

(2019) 07 MAN CK 0004
In the Manipur High Court
Case No : Writ Petition (c) No. 69, 70 Of 2018

Md. Fajur Rahim And Others	Vs	APPELLANT
Hon'ble Speaker, Manipur And Others		RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 27, 32, 102, 103, 136, 178, 191, 191(s), 191(2), 194(2), 226, 226(1)
Manipur Legislative Assembly (Disqualification On Ground Of Defection) Rules, 1986 — Rule 4
Electricity Act, 2003 — Section 85(5)

Citation : (2019) 07 MAN CK 0004

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : S.G. Hasnain, S.M. Fazal, N. Ibotombi, A. Rommel, H.S. Paonam, S. Gunabanta, N. Kumarjit, P. Tamphamani

Final Decision : Disposed Off

Judgement

Kh. Nobin Singh, J

[1] Heard Shri S.G. Hasnain, learned Senior Advocate assisted by Shri S.M. Fazal, Advocate appearing for the petitioner in WP(C) No.70 of 2018; Shri N. Ibotombi, learned Senior Advocate assisted by Shri A. Rommel, Advocate appearing for the petitioner in WP(C) No.69 of 2018; Shri H.S. Paonam, learned Senior Advocate assisted by Shri S. Gunabanta, Advocate appearing for the private respondent, the respondent No.3 in WP(C) No.69 of 2018 & WP(C) No.70 of 2018 and Shri N. Kumarjit, learned Advocate General, Manipur assisted by P. Tamphamani, Advocate appearing for the Speaker, Manipur Legislative Assembly in both the writ petitions.

[2] Since the above two writ petitions have arisen out of the same set of facts, the same are being disposed of by this common judgment and order.

WP(C) No. 69 of 2018

[3.1] By the instant writ petition, the petitioner has prayed for issuing an appropriate writ, order or direction as this Court may deem fit and proper; to direct that the respondent No.3 has incurred disqualification for being a member of the Manipur Legislative Assembly under the provisions of the Tenth Schedule to the Constitution of India and also a writ in the nature of Quo Warranto ousting the respondent No.3 from the post/ office of the Cabinet Minister.

[3.2] Facts and circumstances as narrated in the writ petition, are that the petitioner who is a member of the Manipur Legislative Assembly, was elected as an MLA to the 11th Manipur Legislative Assembly in the last election held in the month of March, 2017 as a candidate nominated and set up by the Indian National Congress, a National Political Party (hereinafter referred to as "the Congress Party"). Similar is the case with the respondent No.3 who was elected as a member of the Manipur Legislative Assembly from 7-Andro Assembly Constituency in the last election held in the month of March, 2017 as a candidate nominated and set up by the Congress Party.

[3.3] After the result of the said election being declared by the Election Commission of India, the Congress Party was found to be the largest single party but the Hon'ble Governor of Manipur invited the group led by the Bhartiya Janata Party (hereinafter referred to as "the BJP") to form the Government in the State. Preceding the aforesaid invitation, the BJP leaders, its elected legislators including the legislators of smaller parties and an elected independent candidate along with respondent No.3, met the Hon'ble Governor in full view of the media and the respondent No.3 exhibited himself along with the BJP leaders by extending his support to the claim for formation of the Government and this was displayed in both print and electronic media. At no point of time, the respondent No.3 was authorized by the Congress Party to support and to be part of the claim made by the BJP nor did he seek any approval for extension of such support from the Congress Party. Further, the Congress Party all along remained opposed to the formation of the Government by the group led by the BJP.

[3.4] As provided in Form-III under Rule 4 of the Members of the Manipur Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, the respondent No.3 declared himself as an MLA elected on the ticket of the Congress Party and he was also sworn in as an elected member of the Manipur Legislative Assembly belonging to the Congress Party.

[3.5] In a letter dated 15.03.2017 submitted by the Hon'ble Chief Minister designate to the Hon'ble Governor of Manipur for giving oath to eight elected MLAs as the Minister, the name of the respondent No.3 was shown as the MLA of the Congress Party representing the Andro Assembly Constituency. The respondent No.3 was thus sworn in by the Hon'ble Governor as a Minister of the BJP led Government. Thereafter, a Notification dated 15.03.2017 was published in the Gazette by the Government of Manipur appointing the respondent No.3 as one of the Ministers in the Council of Ministers led by the BJP. Thereafter, the respondent No.3 was allotted portfolios of MAHUD, Town Planning, Forest &

Environment and Horticulture & Soil Conservation in the capacity of a Cabinet Minister in the ministry led by the BJP. The respondent No.3 has been functioning and discharging the duty as a Minister, in respect of the said departments allotted to him, by presiding/ inaugurating various Government Scheme/ Programme and he is still continuing to do so. The respondent No.3 as a Minister explains and answers questions relating to the said departments allotted to him in the House. The above cited instances clearly reveal that the respondent No.1 in his capacity as the Speaker of the Manipur Legislative Assembly who is the custodian of the House, has recognized and acknowledged the respondent No.3 as a Cabinet Minister of the BJP led Government and the respondent No.1 has allotted him a seat in the Treasury Bench.

