we won back our symbol, it became worthless, because we had already won the election not on a pair of bullocks, but on a cow and a calf. Therefore, that type of delay should not be tolerated any more. We want a quick decision. If this Bill is to be effective, and if defection is to be outlawed effectively, then we must choose a forum which will decide the matter fearlessly and expeditiously. This is the only forum that is possible. With these words I commend the Motion for consideration."

71. It can therefore be seen that the only purpose of entrusting the work of adjudicating the disqualification petitions to the Speaker/Chairman was to avoid *dilly-dallying* in the courts of law or the Election Commission's office. The then Law Minister, who was himself an eminent lawyer, referred to a matter in which he had appeared before the courts seeking restoration of his party's rights to use a party symbol. However, by the time his party's right was restored by the courts, his party had already won the election on another symbol. The then Law Minister expressed that such a type of

delay should not be tolerated and that they wanted a quick decision.

72. It can also be seen that the Parliament decided to entrust the important question of adjudication of disqualification petitions, on account of defection, to the Speaker/Chairman expecting him to decide them fearlessly and expeditiously. As can be seen from the speeches of the then Law Minister and other Members, Parliament was conscious of the potential long delays that could arise if the petitions were left to be decided through court proceedings. To avoid such potential delays, that would defeat the purpose of the Tenth Schedule, the Parliament therefore intended to have a forum which facilitated the quick disposal of the disqualification proceedings.

73. With the experience of over 30 years of working of the Tenth Schedule to the Constitution, the question that we will have to ask ourselves is as to whether the trust which the Parliament entrusted in the high office of the Speaker or the Chairman of avoiding delays in deciding the issue with regard to disqualification has been adhered to by the incumbents in the high office of Speaker and the Chairman or not?

74. We need not answer this question, since the facts of the various cases we have referred to hereinabove themselves provide the answer.

75. Now, let us consider the submissions made on behalf of the rival parties.

76. It has been argued on behalf of the respondents that in view of the Reference made to a Bench of learned five Judges in the case of ***S.A. Sampath Kumar*** (supra), the question as to whether this Court can issue a direction to the Speaker to decide the disqualification proceedings in a time-bound manner should not be decided in the present proceedings. It has also been argued on behalf of the respondents that this Court cannot pass any order which would be in the nature of *Quia Timet* action.

77. No doubt that the Bench of learned two-Judges of this Court in the case of ***S.A. Sampath Kumar*** (supra) has referred the question with regard to the issuance of directions to the Speaker, to the Bench of learned five-Judges. However, in a subsequent case of ***Keisham Meghachandra Singh*** (supra), a Bench of learned three-Judges of this Court found that when the Reference Order came to be passed in the case of ***S.A.***

Sampath Kumar (supra), the judgment of the Constitution Bench of this Court in the case of ***Rajendra Singh Rana*** (supra) was not brought to the notice of the Division Bench of this Court. It will also be relevant to note that R.F. Nariman, J., who had authored the judgment in the case of ***Keisham Meghachandra Singh*** (supra) was also a Member of the Bench which passed the Reference Order in the case of ***S.A. Sampath Kumar*** (supra).

78. Needless to state that in the case of ***Keisham Meghachandra Singh*** (supra), this Court, after referring to various earlier judgments of this Court, has directed the Speaker of the Manipur Assembly to decide the disqualification petitions within a period of three months from date of order.

79. In our considered view, the issue is no more *res-integra*.

80. The Constitution Bench in the case of ***Kihoto Hollohan*** (supra), while considering the challenge to the constitutional validity of the Tenth Schedule, has held that the power of the Speaker/Chairman to decide disqualification petitions under Paragraph 6(1) of the Tenth Schedule to the Constitution is pre-eminently of a judicial complexion. In the majority judgment, M.N. Venkatachaliah, J. (as His Lordship then was)

held that the proceedings of disqualification were, in fact, not before the House, but only before the Speaker as a specially designated authority. The decision under Paragraph 6(1) of the Tenth Schedule to the Constitution was not the decision of the House, nor was it subject to the approval by the House. The decision operated independently of the House. It was therefore held that the decision of the Speaker/Chairman exercising power under Paragraph 6(1) of the Tenth Schedule to the Constitution does not enjoy immunity from judicial scrutiny under Articles 122 and 212 of the Constitution.

