



Decision on questions as to disqualification on ground of defection under Tenth Schedule

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Introduction

Paragraph 6 of Tenth Schedule says

1. If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:
Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.
2. All proceedings under subparagraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.”

Constitutional Validity

The provisions of Para 6(1) of the Tenth Schedule do not have the effect of excluding the jurisdiction of the High Court under Art. 226 or not the Supreme Court under Art. 136 of the Constitution, and, therefore, the paragraph did not require ratification under proviso to Art. 368 (2) of the Constitution.-Parkash Singh Badal v. Union of India ^[1].

Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speaker/Chairman is valid.-KihotoHollonhon v. Zachillhu ^[2].

The finality clause in paragraph 6 does not completely exclude the jurisdiction of the courts under Art. 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction.-KihotoHollonhon v. Zachillhu ^[3].

The contention that vesting of adjudicatory functions in the Speaker would violate the provision on the ground of likelihood of political bias is not tenable.-Mayawati v. Markandeya Chand ^[4].

Scope

A decision under paragraph 6(1) is not a decision of the House, nor is subject to the approval by the House. Therefore, a proceeding under para 6(1) before the Speaker or the Chairperson cannot be constructed as a proceeding in the Parliament or the Legislature of a State. - KihotoHollonhon v. Zachillhu ^[5].

Order dt. 8/5/1986 passed by the Speaker of the Punjab

Legislative Assembly, on an application filed by a splinter or breakaway group of the Shiromoni Akali Dal Legislature Party, recognising it as a separated party is not an order made under Para 6 of the Tenth Schedule.-Parkash Singh Badal v. Union of India ^[6].

The power to resolve any dispute relating to disqualification, as vested in the Speaker or Chairman under the Tenth Schedule is a judicial power.-KihotoHollonhon v. Zachillhu ^[7].

“The Speakers and Chairpersons, while exercised 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 subjected to judicial review by the High Court and Supreme Court”.-KihotoHollonhon v. Zachillhu ^[8].

“The use of the word “final” qua any order passed by any authority under a provision of the Constitution or other statutes has always been understood to imply that no appeal, revision or review lies against that order and not that it overrides the power of judicial review, either of the High Court or of the Supreme Court under Art. 226 or Art. 136 of the Constitution, as the case may be”.- Union of India v. Jyoti Parkas ^[9].

“The concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Art. 136, 226 and 227 of the Constitution insofar as infirmities based on violations of Constitutional mandates, malafides, non-compliance with Rules of Natural Justice and perversity are concerned.”-KihotoHollonhon v. Zachillhu ^[10].

The Speaker of Legislative Assembly has no power of review under the Tenth Schedule, and an order of disqualification made by him under Para 6 is subject to correction only by judicial review.-Dr. Kashinath G. Jalmi v. The Speaker, Legislative Assembly of Goa ^[11].

Disqualification Proceeding – Whether can be initiated suomotu by the Speaker

Paragraph 6 is worded in such a manner as to comprehend also suomotu exercise of jurisdiction by the Speaker in initiating a disqualification proceeding.-BanjakPhom v. Thenucho ^[12].

Question of disqualification-Whether can be decided suomotu by the Speaker

There is nothing in paragraph 6 or any of the other provisions in the Tenth Schedule to limit the jurisdiction of the Speaker to decide a question of disqualification only on a petition filed

by a member of the House. There is nothing in these provisions to indicate that Speaker cannot act *suomotu* if the conditions requisite for disqualification come to his notice by some process or the other.-*BanjakPhom v. Thenucho* ^[13].

Position of Speaker

“The Speakers/Chairpersons hold a pivotal position in the Scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. It would indeed be unfair to the high tradition of that great office to say that the investiture in it of determination jurisdiction under the Tenth Schedule would be vitiated for violation of a basic feature of democracy.”-*KihotoHollonhon v. Zachillhu* ^[14].