[3.6] As many as thirteen petitions were filed by the members of the Congress Party including the petitioner herein before the Hon?ble Speaker who is the Presiding Officer of the Tribunal constituted under Tenth Schedule to the Constitution of India to draw up disqualification proceedings against the respondent No.3 and to decide the case in accordance with the provisions of the Tenth Schedule as to whether the respondent No.3 has incurred disqualification from being a member of the House. The respondent No.1, without any conceivable reason, has not taken cognizance of the said thirteen petitions till that day leave alone, the issuance of any notice to the respondent No.3. Despite several enquiries being made by the petitioner as to the fate of his petition, no reason was assigned nor was any explanation given by the respondent Nos.1 and 2. Being aggrieved by the inaction on the part of the respondent No.1, a writ petition being WP(C) No.353 of 2017 was filed by Shri T.N. Haokip, the president of the Manipur Pradesh Congress Committee before this Court for issuing a direction to the respondent No.1 herein to dispose of the petition filed by him for disqualification of the respondent No. 3 but the issues raised in this petition are absolutely different from that of the earlier petitions. The indecision/ inaction on the part of the respondent No.1 had encouraged and emboldened several other elected members of the Congress party to join the BJP with public reception in the office of the BJP at Imphal. Some disqualification petitions have also been filed by some interested parties against the seven MLAs of the Congress Party who switched over and joined the BJP. Even those Petitions have not been taken cognizance leave alone, the issuance of any notice by the respondent No.1.

[3.7] Being aggrieved by the inaction on the part of the respondent No.1, the instant writ petition has been filed by the petitioner questioning it relying upon the decisions rendered by the Hon?ble Supreme Court in the case of Ravi S. Naik Vs. Union of India (1994) Supp.(2) SCC 641; Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council and Ors. (2004) 8 SCC 747; Kihoto Hollohan Vs. Zachillu and Ors., (1992) Supp.(2) SCC 651; Rajendra Singh Rana Vs. Swami Prasad Maurya, (2007) 4 SCC 270 and the order dated 04.12.2017 passed by the Chairman of the Rajya Sabha in a petition filed against Shri Sharad Yadav and in addition thereto, it has been contended that the respondent No.1 in his capacity as a Presiding Officer of the Tribunal has utterly failed to exercise the power

vested upon it and the mandate of the Tenth Schedule to the Constitution of India thereby encouraging a good number of elected MLAs defecting to other political party by giving up their original political party without any fear of disqualification or fetter in such switching over from one party to another. Failure to take up the disqualification petition filed by the petitioner is nothing but negation of the objectives and reasons of Tenth Schedule and also against the various decisions rendered by the Hon^{ble} Supreme Court of India. In an umpteen number of cases decided by the Hon^{ble} Supreme Court, it was consistently held that a person shall not be left without any remedy or forum for his legitimate grievances.

WP(C) No. 70 of 2018

[4] Facts and circumstances as narrated in this writ petition, are similar and almost identical to that of the writ petition being WP(C) No. 69 of 2018 and therefore, the same are not repeated here for the sake of brevity. The only difference is that in so far as the petitioner in this writ petition is concerned, he is a member of the Manipur Legislative Assembly elected in the last election held in the month of March, 2017 as a candidate nominated and set up by the Congress Party under the paragraph 13 of the Election Symbols (Reservation) and Allotment Order, 1968 from the Wangkhem Constituency.

[5] An affidavit has been filed by the respondent No.3 raising a preliminary objection as regards the maintainability of the writ petition contending that in view of the power as enshrined in the Constitution of India under Tenth Schedule, it is only the Speaker who has the power to decide as to whether a particular member has incurred disqualification and hence, the relief sought for herein, is not maintainable as it being beyond the jurisdiction and power of this Court under Article 226 of the Constitution of India. Further, a consequential relief for issuance of a writ of quo warranto against the respondent No.3 cannot be granted in the present petition. A similar petition praying almost similar relief is also pending before this Court wherein this Court while observing that an issue as to whether the High Court has power under Article 226 of the Constitution of India to direct the Speaker to dispose of the disqualification petition within a time frame is pending before the Hon^{ble} Supreme Court, has passed an order dated 08.09.2017 to the effect that this Court cannot pass any order in the matter, however, granting liberty to the petitioner therein to approach the appropriate forum including the Hon^{ble} Supreme Court for redressal of his grievances. An affidavit-in-opposition on behalf of the respondent No.1 has also been filed denying the averments made in the writ petition. It has further been contended that the petitioner has not approached this Court with clean hands. As regards the provisions of the Tenth Schedule of the Constitution of India and the various decisions rendered by the Hon^{ble} Supreme Court of India and other legal authorities, the answering respondent has nothing to say as the statements made thereof are matters of record. After the receipt of the petition for disqualification, the same was forwarded to the Secretary, Manipur Legislative

Assembly for a detailed verification and submission of a report. After the said petition having been verified by the Secretary, the same was put up before the respondent No.1 and after perusal of all records, the respondent No.1 took cognizance of the matter and issued a notice to the opposite party vide its notice dated 12.09.2018 after registration of the matter as the Disqualification Case No.3 of 2018. Since the respondent No.1 has taken up proceedings for consideration of the disqualification of the respondent No.3 on the basis of the petition filed by the petitioner, the instant writ petition has become infructuous and nothing remains for consideration by it and accordingly, the petition deserves to be dismissed by this Court.