81. No doubt that the Constitution Bench in the case of ***Kihoto Hollohan*** (supra) observed that the scope of judicial review under Articles 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6(1) of the Tenth Schedule to the Constitution would be confined to jurisdictional errors only i.e., infirmities based on violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity. This Court also observed that judicial review would not be available at a stage prior to the making of a decision by the Speaker/Chairman and a *Quia Timet* action would not be

permissible. Further, it was observed that an interference would not be permissible at an interlocutory stage of the proceedings. However, this Court made an exception in respect of cases where disqualification or suspension was imposed during the pendency of the proceedings and such disqualification or suspension was likely to have grave, immediate and irreversible repercussions and consequences. A heavy reliance is sought to be placed on the aforesaid observations by the Respondents.

82. It can be seen from the judgment of the Constitution Bench in the case of ***Kihoto Hollohan*** (supra) that what was contemplated by not permitting a *Quia Timet* action was to prevent the passing of an order which would have the effect of protracting, interfering or delaying the proceedings pending before the Speaker/Chairman. At that point of time, the Constitution Bench was not expected to anticipate that, in the future, situations may arise where the high constitutional functionaries, like the Speaker/Chairman, would keep the proceedings pending for years together and permit them to die a natural death at the end of the tenure of the members facing

such disqualification proceedings. However, such situations have subsequently come before this Court in various cases.

83. A glaring example was the case of ***Rajendra Singh Rana*** (supra) which came before the Constitution Bench of this Court. We have already narrated the facts of the said case. In the said case, though the proceedings of disqualification and the split were pending since 4th September 2003 and 6th September 2003 respectively, the Speaker chose not to decide the disqualification petition relating to the original 13 MLAs but decided the question of split under Paragraph 3 of the Tenth Schedule to the Constitution. Meanwhile, the petition regarding the disqualification of the original 13 MLAs was kept pending. The pendency of the writ petition before the Allahabad High Court was taken as one of the grounds by the Speaker for not deciding the proceedings pending before him. Subsequently, the matter was heard by a Full Bench of the Allahabad High Court. In the Full Bench, the writ petition was dismissed by the learned Chief Justice, while the other two learned Judges of the Bench took a view that the Speaker was in error in not deciding the petition seeking disqualification of the original 13 MLAs first, and instead, directly deciding the

application for recognition of a split made by the 37 MLAs, which included the original 13 MLAs. Finally, the matter reached this Court. The Constitution Bench of this Court ultimately held that the Speaker had committed an error that goes to the root of the matter or an error that was so fundamental, that even under a limited judicial review, the order of the Speaker had to be interfered with.

84. This Court took into consideration the glaring facts in the case. It found that the term of the Assembly was coming to an end and an expeditious decision by the Court was warranted for the protection of the constitutional scheme and constitutional values. This Court further found that the very fact that the original 13 MLAs had given a letter to the Hon'ble Governor requesting him to call upon the Leader of Opposition to form the Government was a ground sufficient enough to incur disqualification under Paragraph 2(1)(a) of the Tenth Schedule to the Constitution. This Court therefore took an unprecedented step of holding those 13 MLAs as disqualified.

85. The view taken by another Constitution Bench of this Court in the case of ***Subhash Desai*** (supra) is consistent with the decisions of the earlier Constitution Bench.

