

(1996) 04 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 28615 and 28622

Karanam Bala Rama Krishna Murthy

APPELLANT

Vs

Gottipati Hanumantha Rao, Minister for Civil Supplies,
Government of A.P. and Others

RESPONDENT

Date of Decision : 15-04-1996

Acts Referred:

Andhra Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules,
1986 — Rule 6
Constitution of India, 1950 — Article 191, 191(2), 192, 192(1), 194
Criminal Procedure Code, 1973 (CrPC) — Section 173(2)

Citation : (1996) 2 ALT 799

Hon'ble Judges : Prabha Shanker Mishra, C.J; Mohammed Habeeb Shams
Ansari, J; B. Subhashan Reddy, J

Bench : Full Bench

Advocate : S. Ramachandra Rao, for the Appellant; B. Adinarayana Rao, for
Respondent No. 1, General, for Respondent Nos. 2 and 4 and M.R. Reddy, for the
Respondent

Judgement

Prabha Shanker Mishra, C.J.,

1. Petitioner-Karanam Balarama Krishna Murthy, a resident of Ongole in Prakasam District has moved this Court for a writ in the nature of quo-warranto in W.P.No. 28615/95 and W.P.No. 28622/95 on the ground that the 1st respondent-Gottipati Hanumanta Rao has incurred disqualification under the Tenth Schedule of the Constitution of India to be a Member of Andhra Pradesh Legislative Assembly as well as on the ground that his antecedents and blemished record of crime and violence are such that he is unfit to discharge his constitutional duties as a Member of the Legislative Assembly and a Minister in the Cabinet of Sri Chandrababu Naidu, the Chief Minister of the State. He has invoked this Court's jurisdiction under Article 226 of the Constitution for, according to him, although Sri Hanumantha Rao joining Telugu Desam Party after his having been elected as an independent candidate during 1994 elections,

Speaker of the Assembly has not taken any proceedings and declared him disqualified under a rule framed by him i.e., the Speaker in exercise of the Powers in paragraph 8 of the Tenth Schedule of the Constitution. Since only a Member of the Legislative Assembly is competent to file a petition in relation to the disqualification of another Member of the House, he (the petitioner) is not permitted to seek a reference about the disqualification of Sri Rao to him (the Speaker). Question whether the alleged criminal track record of Sri Hanumantha Rao disentitles him to hold the office of a Member of Legislative Assembly as well as a Minister in the Government of the State cannot, according to the petitioner, be agitated either before the Speaker as contemplated under the Tenth Schedule of the Constitution or under Articles 191 and 192 of the Constitution of India before the Governor of the State. According to him (the petitioner) a writ in the nature of quo-warranto or any other form to unseat Sri Rao (the 1st respondent) can be issued only by the Court exercising its plenary power and his moving the Court is not an act of an adversary in politics or in life to Sri Rao (the 1st Respondent) but that of a conscientious citizen and a voter in the Constituency represented by Sri Rao which has suffered by his election as a Member of the Assembly and his nomination by the Chief Minister after he has defected to the party headed by him as Minister in his Cabinet. Article 191 of the Constitution has received a substantial amendment by the Constitution (Fifty-second Amendment) Act, 1985 in the shape of Clause (2) thereof and the Tenth Schedule containing provision as to disqualification on ground of defect. The two parts of Article 191 speak of disqualification of a Member of the Legislative Assembly or the Legislative Council of a State. Clause (1) states,

"A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State -

- (a) If he holds any office of profit under the Government of India or the Government of any states specified in the First Schedule, other than an office declared by the Legislature of the State by law not disqualify its holders;
- (b) If he is of unsound mind and stands so declared by a competent court;
- (c) If he is an undischarged insolvent;
- (d) If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state, or is under any acknowledgment of allegiance or adherence to a foreign State;
- (e) If he is so disqualified by or under any law made by Parliament".

Explanation appended to the said clause states,

"For the purposes of these clauses, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State".

Article 192 envisages that, "If any question as to whether a Member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in Clause(1) of Article 191, the question shall be referred for the decision of the Governor and his decision shall be final" and, "Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion". Clause(2) of Article 191 states, "A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule". Instead, however, of a corresponding amendment in Article 192 to cover who shall decide about any person's disqualification under the Tenth Schedule, a complete code with substantive provisions as to disqualification on ground of defection and who shall take decision on question as to disqualification on ground of defection as well as the rule making authority is incorporated in the Tenth Schedule. After a spelling out, the interpretation of the expressions like "House", "Legislature Party", "original political party" and "paragraph" meaning a paragraph of this Schedule were made. It contains in paragraph 2 disqualification subject to the provisions of paragraphs 3,4, and 5 of a Member of a House belonging to any political party for being a Member of the House (a) if he has voluntarily given up his membership of such political party; or (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. This paragraph also contains the following explanation:

"(a) an elected member of a House shall be deemed to belong to the political party, if any by which he was set up as a candidate for election as such member".

Sub-paragraph (2) says, "An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election". Disqualification on ground of defection, however, is made inapplicable in the case of a split in the original political party and if the member claims that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than 1/3rd of the members of such Legislature party. Paragraph 4 carves out another exception to disqualification on ground of defection and says:

"A member of a House shall not be disqualified under sub-paragraph (1) or paragraph 2, where his original political party merges with another political party and claims that he and any other member of his original political party

(a) have become members of such other political party, or as the case may be, of a new political party formed by such merger, or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purpose of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph".