[6] In his reply, it has been stated by the petitioner that although the petitioners have filed their disqualification petitions on 31.07.2017 and 01.08.2017, the respondent No.1 after a lapse of more than 1 year, issued notice to the respondent No.3 only on 12.09.2018 fixing different dates for appearance of the respondent No.3. Various dates ranging from 20.10.2018 till 15.12.2018 were fixed for appearance by the respondent No.3. Some of the said petitions filed by the Congress Party MLAs, which were fixed on 05.01.2019, had been adjourned till further order vide notification dated 02.01.2019 on the ground that the respondent No.1 would be on official tour outside the State Manipur. Likewise, some of the petitions had also been adjourned until further order vide notification dated 02.02.2019. Thereafter, the respondent No.1 did not give next date for further proceedings nor did the respondent No.3 file his written statement.

UNDISPUTED FACTS:

[7] From the pleadings as aforesaid, the undisputed facts are that the election to the 11th Manipur Legislative Assembly was held in the month of March, 2017 and both the petitioners and the respondent No.3 contested it as the candidates nominated and set up by the Congress Party. They were duly elected as the members of the Manipur Legislative Assembly. As provided under Rule 4 of the Members of the Manipur Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, the respondent No.3 declared himself as an MLA elected on the ticket of the Congress Party and he was also sworn in as an elected member of the Manipur Legislative Assembly belonging to the Congress Party. The Congress Party was found to be the largest single party. However, the BJP leaders, its elected legislators including the legislators of smaller parties and an elected independent candidate along with the respondent No.3, met the Hon'ble Governor, in full view of the media, who invited the group led by the BJP to form the Government in the State. The respondent No.3 exhibited himself along with the BJP leaders by extending his support to the claim for formation of the Government and this was displayed in both print and electronic media. The respondent No.3 was not authorized by the Congress Party to support and to be part of the claim made by the BJP nor did he seek any approval for extension of such support from the Congress Party. In his letter dated 15.03.2017 submitted by the Hon'ble Chief Minister designate to the Hon'ble Governor of Manipur for

giving oath to eight elected MLAs as the Ministers, the name of the respondent No.3 was shown as the MLA of the Congress Party representing the Ando Assembly Constituency. On the same day, the respondent No.3 was sworn in by the Hon?ble Governor as a minister of the BJP led Government and in the Notification dated 15.03.2017 published in the Gazette by the Government of Manipur, the respondent No. 3 was shown as one of the Ministers in the Council of Ministers led by the BJP. The respondent No.3 was allotted portfolios of MAHUD, Town Planning, Forest & Environment and Horticulture & Soil Conservation in the capacity of a cabinet minister in the ministry led by the BJP. Since then, the respondent No.3 has been functioning and discharging the duty as a Minister, in respect of the said departments allotted to him, by presiding/ inaugurating various Government Scheme/ Programme and he is still continuing to do so. The respondent No.3 as a Minister explains and answers questions relating to the said departments allotted to him in the House.

[8] From the undisputed facts as aforesaid, the following questions of law have arisen for consideration by this Court:

(a) Whether, in the facts and circumstances of the present case, the respondent No.1 can be said to have failed to discharge its duties as enjoined in the Tenth Schedule to the Constitution of India to decide the petitions?

(b) If the above issue (a) is answered in the affirmative, whether the respondent No.3 has prima facie incurred disqualification?

(c) If the respondent No.3 is found to have incurred a prima facie disqualification, whether this Court can issue an order disqualifying the respondent No.3 from being a member of the Manipur Legislative Assembly or alternatively, whether this Court has the power and jurisdiction to issue a writ of quo warranto declaring the holding of the post of a Minister by the respondent No.3 as illegal, as it being without any authority of law?

TENTH SCHEDULE:

[9] The Tenth Schedule was not there in the Constitution at the time when it was enacted for the first time and it was added by the Constitution (52th Amendment) Act of 1985. The Tenth Schedule is to be read with Article 102 and 191 of the Constitution of India. It contains provisions as to the disqualification of a member of either House of the parliament or the Legislative Assembly or either House of the Legislature of a State on the ground of defection. It may be noted that the word 'defection' is not defined in the Tenth Schedule but paragraph 2(1) specify the acts of defection which would attract the disqualification for the purposes of the Tenth Schedule. Paragraph 2(1) provides that subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House -

(a) If he has voluntarily given up his member 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 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 or person or authority within fifteen days from the date of such voting or abstention.

The object of paragraph 2 is to discourage defection which has assumed the menacing proportion undermining the very basis of democracy. In other words, the object is to curb the menace of defection. Its underlined meaning is that if a person has joined a political party, he is expected to follow the principles of the said political party. In the present case, the provisions of paragraph 2(1)(a) are relevant and a member of a House elected on the ticket given by a political party shall be disqualified, if he has voluntarily given up his membership of such political party. The use of the expression 'shall be disqualified' is significant and important. The constitutional validity of the Tenth Schedule was assailed in *Kihoto Hollohan Vs. Zachillhu*, (1992) Supp.(2) SCC 651. The Hon'ble Supreme Court, before proceeding to record its reasons, had a brief look at the provisions of the Tenth Schedule and in particular, the statements of objects and reasons appended to the Bill which was adopted as the Constitution (52th Amendment) Act, 1985 and read as under:

"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."