Speaker’s Order- Validity of

Where an application was filed by a splinter group of the ShiromaniAkali Dal Legislature Party, to consider and recognise it as a separate group, and the Speaker before passing his order recognising the splinter or breakway group as a separate party, did not hear the original political party i.e. the ShiromaniAkali Dal Legislature Party or any other person interested in the matter, it was held that such an order would bind none, and in that sense the same was void *ab initio*.-*Parkash Singh Badal v. Union of India* ^[15].

Order of disqualification passed by the Speaker was challenged on the ground of malafides. On the facts and circumstances of the case, it is held that the order cannot be said to be vitiated by malafides.-*ZachilhuKhusantho v. State of Nagaland* ^[16].

Where more than one MLA belonging to a particular political party were expelled from the party for defying the party whip, only the petitioner/MLA was declared disqualified by the Speaker; but not the others, it was held that their cases being different on facts on record, the decision of the Speaker was not violative of Art. 14 of the Constitution.-*MahtabLal Singh v. State of Bihar* ^[17].

The petitioner MLA defied his Party’s whip by remaining absent in the House on the plea of illness, but when asked to show-case as to why he should not be declared disqualified on the ground of defection, and given personal hearing by the Speaker, filed to produce any evidence or medical certificate in support of his claim. Held that his challenge to the order of disqualification as violative of the principles or natural justice is not tenable and there was no such violation.-*MahtabLal Singh v. State of Bihar* ^[18].

Having regard to the contents of the declaration, the failure of the petitioners to give any explanation before the Speaker, the failure to take a definite stand before the Speaker that they thereby had not voluntarily given up membership of their political party, it is held that the order of disqualification passed by the Speaker cannot be regarded as perverse.-*ZachilhuKhusantho v. State of Nagaland* ^[19].

Interim stay against the Speaker’s order of Disqualification – Effect of

The effect of the stay of operation of the order of disqualification dated December 13, 1990 in respect of two MLAs of M.G. Party viz. Bandekar and Chopdekar was that with effect from December 14, 1990 the declaration that they

were disqualified from being the members of Goa Legislative Assembly under the Speaker’s order dated December 13, 1990 was not operative, and on 24th December, 1990 i.e. on the date of the alleged split, it could not be said that they were not members of Goa Legislative Assembly.-*Ravi S. Naik v. Union of India* ^[20].

“The action of the Speaker in ignoring the stay-order passed by the High Court, while passing his order dated 15th February, 1991 cannot be condoned on the view that in the absence of decision of the Supreme Court declaring Paragraph 7 as invalid, it was open for the Speaker to proceed on his own interpretation of paragraph 6 and 7 of the Tenth Schedule and ignore the stay-order passed by the High Court.”- *Ravi S. Naik v. Union of India* ^[21].

“The Speaker was bound by the stay-order passed by the High Court on 14th December, 1990 and any action taken by him in disregard of he said stay order would be a nullity. In the instant case, the Speaker’s order dated 15th February, 1991 treating Bandekar and Chopdekar as disqualified members in total disregard of the High Court’s stay order dated 14th December, 1990 was, therefore, held to be null and void.”- *Ravi S. Naik v. Union of India* ^[22].

Speaker’s Power to Review –Scope of

It is not correct to say the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his jurisdiction to decide the question of disqualification; or that such a power existed till 12th November, 1991 when the decision in the case of *KihotoHollonhon v. Zachillhu* ^[23] was rendered; or at least a limited power of review inheres in the speaker to correct any palpable error outside the scope of judicial review.- *Dr. Kashinath G. Jalmi v. The Speaker, Legislative Assembly of Goa* ^[24].

Any need for correction of errors in the Speaker’s order made under the Tenth Schedule can be met by the availability of judicial review against the same.-*KihotoHollonhon v. Zachillhu* ^[25]; *Dr. Kashinath G. Jalmi v. The Speaker, Legislative Assembly of Goa* ^[26].

“The existence of judicial review against the Speaker’s order of disqualification made under Para 6 is itself a strong indication to the contrary that there can be no inherent power of review in the Speaker in the Tenth Schedule, by necessary implication.”-*Dr. Kashinath G. Jalmi v. The Speaker, Legislative Assembly of Goa* ^[27].