Paragraph 5 exempts the Speaker or the Deputy Speaker or the Chairman or the Deputy Chairman of the Legislative Assembly and the Legislative Council, as the case may be, if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belongs immediately before such election and does not, so long as he continues to hold such office, thereafter rejoin that political party or become a member of another political party or if he, having given up for election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office. Paragraph 6 provides as follows:

"Decision on questions as to disqualification on ground of defection

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

Rule making power is conferred upon the Chairman or the Speaker of a House for giving effect to the provisions of this Schedule in paragraph 8 therefor, in particular to provide for-

(a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(b) the report which the leader of a Legislature Party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in Clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to

whom such reports shall be furnished; and

(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

Exercising the power conferred upon him, the Speaker of the Assembly has made rules called. The Members of Andhra Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, and besides defining some other expressions, it has defined a "Member" to mean a member of the Legislative Assembly and a "Committee" to mean the Committee of privileges of the House of the Legislative Assembly. Rules appeared to take care of the provisions which are required to be made, in particular about the maintenance of registers or other records of the political parties, the report which the leader of a Legislature party in relation to a member of the House is required to furnish, the report which a political party shall furnish with regard to admission to such political party of any members of the House and the procedure for deciding any question referred to in sub-paragraph 1 of paragraph 6 i.e., the question whether a member of the House has become subject to disqualification under the Schedule. The rule which has been objected to in particular is one which reads as follows:

"6. (1) References to be by petitions. No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this Rule.

(2) A petition in relation to a member may be made in writing to the Speaker by any other member.

Provided that a petition in relation to the speaker shall be addressed to the Secretary.

(3) The Secretary shall -

(a) as soon as may be after the receipt of a petition under the proviso to Sub-rule (2) make a report in respect thereof to the House; and

(b) as soon as may be after the House has elected a member in pursuance of the proviso to sub-paragraph (i) of paragraph 6 of the Tenth Schedule place the petition before such member.

(4) Before making any petition in relation to any Member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.

(5) Every petition, -

(a) shall contain a concise statement of the material facts on which the petitioner

relies; and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person.

(6) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of Pleadings

(7) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition".

Procedure on receipt of the petition which the Speaker has to follow is one as stated in Rule 7 that (1) the Speaker shall consider whether the petition complies with the requirements of Rule 6; (2) if the petition does not comply with the requirements of Rule 6, he shall dismiss the petition and intimate the petitioner accordingly; and (3) if the petition complies with the requirements of Rule 6, he shall cause copies of the petition and of the annexures thereto to be forwarded (a) to the member in relation to whom the petition has been made; and (b) where such member belongs to any Legislature party and such petition has not been made by the Leader thereof, also to such Leader and such member of Leader shall, within seven days of the receipt of such copies, or within such further period as the Speaker may for sufficient cause allow, forward his comment in writing thereon to the Speaker. This Rule further says after considering the comments, if any, of the member or the leader of the Legislature party, the Speaker may either proceed to determine the question or if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for making preliminary inquiry and submit a report to him. In case the Speaker decides to refer the petition to the Committee, he would intimate the petitioner accordingly and make an announcement with respect to such reference in the house or if the House is not in session, cause the information as to the reference, to be published in the Bulletin and he would, after the receipt of the report from the Committee, determine the question. The Speaker shall either dismiss the petition or declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule, and cause copies of the order to be delivered or forwarded to the petitioner, the member in relation whom the petition has been made and to the Leader of the Legislature party if any, concerned.

2. It does not appear to us necessary to predicate in all aspects and respects either the purpose, object and ambit of the Tenth Schedule or the rules made by the Speaker except insofar as the grievance of the petitioner before us is concerned. Petitioner has alleged that the 1st respondent has been elected to the

House as an independent candidate and has so remained after the constitution of the House although until the members of the Telugu Desam Legislature Party got divided and a faction of them purportedly elected Sri Chandrababu Naidu as their leader who later became the Chief Minister of the State. The 1st respondent not only joined the bandwagon of Sri Chandrababu Naidu but also represented that he was a Member of the Telugu Desam Legislature Party and signed in the said capacity along with other members of the Telugu Desam Legislature Party, representations against the leadership of the then Chief Minister late Sri N.T. Rama Rao that they had voted against Sri Rama Rao as the leader of their Legislature party and elected Sri Chandrababu Naidu and their leader. He followed the said claim of his and continued claiming that he belonged to Telugu Desam Legislature Party and Telugu Desam Party along with others and when Sri Chandrababu Naidu who formed the Cabinet expanded his Council of Ministers, received his nomination and joined his Cabinet as a Minister. 1st respondent, however, has specifically denied the above allegations and claimed before us that he continued and continues to be an independent member of the House and notwithstanding his extending support to the group represented by Sri Chandrababu Naidu, he never became a Member of the Telugu Desam party and that of the Telugu Desam Legislature Party. He has maintained, according to him, his independent status and records in the Assembly bear testimony to his claim. According to him i.e., the 1st respondent, petitioner is a political rival who has not swallowed the defeat at the elections at his hands and has chosen the forum of the Court to vex and torment him without any basis whatsoever.

3. The English common law prerogative of quo-warranto is the remedy or proceeding whereby the Court inquires into the legality of the claim to an office or franchise and to oust the claimant from its enjoyment if the claim be not well founded. Plenary Courts or the Courts of plenary power under the Constitution of India or the superior Courts, as they are called, however are not bound by the inhibitions created either by the judicial pronouncements or the conventions of the Courts of England and in determining the issue as to how one assumed or usurp the office, treat a petition not confined to the relief by a writ in the nature of quo-warranto but to any such relief which on the fact situation the Court deems fit and proper. Of late, even Courts in England who kept the prerogatives confined in jackets prepared for them have accepted that there is no room of confinement of the cause to the relief which is sought for and certiorari, if necessary, in lieu of quo-warranto or even a mandamus can be issued if aims of justice so demand. Some of the rules, however, which are strictly adhered to in determining whether to entertain a petition at the instance of someone who may not have an interest of his own in the subject of the controversy and before the Courts proceed, seek answer to the query whether the office which has been allegedly usurped is a public office, whether there are essential qualifications to be fulfilled and adhered to, whether there are other conditions of eligibility, whether there are some pronounced disqualifications and whether the holder of the office has any title to the office or not. Courts invariably, however, decline to

intervene when they notice that its interference would be vexatious, futile and owing to the changed circumstances the defect in the appointment as alleged can be cured by immediate reappointment. Courts decline to interfere unless the illegality is brought to its notice are grave and manifest as distinguished from the breach of technical rules where there is an equally effective alternative remedy, where the allegations made in the petition have no factual foundation or about which the petitioner has no personal knowledge, where the application is actuated by ill will or malice or ulterior motive and where there is any other legal bar to the cause or a bar under any rule of prudence that the Court ought, in all circumstances, to exercise.