A High Level Committee known as the Committee on Defections, consisting of representatives of political parties and constitutional experts was set up and its observation as contained in thereport dated 07-01-1969 and recorded in para 6 of the judgment, reads as under:

"Following the Fourth General Election, in the short period between March 1967 and February 1968, the Indian political scene was characterised by numerous instances of change of party allegiance by legislators in several States. Compared to roughly 542 cases in the entire period between the First and Fourth General Election, at least 438 defections occurred in these 12 months alone. Among Independents, 157 out of a total of 376 elected joined various parties in this period. That the lure of office played a dominant part in decisions of legislators to defect was obvious from the fact that out of 210 defecting legislators of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were included in the Council of Ministers which they helped to bring into being by defections. The other disturbing features of this phenomenon were: multiple acts of defections by the same person or set of persons (Haryana affording a conspicuous example); few resignations of the membership of the

legislature or explanations by individual defectors, indifference on the part of defectors to political proprieties, constituency preference or public opinion; and the belief held by the people and expressed in the press that corruption and bribery were behind some of these defections."

As regards the objects underlying the provisions of the Tenth Schedule to the Constitution of India, the Hon^{ble} Supreme Court observed as under:

"9. This brings to the fore the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule."

The constitutional validity of the Tenth Schedule was upheld by the Hon^{ble} Supreme Court therein and it has been held by the Hon^{ble} Supreme Court in Ravi S. Naik case (supra) that the constitutional validity of the Tenth Schedule was upheld by the Hon^{ble} Supreme Court except provisions of para 7 which have been held to be unconstitutional and paragraph 6 has been construed and it has been held that the Speaker, while passing an order in exercise of his power under sub- paragraph (1) of paragraph 6 of the Tenth Schedule functions as Tribunal and an order passed by him is subject to judicial review under Article 32, 136, 226 and 27 of the Constitution of India.

PRELIMINARY OBJECTION:

[10.1] Since the learned counsel appearing for the respondent No.3, has raised a preliminary objection as regards the maintainability of the writ petitions, this Court proposes to deal with it before going into the merit of the case. The issue relating to maintainability of the writ petition has been raised mainly on two grounds-one, in view of the power as conferred under the provisions of the Tenth Schedule to the Constitution of India, it is only the Speaker who has the power to decide as to whether a particular member has incurred disqualification and hence, the relief sought for herein, is beyond the jurisdiction and power of this Court under Article 226 of the Constitution of India and two, a consequential relief for issuance of a writ of quo warranto against the respondent No.3 cannot be granted in the present petition, as this Court in a similar petition wherein an issue as to whether the High Court has the power under Article 226 of the Constitution of India to direct the Speaker to dispose of the disqualification petition within a time frame has arisen, has passed an order dated 08.09.2017 to the effect that this Court cannot pass any order in the matter by granting liberty to the petitioner therein to approach the appropriate forum including the Hon^{ble} Supreme Court for redressal of his grievances.

[10.2] The contention of the learned counsel appearing for the respondent No.3 to the extent that it is the Speaker who is empowered to consider and decide the

issue whether a member of the Assembly has incurred disqualification, is absolutely correct. It is undoubtedly a constitutional scheme and it can never be disputed by anyone as long as the provisions under the Tenth Schedule to the Constitution of India, are not suitably amended by the Parliament in tune with the present day circumstances. In other words, as per the existing provisions of the Tenth Schedule to the Constitution, the Speaker alone can do it. But the corollary question that arises, is as to what is the remedy provided in the Constitution for an aggrieved person when the Speaker fails to decide the petition filed by an MLA or any other person praying for disqualification of a member without following the constitutional mandate as envisaged under the provisions of the Tenth Schedule to the Constitution of India.

The specific allegation in the instant writ petitions is that the Speaker has failed to discharge its solemn duty enjoined upon him in the Tenth Schedule to the Constitution of India.

[10.3] Article 226(1) of the Constitution of India reads as under:

"226(1) Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [Writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose]."

Article 226(1) provides that every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by part-III and for any other purpose. The power to issue prerogative writs under this article is plenary in nature and is not limited by any other provisions of the Constitution of India, as has been held by the Hon^{ble} Supreme Court in the case of ABL International Limited Vs. Export Credit Guarantee Corporation of India Ltd, (2004) 3 SCC 553, paragraph 28 of which reads as under:

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its

instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

The above view has been reiterated by the Hon^{ble} Supreme Court in *State of Kerala & ors. Vs. M.K. Jose*, (2015) 9 SCC 433.

[10.4] In *Union of India Vs. R. Gandhi, President, Madras Bar Association*, (2001) 11 SCC 1, it has been held by the Hon^{ble} Supreme Court that the fundamental right to equality before the law and equal protection of the law guaranteed by Article 14 of the Constitution, clearly includes a right to have the person's rights adjudicated by a forum which exercises judicial power in an impartial and independent manner consistent with the recognized principles of adjudication. It has further been held by the Hon^{ble} Supreme Court that all courts are tribunals and any tribunal to which any existing jurisdiction of courts is transferred should also be a judicial tribunal. Tribunals are special alternative institutional mechanisms and they are of different types like private tribunals or tribunals constituted under the Constitution (Speaker or the Chairman under the tenth schedule) or tribunals authorized by the Constitution or statutory tribunals created the various statutes. Impartiality, independence, fairness and reasonableness in decision making are the hallmarks of the judiciary. If impartiality is the soul of the judiciary, independence is the lifeblood of the judiciary. Without independence, impartiality cannot thrive. Independence of judiciary has always been recognised as a part of the basic structure of the Constitution. In *Kihoto Hollohan case* (supra), the Hon^{ble} Supreme Court observed:

"115. The question is, whether the investiture of the determinative jurisdiction in the Speaker would by itself stand vitiated as denying the idea of an independent adjudicatory authority. We are afraid the criticism that the provision incurs the vice of unconstitutionality ignores the high status and importance of the office of the Speaker in a Parliamentary democracy. The office of the Speaker is held in the highest respect and esteem in Parliamentary traditions. The evolution of the institution of Parliamentary democracy has as its pivot the institution of the Speaker. The Speaker holds a high, important and ceremonial office. All questions of the well being of the House are matters of Speaker's concern. The Speaker is said to be the very embodiment of propriety and impartiality. He performs wide ranging functions including the performance of important functions of a judicial character.