Judicial Review of Speaker’s Order-Scope of

“The scope of judicial review under Article 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker or Chairperson under paragraph 6 would be confined to jurisdictional errors only.”-*KihotoHollonhon v. Zachillhu* ^[28].

Jurisdiction errors would include infirmities based on violation of Constitutional mandate, malafides, non-compliance with rules of natural justice and perversity-*KihotoHollonhon v. Zachillhu* ^[29].

Having regard to the Constitutional Scheme in the Tenth Schedule, judicial review should not cover any stage prior to the making of decision by the Speakers or Chairpersons, as the case may be, except in cases of interlocutory or suspensions

which may have grave, immediate and irreversible repercussions and consequences.-KihotoHollonhon v. Zachillhu^[30].

It is every violation of every rule, which would call upon or require the court to strike down the order of a Tribunal like that of Speaker. Whether the order is to be struck down on the ground of violation of a Rule, depends on a host of circumstances, such as the nature and significance of the Rule the conduct of the Writ-petitioners, and prejudice caused to them etc. having regard to all the circumstances, it is viewed that the final order of the Speaker is not liable to be quashed on this ground alone i.e. violation of Rule 7 of the Members of Nagaland Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986.-ZachilhuKhusantho v. State of Nagaland^[31].

Where an order of review was passed under the Tenth Schedule by the Speaker of the State Legislative Assembly reviewing the earlier order of disqualification against the Chief Minister and two other Ministers on the ground of defection, a writ-petition filed by a member of the Assembly questioning the Speaker's power of review, almost ten after the date of impugned order, was not liable to be dismissed merely on the ground of laches, particularly when the alleged usurpation of the public offices including that of the Chief Minister continued.-Dr. Kashinath G. Jalmi v. The Speaker, Legislative Assembly of Goa^[32].

Moreover, the relief claimed by the Petitioner-MLAs in their writ-petitions before the High Court, being in the nature of a class-action, and seeking no relief personal to them, the writ-petitions should not have been dismissed by the High Court merely on the Ground of laches.-Dr. Kashinath G. Jalmi v. The Speaker, Legislative Assembly of Goa^[33].

"While applying the principles of natural justice, it must be borne in mind that they are not immutable but flexible and they are not cast in a rigid mould and cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.-Ravi S. Naik v. Union of India^[34]."

Judicial review in respect of an order passed by the Speaker or Chairman under para 6 of the Tenth Schedule of the Constitution is held confined to jurisdiction errors only.-KeshabGogoi v. Speaker, Assam Legislative Assembly^[35].

If the impugned notice of the Speaker creates only an apprehension in the mind of the appellant-petitioner that a wrongful action is going to be taken against him under 10th schedule to the Constitution and no decision has been taken by the Speaker causing the injury to the appellant-petitioner, judicial review will not be available against such wrongful action or injury apprehended by the by the petitioner-appellant.-KeshabGogoi v. Speaker, Assam Legislative Assembly^[36].

In case of expulsion of a member of a political party from such party on the ground of anti-party activity, the dispute relates to intra-party discipline and right of a number to go against the party-whip and wishes of the party to which he belonged, and therefore, it cannot be a subject-matter of any writ-petition.-Dr. Mohan Babu v. Chief Election Commissioner, E.C. of India^[37].

Exercise of Discretion in entertaining a delayed Writ-petition- Circumstances for

"The exercise of discretion by the court even where the application is to be governed by the objective of promoting public interest and good administration, and on that basis it cannot be said that discretion should not be exercised in favour of interference by way of a Writ-petition under Art. 226, where it is absolutely necessary to prevent continuance of usurpation of public office or perpetuation of an illegality, as in the present case.-Dr. Kashinath G. Jalmi v. The Speaker, Legislative Assembly of Goa^[38]."