4. A plain and prima facie examination of the provisions in the Tenth Schedule shows that an elected Member of a House who has been elected as such otherwise than as a candidate set up by any political party i.e., who has been elected as an independent candidate and not one set up by any political party shall be disqualified for being a Member of the House if he joins any political party after such election. According to the petitioner 1st respondent, who has been elected as a Member of the Cabinet as an independent candidate, has, after such election, joined a political party and accordingly the Legislature party of the original Telugu Desam Party which is represented in the House by its leader Sri Chandrababu Naidu and other members including some other persons who were elected as independent candidates and like the 1st respondent have joined, the Telugu Desam Party and Telugu Desam Legislature Party. Petitioner, however is himself is not a Member of the Legislature of the State and thus is not a member as defined under the Rules framed by the Speaker of the State Legislature in exercise of his power under paragraph 8 of the Tenth Schedule of the Constitution. Rule 6 aforequoted requires that a petition in relation to the disqualification of a Member may be made in writing to the Speaker by any other member. This, according to the learned counsel for the petitioner, has limited the reference of the question whether a member of the House has become subject to disqualification under the Tenth Schedule by persons who are themselves member of the House and denied to others including the constituents whose members or members has/have defected the Member to seek a reference of the question to the Speaker for determination in accordance with the provisions in the Tenth Schedule.

5. We have seen Rule 6 that the Speaker has chosen to make the rule that no reference of any question as to whether a Member has become subject to disqualification under the Tenth Schedule shall be made except by a petition made in accordance with the provisions of the rules framed by him under the Tenth Schedule and that a petition in relation to a Member may be made in writing to the Speaker by any other Member. Auxiliary verbs "may" and "shall" ordinarily are taken to indicate the directory and obligatory character of the assertion in legal parlance. However, these auxiliary verbs are not words of compulsion, they are enabling words and they only confer capacity, power or authority and imply a discretion . The enabling words are construed as

compulsory whenever the object of the power is to effectuate a legal right. They are, however, not taken as compulsory when no consequence of non-compliance or non-observance is indicated. The word "may" also be used in the sense of "shall" or "must" and in a case where a high designatory is required to exercise his discretion of doing a thing by another, such as a petition or a representation, not doing of it is taken as fatal and becomes a cause of not exercising the discretion. What is then the purpose of the rule that reference to the Speaker shall be by a petition and such a petition be filed by a Member against another whose disqualification is asked for. Since the rule aforementioned pronounces no reference shall be made except by a petition, the Speaker may hold he has no reason to exercise his discretion and thus that there is no reference to him upon which he has to act. If a petition is presented to him by someone who is not a member, he may choose to ignore it and hold since it is not a petition by a Member seeking disqualification of another Member, he is not bound to entertain it. If such intendment is read in the above rule, can it survive the test of validity as a rule of procedure or otherwise a rule framed by the Speaker for the purposes of giving effect to the provisions of the Tenth Schedule of the Constitution. Any affirmative answer, in our view, will substantially annul the jurisdiction to decide the question as to the disqualification on ground of defection and it may legitimately be found to have thus been beyond the rule making power of the Speaker. A subject of exclusive jurisdiction of the Speaker qua the jurisdiction of the Court in respect of any matter connected with the disqualification of a Member of a House under the Tenth Schedule is barred under paragraph 7 of the Tenth Schedule, may amount to be a failure of the Mechanism if there is no Member available to make a petition as contemplated under the Rule. One of the settled principles is that Legislatures possess wide powers of delegation and when a power is delegated by the Constitution itself, it is difficult to see any excess done by it. The delegation, however, is always subject to one important limitation. Essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct cannot be delegated. Legislature cannot delegate uncanalised and uncontrolled power. In other words, the power delegated must not be unconfined and vagrant, but must be canalised within banks kept it from overflowing. The banks that set the limits of the powers, are to be construed by the Legislature by declaring the policy of the law and by laying to down standards for guidance of those on whom the power to execute the law is conferred. So the delegation is valid only when the Legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the Legislature. Fictionally, thus, delegation of power is to fill up the details. It is only ancillary or subordinate to the main legislation under which the power is delegated. If we resort these to a strict construction and take the above rule as one in which the Speaker has intended to lay down that he shall take up a reference of the question whether a certain Member of the Assembly has got himself disqualified only when another member will make a petition, it is possible

to hold that a Speaker has, by the said rule, limited his jurisdiction to petitions by a Member or Members against another Member or Members. How could then the rule, if the above is accepted, will not enter into rough way thus and may be found to be invalid. Dealing with Article 192(1) aforequoted, a Constitution Bench of the Supreme Court in *Brundaban Nayak Vs. Election Commission of India and Another*, has pointed out, "It is significant that the first clause of Article 192(1) does not permit of any limitation such as Mr. Setalvad suggests. What the said clause requires is that a question should arise; how it arises, by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of the application of this clause. All that is relevant is that a question of the type mentioned by the clause should arise, and so, the limitation which Mr. Setalvad seeks to introduce in the construction of the first part of Article 192(1) is plainly inconsistent with the words used in the said clause". The Supreme Court has further observed:

"Then as to the argument based on the words "the question shall be referred for the decision of the Governor", these words do not import the assumption that any other authority has to receive the complaint and after a prima facie and initial investigation about the complaint, send it on or refer it to the Governor for his decision. These words merely emphasise that any question of of the type contemplated by Clause (1) of Article 192 shall be decided by the Governor and Governor alone; no other authority can decide it, nor can the decision of the said question as such fall with in the jurisdiction of the Courts. That is the significance of the words "shall be referred for the decision of the Governor". If the intention was that the question must be raised first in the Legislative Assembly and after a prima facie examination by the Speaker it should be referred by him to the Governor, Article 192(1) would have been worded in an entirely different manner. We do not think there is any justification for reading such serious limitations in Article 192(1) merely by implication".