119. Accordingly, the contention that the vesting of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such

constitutional functionaries should not be considered exceptionable."

In *Jagjit Singh Vs. State of Haryana*, AIR 2007 SC 590, the Hon'ble Supreme Court held:

"85. Before parting, another aspect urged before us deserves to be considered. However, at the outset, we do wish to state that the Speaker enjoys a very high status and position of great respect and esteem in the Parliamentary Traditions. He, being the very embodiment of propriety and impartiality, has been assigned the function to decide whether a member has incurred disqualification or not. In *Kihoto Hollohan's* judgment various great Parliamentarians have been noticed pointing out the confidence in the impartiality of the Speaker and he being above all parties or political considerations. The High office of the Speaker has been considered as one of the grounds for upholding the constitutional validity of the Tenth Schedule in *Kihoto Hollohan's* case.

86. Undoubtedly, in our constitutional scheme, the Speaker enjoys a pivotal position. The position of the Speaker is and has been held by people of outstanding ability and impartiality. Without meaning any disrespect for any particular Speaker in the country, but only going by some of events of the recent past, certain questions have been raised about the confidence in the matter of impartiality on some issues having political overtones which are decided by the Speaker in his capacity as a Tribunal. It has been urged that if not checked, it may ultimately affect the high office of the Speaker. Our attention has been drawn to the recommendations made by the National Commission to review the working of the Constitution recommending that the power to decide on the question as to disqualification on ground of defection should vest in the Election Commission instead of the Speaker of the House concerned. Our attention has also been drawn to the views of number of other experts, committees/commissioner to the effect that the power of disqualification as a result of defection need to be exercised in accordance with the opinion of the Election Commission as in the case of decision on question as to disqualification of members provided for in Article 103 and 194(2) of the Constitution (See *Anti-Defection Law and Parliamentary Privileges* by Dr. Subhash C. Kashyap, M.P. Jain's *Indian Constitutional Law*, 5th Edn. By T.K. Tope, *Reviewing the Constitution* edited by Dr. Subhash C. Kashyap & Ors., *First V.M. Tarkunde Memorial Lecture* on "Indian Democracy Reality or Myth?" delivered by Shri Soli J. Sorabjee)."

In *Cotton Corporation of India Ltd Vs. United Industrial Bank Ltd.*, (1983) 4 SCC 625, it has been held by the Hon'ble Supreme Court that a person having a legal right and complains of its violation or infringement, one can approach the Court and seek relief.

[10.5] In the present case, although some petitions were filed on the basis of the aforesaid undisputed facts praying for disqualification of the respondent No.3, the Speaker did not pay any heed to decide them within a reasonable time. In other words, he has chosen not to take a decision on the said petitions for an

indefinite period. If the stand of the respondent No.3 that as long as a decision is not taken by him, this court has no jurisdiction to entertain any petition under Article 226 of the Constitution of India, is accepted, the aggrieved person will be left with no remedy at all. This is not what is expected in a democratic country which is governed by rule of law. On top of that, there is no guarantee that the Speaker will take a decision before the expiry of the term of five years and in that event, the petitions will be rendered infructuous for no fault of the petitioners which is never contemplated in the Tenth Schedule to the Constitution of India. The validity or correctness of the power and function as conferred upon the Speaker under the Tenth Schedule is not under challenge in these writ petitions. Only the inaction or indecision on the part of the Speaker or the abdication of his duty enjoined upon him, is being questioned herein, as it has led to allowing the respondent No.3 continuing as a Minister which is contrary to the constitutional mandate. The failure on the part of the Speaker in taking a decision on the petitions for disqualification, has allowed the illegality to be continued affecting the constitutional schemes in general and in particular, the public money. Without taking a decision on the petitions for disqualification, it does not lie in the mouth of the Speaker to contend that the exercise of power and jurisdiction by this Court will arise, only when a decision is taken by him which is quite uncertain. What is provided in the Tenth Schedule is, in a sense, an alternative remedy to be exhausted by an aggrieved person before he approaches the High Court for redressal of his grievance because any decision taken by the Speaker has been held to be subject to judicial review. If the alternative remedy is found to be ineffective due to deliberate inaction or indecision on the part of the Speaker, this Court cannot be denied its power and jurisdiction of issuing appropriate writ. In the absence of any specific provision in the Constitution, if the exercise of the Court's power of judicial review which is one of the basic features of the Constitution, will have to depend upon the wisdom of the Speaker, the provisions of Article 226 of the Constitution of India may be rendered meaningless. Had the Speaker taken a decision on the petition for disqualification within a reasonable time, the problem that arises in the present case, could have been avoided protecting the constitution and its values and the principles of democracy. In view of the above, this Court is of the view that the contention of the learned counsel appearing for the respondent No.3 as regards the maintainability of these petitions, has no substance at all and is, accordingly, not acceptable to this Court.