86. This Court, in the case of ***Subhash Desai*** (supra), held that the Speaker of the Maharashtra Legislative Assembly was the appropriate constitutional authority to decide the question of disqualification under the Tenth Schedule to the Constitution. It was held that there were no extraordinary circumstances in the said case that warranted the exercise of jurisdiction by this Court to adjudicate disqualification petitions in the first instance. This Court therefore held that the Speaker must decide disqualification petitions within a reasonable period. It is to be noted that though the Constitution Bench in the case of ***Subhash Desai*** (supra) had noticed the judgment of three learned Judges in the case of ***Keisham Meghachandra Singh*** (supra), it did not disapprove the view taken in the said case. On the contrary, it observed that the Speaker should act fairly, independently, and impartially while adjudicating the disqualification petitions under the Tenth Schedule to the Constitution.

87. We have also extensively referred to the judgment of learned three Judges in the case of ***Keisham Meghachandra Singh*** (supra). This Court, after referring to the earlier judgments, found that what was meant by passing an order in

Quia Timet action in the case of ***Kihoto Hollohan*** (supra) was passing an order injuncting the Speaker from making a decision in the disqualification petitions pending before him. It held that it did not, in any manner, interdict judicial review *in aid of* the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule to the Constitution. It was observed that the Speaker, in acting as a Tribunal was bound to decide the disqualification petitions within a reasonable period.

88. In the present case, the Appellants in the lead matter namely Padi Kaushik Reddy and Kuna Pandu Vivekanand filed separate disqualification petitions before the Telangana State Legislative Assembly on 18th March 2024, 2nd April 2024 and 8th April 2024.

89. Since the petitions for disqualification filed by the Appellants/Petitioners were kept pending before the Speaker, writ petitions were filed before the High Court.

90. The learned Single Judge, vide judgment and order dated 9th September 2024, had only asked the Speaker for fixing a schedule of hearing (filing of pleadings, documents, personal hearing etc.) within a period of four weeks. The learned Single

Judge further clarified that, if nothing was heard within four weeks, then the matter would be reopened *suo motu*. Being aggrieved by the order of the learned Single Judge, the Secretary of the Telangana Legislative Assembly preferred three separate appeals. Vide impugned judgment and final order dated 22nd November 2024, however, the learned Division Bench of the High Court reversed the order of the learned Single Judge.

91. When the matter was firstly listed on 31st January 2025 before this Court, taking into consideration that the learned Division Bench of the High Court had directed the disqualification proceedings to be decided within a "reasonable period", we had asked Shri Rohatgi, learned Senior Counsel for the Respondents to take instructions from the Speaker as to within how much time would the disqualification proceedings be decided by him. Thereafter, when the matter was listed on 10th February 2025, Shri Rohatgi submitted that he was not in a position to make any statement in that regard. Thereafter, upon the matter being mentioned on 20th February 2025, it was directed to be kept for hearing on 4th March 2025. On the said date, after we had heard Shri Sundaram and Shri Naidu,

learned Senior Counsel for the Appellants/Petitioners at some length, a hyper technical objection was raised by Dr. Singhvi and Shri Rohatgi, learned Senior Counsel appearing for the Respondents that no "formal notice" was issued in these matters and therefore the respondents could not file any reply. Though we found the objection to be totally hyper technical, in order to avoid any complications at a subsequent point of time, where a ground could be raised by the respondents claiming that the petitions were decided without following the principles of natural justice, we issued a formal notice to the respondents returnable on 25th March 2025. It is to be noted that the Speaker had issued notices to the MLAs pertaining to the lead matter only on 16th January 2025 i.e., on the next day after the lead matter was filed before this Court on 15th January 2025. Similarly, notices were issued to the remaining MLAs pertaining to the connected writ petition on 4th February 2025 i.e., on the next day after the connected matters were heard for the first time by this Court on 3rd February 2025.

92. It could thus be seen that the Speaker did not even find it necessary to issue notices in the petitions filed by the present petitioners for a period of more than seven months and only

after the proceedings were filed before this Court, did the Speaker find it necessary to issue notice.