Dealing thereafter with Article 192(2), the Supreme Court in the said Judgment has once again made a significant observation in respect of the provisions in Article 192(1) in these words:

"It is true that Article 192(2) requires that whenever a question arises as to the subsequent disqualification of a member of the Legislative Assembly, it has to be forwarded by the Governor to the Election Commission for its opinion. It is conceivable that in some cases, complaints made to the Governor may be frivolous or fantastic; but if they are of such a character, the Election Commission will find no difficulty in expressing its opinion that they should be rejected straightway. The object of Article 192 is plain. No person who has incurred any of the disqualifications specified by Article 192(1), is entitled to continue to be a member of the Legislative Assembly of a State, and since the obligation to vacate his seat as a result of his subsequent disqualification has been imposed by the Constitution itself by Article 190(3)(a), there should be no difficulty in holding that any citizen is entitled to make a complaint to the Governor alleging

that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191(1) and should, therefore, vacate his seat. The whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status, and if any member forfeits that status by reason of a subsequent disqualification, it is in the interests of the constituency which such a member represents that the matter should be brought to the notice of the Governor and decided by him in accordance with the provisions of Article 192(2). Therefore, we must reject Mr. Setalvad's argument that a question has not arisen in the present proceedings as required by Article 192(1)".

6. We have referred to the relevant provisions in Articles 191 - 192. Introduction of Clause (2) in Article 191 and the provisions in the Tenth Schedule is only to see that Article 192(1) of the Constitution is couched in almost similar language as we find in paragraph 6 of the Tenth Schedule. The only difference is that in the case of Article 192(1) it is the Governor who has to decide and in the case of paragraph 6 of the Tenth Schedule it is the Speaker who has to decide Rule 6, thus, of the Rules framed by the Speaker in exercise of the power under paragraph 8 of the Tenth Schedule, if it is read to limit the reference only to petitions by a member or members, will render invalid as being opposed to the spirit, purpose and object of the provisions in paragraph 8 of the Tenth Schedule. All that paragraph 6 has provided for is the forum or the authority of the Speaker to decide the question of disqualification and there should be no difficulty in holding with reference to the above that the Tenth Schedule, provision in providing for the Speaker to decide the question, has not limited the reference to him of the question of the disqualification of a member by a petition by another member. There should be no difficulty in holding with reference to the above that any citizen is entitled to make a complaint to the Speaker alleging that a Member of the Legislative Assembly has incurred disqualification by defection as mentioned in Article 191(2) read with the various paragraphs of the Tenth Schedule of the Constitution and therefore he should vacate his seat. The whole object of democratic elections, as the Supreme Court has pointed out, is to constitute legislative chambers composed of Members who are entitled to that status and if any member forfeits that status by reason of a subsequent disqualification, it is in the interest of the constituency which such a member represents that the matter should be brought to the notice of the Speaker and decide by him in accordance with the provisions of the Tenth Schedule of the Constitution. We are reminded, however, of another settled principle that the question, whether any particular legislation suffers from excessive delegation or has gone against or beyond the delegation or power conferred by the rule making authority, has to be decided having regard to the provisions of the statute and the Courts have to be liberal and if on a liberal construction the delegated or subordinate legislation is sustainable, even if skeletal, the Court will uphold it. If by reading down or reading the above rules only as enabling provisions and not as rules which in any manner take away the right of any

citizen particularly the constituents i.e., the person's rule whose constituency is represented by the Member who has disqualified himself, the rules survive. The Court shall not strike it down but declare the limitations under which the same shall operate. Maxwell on "The Interpretation of Statutes", Twelfth Edition, Chapter 13 has pointed out:

"It is impossible to lay down any general rule for determining whether a provision is imperative or directory. "No universal rule", said Lord Campbell L.C., can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. And Lord Penzance said: "I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in the aspect decide whether the matter is what is called imperative or only directory".

It is stated further in the same paragraph, "Enactments regulating the procedure in courts are usually construed as imperative, even where the observance of the formalities in question is not a condition exacted from the party seeking the benefit of the statute, but a duty imposed on a court of public officer when no general inconvenience or injustice seems to call for a different construction". We do not intend to extend this discussion any further than saying that the rule in question is purely procedural and it has nothing to do with the jurisdiction which a Speaker has to exercise otherwise and in all cases of any complaint of disqualification of a Member of the House. The rule notwithstanding a Speaker shall have jurisdiction to go into the question of the disqualification of a Member by defection.