In Re: issue (a):

[11.1] Admittedly and indubitably, the respondent No.3 who was elected as a member of the Manipur Legislative Assembly on the ticket of the Congress Party, was sworn in as a Minister of the BJP led Government. On 31-07-2017 a petition was filed by the petitioner praying for disqualification of the respondent No.3 on the ground that he has voluntarily given up his membership of the Congress Party. It may be noted that prior to the filing of the said application, thirteen petitions had been filed for drawing up disqualification proceedings against the

respondent No.3. The Speaker, the respondent No.1 herein did not take any cognizance of them nor did he issue any notice to the respondent No.3. Being aggrieved by the inaction on the part of the Speaker and having no alternative, Shri T.N. Haokip, one out of the said thirteen petitioners, filed a writ petition being WP(C) No.353 of 2017 praying for a direction to the respondent No.1 to dispose of his petition. This writ petition was contested by the respondent No.3 on the inter-alia grounds that this Court ought not to pass any order for the reason that the issue whether the High Court has jurisdiction to direct the Speaker to dispose of the petition within a time frame, is pending before the Hon'ble Supreme Court for consideration after the same being referred to a Constitution Bench. In the said writ petition, this Court had passed the following order:

"By the instant writ petition, the petitioner has prayed for issuing a writ of mandamus or any other appropriate writ to direct the Hon'ble Speaker to dispose of the petition filed by the petitioner under Article 191(2) and Para 2(1) (a) of the Tenth Schedule to the Constitution of India on the inter alia ground that the Respondent No. 1 has not taken any appropriate step as regards the disposal of the said petition.

Shri H.S. Paonam, learned Senior Counsel appearing for the private respondent submits that the issue as regards the power of the High Court under Article 226 of the Constitution to direct the Speaker to dispose of the petition within a time frame is pending before the Hon'ble Supreme Court with the same being referred to the Constitution Bench of 5 (five) Judges, Shri N. Ibotombi, learned Senior Counsel appearing for the petitioner submits that in those cases which are pending before the Constitution Bench Hon'ble Supreme Court, the Hon'ble Speaker took certain steps as regards the issuing of notice, etc. But in the present case, no such action has yet been taken by the Speaker.

Be that as it may, in view of the fact that the issue is pending before the Hon'ble Supreme Court, this Court cannot pass any order in the matter. However, it is open to the petitioner to approach the appropriate forums including the Hon'ble Supreme Court for redressal of his grievance, if so advised."

[11.2] Article 178 of the Constitution provides that every Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be the Speaker and the Deputy Speaker thereof. In the present case, the election to the 11th Manipur Legislative Assembly was held in the month of March, 2017 and the respondent No.1 was chosen as the Speaker of the Assembly. After the respondent No.1 having been chosen as the Speaker, he ought to be above politics and ought to be neutral in the discharge of his duties and functions for the reason that he functions as a tribunal. Therefore, in all matters relating to disqualification of a member, the Speaker has to decide the question of disqualification as a tribunal. But unfortunately, in the same manner in which a step motherly treatment had been meted out to the said thirteen petitions, the Speaker failed to take any cognizance of the petition filed by the petitioner. After

having waited for more than a year and having no alternative at all, the present petitioners approached this Court by way of the present writ petitions on different issues. The prayers in the writ petitions are to declare that the respondent No.3 has incurred disqualification and to issue, thereafter, a writ of quo warranto to oust him from being a Minister. These writ petitions were contested by the respondents including the Speaker on the main ground that since it is the Speaker alone who can disqualify a member of the Assembly on the grounds mentioned in paragraph 2 of the Tenth Schedule, the writ petitions are not maintainable and therefore, this Court has no jurisdiction to entertain them. It has also been contended that the High Court can entertain a petition filed only against an order passed by the Speaker and as long as no order is passed by the Speaker, nothing can be done by the High Court on such petition, for which he has relied upon the decision rendered by the Hon'ble Supreme Court in Kihoto Hollohan case (supra).

[11.3] It is an undeniable fact that the time period within which the petition is to be decided by the Speaker, is not prescribed in the Tenth Schedule to the Constitution of India. But the Speaker being functioning as a tribunal ought to act fairly and reasonably. There is no any provision in the Tenth Schedule providing that since no time period is prescribed, the Speaker can do whatever he feels like. The Speaker being an elected representative of the people and a constitutional authority, he is expected to decide the petition within a reasonable time. The word 'reasonable' is a relative term and has no definite meaning. Its application depends upon the facts and circumstance of a particular case and no hard and fast rule thereof can be laid down which can be applied in all cases. It is to be understood and measured with reference to what a reasonable person would think it reasonable in a similar circumstance. In the present case, it is to be understood with reference to the term of the Assembly. Since the term of the assembly being five years, the reasonable time to be taken by the Speaker in the disposal of the petitions can never be five years and it ought to be much earlier than that. In other words, the petitions will have to be decided by the Speaker well in advance prior to the expiry of the term of the Assembly. The time taken by the Speaker for more than a year while issuing the notice to the respondent No. 3, cannot be said to be a reasonable one. The petitions could have been disposed within a year itself, as the facts are to be ascertained by the Speaker on the basis of documents only which are not disputed by the respondents. The inaction on the part of the Speaker or the abdication of his duty enjoined upon him in the Tenth Schedule appears to be quite unreasonable and arbitrary. It has been submitted by the counsel appearing for the respondent No.3 that the Tenth Schedule to the Constitution envisages a constitutional scheme which is to be respected by all including the High Court. His contention may be true to that extent but it may be noted that every chapter of the Constitution of India envisages various constitutional schemes. Part-III of the Constitution of India which deals with the fundamental rights, is an important chapter concerning various constitutional schemes. Article 14 of the Constitution of India strikes at