93. The question, therefore, that we ask ourselves is as to whether the Speaker has acted in an expeditious manner, when expedition was one of the main reasons, why the Parliament had entrusted the important task of adjudicating disqualification petitions to the Speaker/Chairman. Non-issuance of any notice for a period of more than seven months and issuing notice only after either the proceedings were filed before this Court, or after this Court had heard the matter for the first time cannot by any stretch be envisaged as acting in an expeditious manner.

94. Though, we do not possess any advisory jurisdiction, it is for the Parliament to consider whether the mechanism of entrusting the Speaker/Chairman the important task of deciding the issue of disqualification on the ground of defection, is serving the purpose of effectively combating political defections or not? If the very foundation of our democracy and the principles that sustain it are to be safeguarded, it will have to be examined whether the present mechanism is sufficient or not. However, at the cost of

repetition, we observe that it is for the Parliament to take a call on that.

95. In light of the facts of the present case, however, a failure to issue any direction to the Speaker, in our view, would frustrate the very purpose for which the Tenth Schedule has been brought in the Constitution. If we do not issue any direction, it will amount to permitting the Speaker to repeat the widely criticized situation of "*operation successful, patient died*".

96. In any event, we find that there was absolutely no occasion for the learned Judges of the Division Bench of the High Court to have interfered with the well-reasoned order of the learned Single Judge, as learned Single Judge had only asked the Speaker to fix a schedule of hearing (filing of pleadings, documents, personal hearing etc.) within a period of four weeks. The learned Single Judge had not even issued any direction to decide the disqualification proceedings within a time-bound period. We, therefore, find that the Division Bench of the High Court has erred in interfering with the order of the learned Single Judge of the High Court.

97. We further find that as a matter of fact, there was no occasion for the Secretary, Telangana Legislative Assembly to have challenged the order passed by the learned Single Judge inasmuch as nothing adverse could be found in the said order.

98. Next, it was sought to be urged on behalf of the appellants that taking into consideration the glaring facts in the present case, we ourselves should decide the question with regard to the disqualification as was done by the Constitution Bench of this Court in the case of ***Rajendra Singh Rana*** (supra).

99. In that respect, it is pertinent to note that all the judgments of the Constitution Bench, right from ***Kihoto Hollohan*** (supra) to ***Subhash Desai*** (supra), consistently hold that the Speaker is the authority who should decide the issue with regard to disqualification at the first instance. We are, therefore, not inclined to accede to the said request. We, however, find it appropriate to direct the Speaker to decide the petitions pending before it within a stipulated period.

100. We may clarify that we are inclined to do so in view of the specific finding of the Constitution Bench of this Court in the cases of ***Kihoto Hollohan*** (supra) and ***Subhash Desai*** (supra), that the Speaker, while acting as an adjudicating

authority in Paragraph 6(1) of the Tenth Schedule to the Constitution, acts as a Tribunal amenable to the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and of this Court under Article 136 of the Constitution. While doing so, we are also reminded of the finding of the Constitution Bench that the Speaker/Chairman, while acting as an adjudicating authority under Paragraph 6 of the Tenth Schedule to the Constitution does not enjoy the constitutional immunity as available either under Article 122 or 212 of the Constitution.

101. We are therefore inclined to allow the present appeals/petition.

102. In the result, we pass the following order:

(i) The present appeals/petition are allowed;

(ii) The impugned judgment and final order dated 22nd November 2024 passed by the Division Bench of the High Court is quashed and set aside;

(iii) We direct the Speaker to conclude the disqualification proceedings pending against the 10 MLAs pertaining to the present appeals/petition as expeditiously as

possible and in any case, within a period of three months from the date of this judgment; and

(iv) We further direct that the Speaker would not permit any of the MLAs who are sought to be disqualified to protract the proceedings. In the event, any of such MLAs attempt to protract the proceedings, the Speaker would draw an adverse inference against such of the MLAs.

103. Pending application(s), if any, shall stand disposed of.

104. In the facts and circumstances, no order as to costs.

.....CJI
(B.R. GAVAI)

.....J
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
JULY 31, 2025.