In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, it has been pointed out how a constitutional provision should be read when a certain legislation can be sustained by reading it down and when the Court should not resort to reading down any provision of law. We, however, are convinced that we are committing no wrong in clarifying that the rule in question is not one which has limited the Speaker's powers to go into the question of the disqualification of a member on any other information. This clearly implies that the Speaker cannot say "no" to any information other than a petition by a Member merely because it is coming from someone whom the Speaker does not treat qualified to make the petition. The Speaker will be bound in every case to see the strength of the allegation and not the might of the complainant. It is not possible for the above reasons to accept the contention of the learned Advocate General that the Speaker is the best person to judge when and how he shall entertain a petition as a reference of the question of disqualification of a Member on account of defection and also that it is primarily a question arising within the precincts of

the Legislature and is a part of the procedure of the Legislation. One clear reason is that acceptance of the above contention merely because a Speaker has been made the arbiter of the question will amount to giving two interpretations, one when the arbiter is the Governor and the other when the arbiter is the Speaker. Both these disqualifications are contemplated under Article 191 of the Constitution—one in Clause (1) thereof and another in Clause (2) thereof. In respect of disqualification falling under Clause (1) of Article 191, the reference is to the Governor. In respect of disqualification falling under Clause (2) of Article 191, the reference is to the Speaker. In respect of the reference to the Governor, the Supreme Court has left no manner of doubt. If any other meaning is given to paragraph 6 of the Tenth Schedule, which has to be read along with Article 191(2) of the Constitution, there shall be a clear violation of the constitutional intendment. In *Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.*, the Supreme Court has said;

"It is well established rule of construction that a power to do something essential for the proper and effectual performance of the work which the statute has in contemplation may be implied." (See *Craies on Statute Law Fifth Edition*. 105).

This, however, has to be understood in the light of the judgment of the supreme Court in *U.P. Industrial Disputes Act, 1947 in The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, wherein it is observed:

"The cardinal rule in regard to promulgation of bye-laws or making rules is that they must be *legi fidei rationi consona*, and therefore all regulations which are contrary or repugnant to statutes under which they are made are ineffective. In the expression "industrial dispute" as ordinarily understood and, construed conveys a dispute between an employer on the one hand and the workmen acting collectively on the other, then the definition of those words cannot be widened by a statutory rule or regulation promulgated under the Statute or by Executive fiat".

In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, it is observed:

"Rules made under a statute shall be consistent with the provisions and, what is more, based upon a construction of the express provisions of the Act".

In *Sainik Motors, Jodhpur v. State of Rajasthan AIR 1962 SC 1480* the Supreme Court while dealing with the rules framed under *Rajasthan Passengers and Goods Taxation Act, 1959* observed:

"If the Act creates an option, it cannot be negated by the Rules. The Act and the Rules must be read harmoniously, and reading them so, it is plain that the apparent mandatory language of the Rules and the notification still retains the permissive character of the section, but only lays down what the amount of the lump sum must be, if lump sum payment is made in lieu of payment of the tax calculated on actual fares and freights. If the two Rules and the notification are read in this way, the mandatory language is limited to the prescribing of the

lump sum rates. In our opinion, the two Rules and the notification are not void and contradictory of the Act".

We are reading the rules framed by the Speaker to avoid the conflict and to sustain it in the same way as the Supreme Court has indicated in the above case and come to the above conclusion unhesitatingly for if any other view is taken, the law making power of the Speaker shall extend to creating bar upon his own jurisdiction and denying to a person who knows about the disqualification opportunity to win the information to the Speaker for appropriate action. The view which we are taking is not different from the view taken by a Bench of the Gauhati High Court in Civil Rule Nos. 110/91 to 119/91 (unreported judgment dated 27-1-1992, a copy of which has been made available to us by the Registry of the Gauhati High Court at this Court's request). The Gauhati Court has, on a similar contention as to the inhibition created by the rule upon the jurisdiction of the Speaker, stated as follows:-

"We are of the opinion that paragraph 6 of the Tenth Schedule does not expressly or impliedly lay down that the Jurisdiction of the Speaker can be invoked only by a petition filed by a Member of the House; paragraph 6 is worded in such a manner as to comprehend also suo motu exercise of jurisdiction by the Speaker. We are of further opinion that Rule 6 does not and cannot have the effect of taking away the suo motu power of the Speaker and Rule 6 and the succeeding Rules referring to petition being filed by a Member of the House lay down procedure where a member of a House seeks to invoke the jurisdiction of the Speaker and cannot detract from the suo motu power of the Speaker. It is no doubt true that the procedure laid down in the Rules is, technically speaking, the procedure in regard to petition filed by a member of the House, but the same procedure must be applicable, mutatis mutandis, in a case where the Speaker suo motu takes up for consideration a question of disqualification".

Since we are of the opinion that Rule 6 is no bar to the making of an application by the petitioner to the Speaker seeking disqualification of the 1st respondent on the ground of defection, we must decline to entertain the petition under Article 226 of the Constitution and ask the petitioner to invoke the jurisdiction of the speaker for the purpose before seeking any remedy before this Court under Article 226 of the Constitution of India. In *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, the majority judgment has pointed out:

"... in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exaltations that such floor-crossing belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the properties of political and personal conduct whose awkward erosion and grotesque manifestations have been the

base of the times - above certain the theoretical assumptions which in reality have fallen into a morass of personal and political degradation".

The Supreme Court has also said:

"The choices in constitutional adjudications quite clearly indicate the need for such defence. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end..." are constitutional".

It is in this context that in the same judgment the Supreme Court has said that a Speaker acts not in the capacity of the Presiding Officer of the House but in the capacity of quasi-judicial authority like any other quasi-judicial authority to rule and his role in this behalf can be tested on the touch stone of judicial review, though limited, for the reasons stated in the judgment. The Supreme Court has pointed out:

"If the adjudicatory authority is a tribunal, as indeed we have held it to be, why, then, should its scope be so limited; The finality clause in para graph 6 does not completely exclude the jurisdiction of the Courts under Articles 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the Courts is that in spite of a finality clause it is open to the Court to examine whether the action of the authority under challenge is ultra vires the powers conferred on the said authority. Such an action can be ultra vires for the reason that it is in contravention of of a mandatory provision of the law conferring on the authority the power to take such an action. It will also be ultra vires the powers conferred on the authority if it is vitiated by mala fides or is colourable exercise of power based on extraneous and irrelevant considerations. While exercising their certiorari jurisdiction, the Courts have applied the test whether the impugned action falls within the jurisdiction of the authority taking the action or it falls outside such jurisdiction. An ouster clause confines judicial review in respect of actions falling outside the jurisdiction of the authority taking such action but precludes challenge to such action on the ground of an error committed in the exercise of jurisdiction vested in the authority because such an action cannot be said to be an action without jurisdiction. An ouster clause attaching finality to a determination, therefore, does not certiorari to some extent and it will be effective in ousting the power of the Court to review the decision of an inferior tribunal by certiorari if the inferior tribunal has not acted without jurisdiction and has merely made an error of law which does not affect its jurisdiction and if its decision is not a nullity for some reason such as breach of rule of natural justice".