the root of any act of arbitrariness. While exercising the power conferred upon him in the Tenth Schedule, the Speaker is expected to act fairly and reasonably. In other words, there is no any provision in the Tenth Schedule which provides that the Speaker while exercising its power under the Tenth Schedule, is not bound to follow the mandates of other provisions of the Constitution of India. The provisions under the Tenth Schedule and other provisions of the Constitution of India are to be harmoniously construed & applied and while exercising the power conferred under the Tenth Schedule, the other provisions of the Constitution of India cannot be violated by the Speaker. During the course of hearing, it has been submitted by the learned counsel appearing for the respondent No.3 that the Speaker has taken cognizance in the petitions filed by the petitioners and notice has been issued to the respondent No.3. But it is nowhere indicated in the affidavit of the Speaker that an endeavour shall be made by him to dispose of the petitions within a reasonable time. The mere issuance of notice will not be sufficient at all. If one looks at the manner in which the proceeding is being initiated and continued by the Speaker, there is no likelihood of the proceedings being completed before the expiry of the term of the Assembly. Although the petition was filed on 31-07-2017, a notice was issued only on 12-09-2018 and many of the petitions have been adjourned until further order. In *Jagjit Singh Vs. State of Haryana*, AIR 2007 SC 590, it has been held that the question of fact that a member has given up his independent character and joined a political party is to be determined on appreciation of the materials on record. In *Dr. Mahchandra Prasad Singh Vs. Chairman, Bihar Legislative Council & ors.*, (2004) 8 SCC 747, it has been held that the final authority to take a decision on the question of disqualification of a member of the House vests with the Chairman or the Speaker of the House. It is to be noted that the Tenth Schedule to the Constitution does not confer any discretion on the Chairman or Speaker of the House. Their role is only in the domain of ascertaining the relevant facts. Once the facts gathered or placed show that a member of the House has done any such act which comes within the purview of sub-paragraph (1), (2) or (3) of paragraph 2 of the Tenth Schedule, the disqualification will apply and the Chairman or the Speaker will have to make a decision to that effect. Therefore, it can be safely held that the Speaker has failed to take a decision on the petitions for disqualification filed by the petitioner.

In Re: issue (b):

[12.1] In the words of the Hon^{ble} Supreme Court as expressed in *Ravi S. Naik* case (supra), the meaning of the expression 'voluntary given up his membership of such political party' is different from that of the word 'resignation' and it has a wide connotation for the reason that a member of the House may give up voluntarily his membership of a political party without formally tendering his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs. The issue relating to the disqualification by way of defection is

to be decided by the Speaker as a Tribunal which will have to draw an inference on the facts and circumstances of each case and no hard and fast rule can be laid down in respect thereof. In *G. Viswanathan Vs. Hon'ble Speaker, Tamil Nadu*, AIR 1996 SC 1060, it has been held that the act of voluntarily giving up the membership of the political party may be either express or implied. In *Rajendra Singh Rana Vs. Swami Prasad*, (2007) 4 SCC 270, it has been held that the act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected.

[12.2] The materials on record have shown that the respondent No.3 was elected as a member of the Manipur Legislative Assembly on the ticket of the Congress Party and he was also sworn in as an elected member of the Manipur Legislative Assembly belonging to the Congress Party. On the basis of a letter dated 15.03.2017 of the Hon'ble Chief Minister designate, the respondent No.3 was sworn in by the Hon'ble Governor as a Minister of the BJP led Government which is evident from the Notification dated 15.03.2017 published in the Gazette by the Government of Manipur. The respondent No.3 has been and is still continuing to discharge his duties as a Minister. It is thus seen that the respondent No. 3 has voluntarily given up his membership of the Congress Party. This inference is based on the materials on record which require no interpretation at all as the same have not been denied by the respondents. Despite he having voluntarily given up his membership of the Congress Party, the respondent No.3 continues to be allowed to be a member of the Manipur Legislative Assembly for the reason that no formal order of disqualification has so far been issued by the Speaker which can be said to be one of the unfortunate events in the history of Indian democracy.

In Re: issue (c):

[13.1] The first part of this issue relates to a prayer for declaring that the respondent No.3 is disqualified from being a member of the Manipur Legislative Assembly. One of the issues raised in *Rajendra Singh Rana* case (supra) was as to whether the Speaker was justified in keeping the petition seeking disqualification of 13 MLAs pending, while he proceeded to accept a case of split in the BSP. The Hon'ble Supreme Court held that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership. It is really a decision *ex-post facto*. Keeping in mind the peculiar facts and circumstances of that case, the Hon'ble Supreme Court declared that the

13 MLAs stood disqualified with effect from 27-08-2003. The relevant paragraphs of the said decision read as under:

"44. Normally, this Court might not proceed to take a decision for the first time when the authority concerned has not taken a decision in the eye of the law and this Court would normally remit the matter to the authority for taking a proper decision in accordance with the law and the decision this Court itself takes on the

relevant aspects. What is urged on behalf of the Bahujan Samaj Party is that these 37 MLAs except a few have all been made Ministers and if they are guilty of defection with reference to the date of defection, they have been holding office without authority, in defiance of democratic principles and in such a situation, this Court must take decision on the question of disqualification immediately. It is also submitted that the term of the Assembly is coming to an end and an expeditious decision by this Court is warranted for protection of the constitutional scheme and constitutional values. We find considerable force in this submission.