Non-awarding of costs-Relevant considerations for

The motive or conduct of the members in such a situation can be relevant only for denying them the costs, even if their writ-petition and the claim therein succeed.-Dr. Kashinath G. Jalmi v. The Speaker, Legislative Assembly of Goa^[39].

Irregularity in procedure-Effect of

As long as irregularity of procedure does not amount to violating an essential principle of natural justice, it cannot be used as a ground to challenge the validity of the disqualification-proceedings before the Speaker.-ZachilhuKhusantho v. State of Nagaland^[40].

When a certain procedure is required by the Disqualification Rules to be adopted for giving effect to the provisions of the Constitution, the non-adoption of the procedure cannot be side-lined altogether as a mere procedure and of no circumstance.-Mayawati v. Markandeya Chand^[41].

Where the two MLAs expelled by their Party President and later declared "unattached" by the Speaker did not challenge the order of expulsion or the order of the Speaker declaring them unattached, the writ-petitioners other than those two MLAs are not entitled to challenge the same collaterally in these proceedings under Art. 226.-BanjakPhom v. Thenucho^[42].

A plea not taken before the Speaker cannot be taken before the High Court in a writ-proceeding. When the omission as regards verification of Annexures to the petition seeking disqualification of certain MLAs was not pleaded before the Speaker, nor was noticed by the Speaker, and nor even noticed in the writ-petition as no ground in this respect was taken in the writ-petition, it was held that the order of the Speaker could not be interfered with under Art. 226 on the ground of alleged omission of verification of the Annexures to the Petition of disqualification.-ZachilhuKhusantho v. State of Nagaland^[43].

Perversity- Meaning of

In any event, merely because there is a delay in concluding the hearing by the Speaker, his order cannot be said to be perverse.-Mayawati v. Markandeya Chand^[44].

Unreasonableness-Meaning of

"It is frequently used as a general description of the things that must not be done. For instance a person entrusted with a discretion must direct himself properly in a law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are

irrelevant to the matter that he has to consider.” If he does not obey these rules, he may truly be said, and often is said, to be acting “unreasonably.”- Associated Provincial Picture Houses Ltd. V. Wednesbury Corporation ^[45].

It applies to a decision which is so outrageous in its defence of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.-CCSU v. Minister of Civil Service ^[46].

To arrive at a decision on ‘reasonableness,’ the court or the authority has to find out if any relevant factors have been left out or an irrelevant factors have been taken into account. A decision to be reasonable should be within the four corners of the law, and not one which is no which no sensible person could have reasonably arrived at, having regard to the above principle, and should be bonafide one.- Union of India v. Ganayutham ^[47].

Sub-Paragraph (2)-Scope of

The deeming provision contained in paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Art. 122(a) and 212(1) of the Constitution as understood, and explained in Keshav Singh’s case reported in (1965) ^[48] to protect the validity of proceedings from irregularities of procedure, but confined the scope of such immunity only to the proceedings in Parliament or in the Legislature of State, as the case may be.-KihotoHollonhon v. Zachillhu ^[49].

“Validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. No court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business.- M.S.M. Sharma v. Dr. Shree Krishna Sinha ^[50]”

The High Court has no jurisdiction to entertain a writ-petition under Art. 226 to decide the legality of a proceeding in the Legislature of a State.-SaradhakarSupakar v. Speaker, Orissa Legislative Assembly ^[51].

As the Speaker has not yet taken a final decision and has merely referred the matter of disqualification to the Committee of Privileges for enquiry and report, on the receipt of which only he would take a final decision, and the Committee is yet to conclude its proceeding, the present writ-petition is held as premature and not maintainable on this ground alone.-BhajanmanBohera v. Speaker, Orissa Legislative Assembly ^[52].

“The Disqualification Rules framed under paragraph 8 of Tenth Schedule are procedural in nature, and any violation of the same would amount to an irregularity in procedure, which is immune from judicial scrutiny in view of sub-paragraph (2) of Paragraph 6.-Ravi S. Naik v. Union of India ^[53].

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