Elucidating further the Supreme Court has in the majority judgment said:

"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", and added,

"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. No would interference be permissible at an interlocutory stage of the proceedings. Exception on 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 consequences".

7. The application thus can be closed by declaring the law and issuing a direction to the Speaker to entertain application, if any, which application the petitioner may file and proceed as in the case of any application filed by a Member of the House to dispose of the same. We have some reasons to find fault with another part of the Rule where appointment of a Committee of the Members of the House of the House by the Speaker to go into the question of disqualification of a Member is contemplated. It is well settled that an authority or tribunal, which is enjoined by the law to decide any question or dispute, has to take its own decision unaffected by any extraneous consideration. Speaking on the provision under Article 217(3) of the Constitution, which states, If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final", a Constitution Bench of the Supreme Court in the case of Jyoti Prokash Mitter Vs. Hon'ble Mr. Justice Himansu Kumar Bose, Chief Justice, High Court, Calcutta and Another, has said as follows:

"It is true that it is only where a genuine dispute arises as to the age of a Judge that Article 217(3) would be allowed to be invoked; but that is a matter for the President to consider. Under Article 217(3) the president should, and we have no doubt that he will, in every case, consult the Chief Justice of India as to whether a complaint received in respect of the age of a sitting Judge of any High Court should be investigated, and it is with such consultation that he should decide whether the complaint should be further investigated and a decision reached on the point. We think it is clear that if a dispute is raised about the age of a sitting judge and in support of it, evidence is adduced which prima facie throws doubt on the correctness of the date of birth given by a Judge at the time of his appointment, it is desirable that the said dispute should be dealt with by the President, because it is of utmost importance that in matters of this kind, the confidence of the public in the veracity of a statement made by a Judge in respect of his age must be scrupulously maintained, and where a challenge is made to such a Statement, it is in the interests of the dignity and status of the

Judge himself as much as in the interests of the purity and reputation of the administration of justice that the dispute should be resolved and the matter cleared up by the decision of the President".

When the President is required to decide under Article 217(3) of the Constitution of India after consultation with the Chief Justice of India, it is obvious consultation is mandatory. The repository of the power of the President, in this behalf itself has mandated consultation with the Chief Justice of India. The repository of the Speaker's power i.e., paragraph 6 of the Tenth Schedule does not contain any such provision either for consultation or for appointment of a Committee for any opinion to advise the Speaker will be against the maxim "Delegatus non potest delegare" i.e., A delegate cannot delegate; an agent cannot delegate his functions to a sub-agent without the knowledge or consent of the principal; the person to whom an office or duty is delegated cannot lawfully devolve the duty on another, unless he be expressly authorised so to do. (See Black's Law Dictionary, Sixth Edition). The above has been also stated as *Delegata potestas non potest delegari* i.e., A delegated power cannot be delegated. Indian democracy has matured by strict adherence to the laws and principles of law which recognise the role of statutory authorities and tribunals, more so the constitutional authorities and adherence by such authorities and tribunals to such laws and principles of laws. Constitutional Courts/ authorities and authorities and tribunals appointed by laws have exercised self imposed restrictions and restraints upon their powers and have shown concern to upholding the laws and adherence to laws to all concerned. Tenth Schedule of the Constitution has recognised such a constitutional authority in the Speaker to decide the question of disqualification of a Member of the House. No Speaker will ever like to set an example of himself by not discharging the constitutional duty which paragraph 6 of the Tenth Schedule has bestowed on him. We have no reason to think that Speaker of the State Assembly has any intentions to ignore the disqualification, if any, acquired by the respondent. He, of course, is required to follow the procedure prescribed in this behalf and decide in accordance with law without recourse to any act by him which shall show his decision in poor light. There is another reason for us to find fault with the rule of appointment of a Committee of the Members of the House to go into the question of the disqualification of a Member of the House by defection. Actions of the Committee of the House or a House Committee including the privilege committee (which is the committee to which the Speaker under the Rule can delegate the function of inquiring into the question of disqualification of a Member by defection) shall be acting for and on behalf of the House i.e., the Assembly. Its proceedings will be falling under Article 194 of the Constitution of India. Notwithstanding, however, the express words in paragraph 6 (2) of the Tenth Schedule, the decision making by the Speaker on questions as to disqualification on the ground of defection has been held by the Supreme Court in *Kihota Hollohon v. Zachihu* (7 supra) to be an act of a tribunal/statutory authority and the orders made by the Speaker are not treated as a proceeding of the House for the purpose of the privileges or the bar

under Article 212 of the Constitution of India. In *Kihota Hollohon v. Zachihu* (7Supra) the Supreme Court has said as follows:

"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's* case. In the matter of: Under Article 143 of the Constitution of India, 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".

In *Kihota Hollohon v. Zachihu* (7 Supra) the Supreme Court has explained the legal position in full and it is understood thus for the purposes of the Tenth Schedule that a Speaker's power has to be limited to the issue of adjudication as to the disqualification of a Member on the ground of defection and not confused with any such act which shall also enter into the area preserved for Article 194 of the Constitution.

8. The issue thus for any action before us under Article 226 of the Constitution at this stage of the proceeding when the Speaker is yet to take a decision can be disposed of by an order recording that the application before us is premature and that the petitioner can approach the Speaker by making a proper application. If any such application is made by the petitioner, the Speaker shall be obliged to proceed in accordance with the provisions in the Tenth Schedule and in the light of the judgment by us above. We are informed, however, that some Members of the House have also made applications before the Speaker seeking disqualification of the 1st respondent on the ground of defection. The Speaker, we are told, has not however taken any cognizance of such applications. We do not propose to take any definite view, however, on the delay by the Speaker in taking cognizance of the matter except to observe that non-exercise of jurisdiction is equally without jurisdiction. By not exercising his jurisdiction, the Speaker can give opportunity to any person to move this Court for an appropriate order in exercise of this Court's power under Article 226 and 227 of the Constitution to proceed in accordance with law and to complete necessary inquiry within a reasonable time. Learned Advocate General has, however, stated at the Bar that no sooner the Parliamentary elections are over, the Speaker will take appropriate action and shall make no unreasonable delay. We leave any discussion on this aspect at the assurance of the learned Advocate General on behalf of the Speaker and record that the Speaker shall entertain petition, if any, filed by the petitioner seeking disqualification of the 1st respondent and decide the same in accordance with law. We cannot, however, close our judgment with the above as we cannot close our eyes to serious allegations in the writ petitions against the 1st respondent and in the counter-affidavit filed by the 1st respondent against the petitioner. Both of them appeared to have incurred the wrath of the law and are accused of commission of serious cognizable offences. Both of them have faced proceedings in the Court and cases for investigation are

pending against both of them. Petitioner has supplied a list of cases against the 1st respondent. The 1st respondent has supplied a list of cases against the petitioner. List of cases filed by the petitioner, including the case in which he has been made an accused, reads as follows:

"Crime No. 128/94 was on 22-11-1994 at 5-20 p.m. There was a big explosion in the Gottipati Brothers boiled Rice and Agro Products Mill Pvt. Ltd., The Mill belonging to the 1st respondent and his brothers. A heavy explosion took place at 5-20 p.m. on 22-11-1994 in which three persons died and several others sustained grievous injuries. The dead bodies were removed without the knowledge of the police even though the police station is at a distance of 1.5 kms. As the local police did not take cognizance of the incident, the Circle Inspector, Inkollu went to Martur and suo motu lodged the report. It was registered u/s 120B I.P.C., and Section 5 of the Explosive Substance Act. At the scene of occurrence, 108 live bombs, large quantity of explosive material was seized from the store room of the above Mill.

Eventhough there are three deaths, Section of law was not altered into 302 IPC, till today. The explosive material that was seized was not sent to Explosive Inspector. The Video cassettes taken at the scene of offence were not produced before the concerned Magistrate. The sub-Inspector who was suspended (Pothuraju) for his complicity in the above incident has been reinstated within one and half months by the Government and posted in the same place.

Crime No. 10/95 of Martur Police Station. Incident was on 19-2-1995 at 6-10 p.m. Police registered the case against the 1st respondent and his brothers under Sections 147, 148, 324, 307 r/w Section 149, IPC, and police opened fire. Incident was in front of the Police Station, Martur.

The F.I.R. discloses that when the writ petitioner went to Martur Police Station to represent the grievance of his supporters, the 1 st respondent and his brothers wielded coconut knives and knives caused grievous injurie to Popuri Audinaryana S/o Seshaiyah and Nimmagadda Sreenivasarao and made an attempt on the life of the writ petitioner who took shelter in the Police Station. As the 1st respondent in W.P. made an attempt the police opened fire to dissuade the accused.

In this case none were arrested so far. No investigation till today.

Crime No. 11/95.

The complainant is Gottipati Seshagiri Rao, brother of the 1st respondent in W.P., registered under Sections 147, 148, 324 and 307 I.P.C. r/w Section 149 I.P.C.

This was registered at 9-15 p.m. on 19-2-1995. The report was given in Chilakaluripeta Police Station, Guntur District and forwarded to Martur Police Station on point of jurisdiction. This has been lodged as a counter blast to Cr.No. 10/95 of Martur Police Station.

This case was registered against the writ petitioner and the defacto complainant in Cr.No. 10/95.

Cr.No. 12 / 95 of Martur Police Station. This was registered against the writ petitioner and 100 others under Sections 143 and 341 I.P.C., which are bailable. The defacto complainant was Ghanta Subbarao, E.C.. 883 of Martur Police Station.

All the other cases mentioned by the 1st respondent P.R.C.3/92 on the file of the Addl. Munsif Magistrate, Parchur.

C.C.No. 143/1995 on the file of the IV Addl. Munsif Magistrate, Guntur.

Cr.No. 56/91 of Chilakaluripet a Police Station, Guntur District,

Investigation completed and charge Sheets have been laid before the concerned courts."

List of cases pending against the petitioner, as handed over to the Court on behalf of the 1st respondent, reads as follows:

"The petitioner was charged in Cr.No. 56/91 of Chilakaluripet Rural Police Station for the offences Under Sections 147, 148, 302, 202 read with 149 I.P.C., wherein my younger son and three others were brutally done to death by the petitioner and his men and in order to conceal the said murder, the dead bodies were carried to Kurichedu forest and were buried in the Hillock adjoining the land owned by the petitioner herein. The petitioner successfully evaded the proceedings before the committal court for three years forcing the learned Magistrate to split up the case as against the petitioner and committed the case as against others to the Court of Session, which was numbered as S.C.No .82/1994 on the file of I Addl. Sessions Judge, Guntur. Later the learned Magistrate issued notices to the sureties of the petitioner for forfeiting the bonds executed by them. At that stage, the petitioner appeared and the case against him was also committed to the Court of Session, which was numbered as Sessions Case No. 140 of 1995. After the committal of the charges, as the petitioner successfully evaded service of summons by the Sessions Court, from the last ten months the petitioner did not so far received the summons wantonly and the police are returning the summons on one pretext or the other.

Petitioner was charged for the offences Under Sections 148, 307, 427 and 324 I.P.C., in Cr.. No. 40/91 of Marturu Police Station for which a charge sheet was filed in the Court of Munsif Magistrate, Parchur and numbered as P.R.C.No. 3/92. In the said case, the petitioner having received summons failed to appear before the committal Court, resulting in issuance of NBWs against him which were not executed so far. Ultimately, on 5-9-1994, the Court issued proclamation u/s 82 Cr.P.C. and thereafter, the petitioner appeared in the court and filed an application for recalling the proclamation. In the said case, NBWs are still pending against three other accused persons and proclamation was also issued against them. The said case is pending committal to Sessions Court for trial.

Similarly, a case was registered against the petitioner and others in Cr.No. 11/95 of Marturu Police Station for the offences Under Sections 147, 148, 324 and 307 read with 149 IPC, which is pending investigation.

The petitioner and others were charged for the offences Under Sections 143, 341 read with 149 I.P.C. in Cr.No. 12 of 1995 of Marturu P.S., which is also pending investigation.

The petitioner is facing trial for the offences Under Sections 147, 148, 341, 324, 326 read with 149 I.P.C. in C.C.No. 143/95 on the file of IV Addl. Munsif Magistrate Guntur in which NBWs are pending against the petitioner since 19-6-1995."

9. Both the petitioner and the first respondent have been in and out of the State Assembly and the first respondent at present has come to occupy the position of a Minister in the Cabinet of Sri Chandrababu Naidu, the present incumbent of the office as the Chief Minister of the State. Whether they have been able to influence the investigation or otherwise the proceedings against them, however, is not an issue which we should detain us as no one can claim that any case against him be not investigated and he do not subjected to trial and punishment if found guilty in accordance with law. One must establish his innocence although the proceedings in Court shall be dealt with strictly in accordance with the presumptions in law, such as until found guilty the accused shall be presumed to the innocent. It is more so for those who are in the public life that they have a clean image and that they do not have any cloud hovering of their fair names. If they are guilty, they must take the consequences. If they are not, they come clear. Whether Petitioner's allegations are true and whether the first respondent has rightly brought all facts to show that petitioner has been evading the law, it is necessary both of them are subjected to a fair and effective investigation and the investigating agency is kept free of any influence that any person can bring upon it. Political interference, which means nothing but interference of the politicians who are accused of committing offences with the investigation, has almost become a normal feature and there is hardly any case involving a politician in which a complaint is not made that investigating agency is not impartial. We have, however, to see that amongst those who are responsible for investigation of the cases, some such people are picked up and identified who can withstand the pressure of any kind and investigate the case with the expected fairness. Learned Advocate General has named an Officer belonging to the Indian Police Service and presently holding the post of the Deputy Inspector General of Police in C.B.C.I.D., who, according to him, can stand to the trust of the Court and shall not fail in proceeding strictly in accordance with law in case there is legal evidence to prosecute the first respondent and/or the petitioner, as the case may be. The first amongst the Lawyers of the State has shown his trust in Sri D. Goplakrishnam Raju and we take his trust as the trust of the Court and accordingly order for entrustment of all cases in which the first respondent is named as an accused or is suspected to be an accused and all cases in which the

petitioner is named as an accused or is suspected to be an accused to be investigated by him. Some of the allegations against the petitioner show him almost as a fugitive and the Court cannot ignore such allegations unless it is assured that petitioner shall appear in all proceedings in Courts without fail and shall take such orders in accordance with law which the Court delivers to him in accordance with law. Learned counsel for the petitioner has stated that the petitioner shall appear in all proceedings in Court and shall give no opportunity to the first respondent to bring to the notice of this Court any failing on his part for any further order in this behalf.

10. To conclude,

(i) Rule 6 of the Rules framed by the Speaker in exercise of the powers under paragraph 8 of the Tenth Schedule does not inhibit in any manner the jurisdiction of the Speaker to entertain a reference on the basis of information that he may have from any source other than by way of a petition by a Member of the House against another Member. The petitioner is entitled to make application before the Speaker seeking disqualification of the first respondent under the Tenth Schedule. The speaker is obliged to entertain the same and dispose of the same in accordance with law.

(ii) The application before us for a writ in the nature of quo-warranto or any other writ is premature. The petitioner has got a more efficacious remedy than the remedy by way of a prerogative writ or order by this Court on the question of disqualification of the first respondent on the ground of defection.

(iii) No specific direction to dispose of the petition, if any, pending before the Speaker is required as learned Advocate General has assured the Court that soon after the Parliamentary elections the Speaker shall proceed to take up the matter. The petitioner, if so advised, can file his petition in the meanwhile and the Speaker shall take up the same in accordance with law.

(iv) All criminal cases in which the first respondent is made an accused or is suspected to be an accused shall forthwith be transferred to the C.B.C.I.D., and Sri D. Gopalakrishnam Raju shall take up investigation of the cases. He shall exercise all the powers of the officer in-charge of a Police Station for the purposes of investigation, interrogation, search, seizure, and all matters for submission of the report u/s 173(2) of the Code of Criminal Procedure, 1973.

(v) All cases in which the petitioner is an accused or is suspected to be an accused shall also be transferred to C.B.C.I.D. forthwith and shall be taken up for investigation by Sri D. Gopalakrishnam Raju who shall exercise all powers of the Officer in-charge of a Police Station in respect of all such matters as in the case of the first respondent. Petitioner shall appear in all proceedings pending in Courts and shall take orders of the Court and act strictly in accordance with the orders of the Court. The first respondent shall be entitled to bring to the notice of the Court any default on the part of the petitioner in this behalf for suitable orders.

11. In the result, the writ petitions are ordered as above. No order as to costs.