45. Here, the alleged act of disqualification of the 13 MLAs took place on 27-8-2003 when they met the Governor and requested him to call the leader of the opposition to form the Government. The petition seeking disqualification of these 13 members based on that action of theirs has been allowed to drag on till now. It is not necessary for us to consider or comment on who was responsible for such delay. But the fact remains that the term of the Legislative Assembly that was constituted after the elections in February 2002, is coming to an end on the expiry of five years. A remand of the proceeding to the Speaker or our affirming the order of remand passed by the High Court, would mean that the proceeding itself may become infructuous. We may notice that the question of interpretation of the Tenth Schedule and the question of disqualification raised earlier in regard to Members of the prior Assembly of this very State, which led to the difference of opinion between two of the learned Judges of this Court and which stood referred to a Constitution Bench, was, disposed of on the ground that it had become infructuous in view of the expiry of the term of the Assembly. Para 3 of the Tenth Schedule has also been deleted by Parliament, though for the purpose of this case, the scope of that paragraph is involved. Considering that if the 13 members are found to be disqualified, their continuance in the Assembly even for a day would be illegal and unconstitutional and their holding office as Ministers would also be illegal at least after the expiry of six months from the date of their taking charge of the offices of Ministers, we think that as a court is bound to protect the Constitution and its values and the principles of democracy which is a basic feature of the Constitution, this Court has to take a decision one way or the other on the question of disqualification of the 13 MLA based on their action on 27-8-2003 and on the materials available.

48. The act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected. Be it noted that on 26-8-2003, the leader of their party had recommended to the Governor, a dissolution of the Assembly. The first eight were accompanied by Shivpal Singh Yadav, the General Secretary of the Samajwadi Party. In Ravi Naik this Court observed: (SCC p. 649, para 11)

"A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can

be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."

53. In view of our conclusion that it is necessary not only to show that 37 MLAs had separated but it is also necessary to show that there was a split in the original political party, the above finding necessarily leads to the conclusion that the 13 MLAs sought to be disqualified had not established a defence or answer to the charge of defection under para 2 on the basis of para 3 of the Tenth Schedule. The 13 MLAs, therefore, stand disqualified with effect from 27-8-2003. The very giving of a letter to the Governor requesting him to call the leader of the opposition party to form a Government by them itself would amount to their voluntarily giving up the membership of their original political party within the meaning of para 2 of the Tenth Schedule. If so, the conclusion is irresistible that the 13 members of BSP who met the Governor on 27-8-2003 who are Respondents 2, 3, 4, 5, 6, 9, 10, 14, 16, 19, 20, 21 and 37, in the writ petition filed by Maurya, stand disqualified in terms of Article 191(s) of the Constitution read with para 2 of the Tenth Schedule thereof, with effect from 27-8-2003. If so, the appeal filed by the 37 MLAs, by modifying the decision of the majority of the Division Bench. Hence the writ petition filed in the High Court, will stand allowed with a declaration that the 13 members who met the Governor on 27-8-2003, being Respondents 2, 3, 4, 5, 6, 9, 10, 14, 16, 19, 20, 21 and 37 in the writ petition, stand disqualified from the Uttar Pradesh Legislative Assembly with effect from 27-8-2003."

In *Speaker, Haryana Vidhan Sabha Vs. Kuldeep Bishnoi & ors*, (2015) 12 SCC 381, some substantial questions of law were considered out of which the following issues are relevant for the present case.

"4.2. Whether even in exercise of its powers of judicial review, the High Court, as a constitutional authority, can issue mandatory directions to the Speaker of a State Assembly, who himself is a constitutional authority, to dispose of a disqualification petition within a specified time?

4.3. Can the High Court, in its writ jurisdiction, interfere with the disqualification proceedings pending before the Speaker and pass an order temporarily disqualifying a Member of the State Legislative Assembly, despite the law laid down by this Court in *Raja Soap Factory v. S.P. Shantharaj* and in *L. Chandra Kumar v. Union of India* to the contrary?

4.4. When a disqualification petition filed under Article 191 read with Schedule X to the Constitution of India is pending consideration before the Speaker, can a parallel writ petition, seeking the same relief, be proceeded with simultaneously?."

After analysing its earlier decisions, the Hon^{ble} Supreme Court held:

"47. In our view, the High Court had no jurisdiction to pass such an order, which was in the domain of the Speaker. The High Court assumed the jurisdiction which

it never had in making the interim order which had the effect of preventing the five MLAs in question from effectively functioning as Members of the Haryana Vidhan Sabha. The direction given by the learned Single Judge to the Speaker, as endorsed by the Division Bench, is, therefore, upheld to the extent that it directs the Speaker to decide the petitions for disqualification of the five MLAs within a period of four months. The said direction shall, therefore, be given effect to by the Speaker. The remaining portion of the order disqualifying the five MLAs from effectively functioning as Members of the Haryana Vidhan Sabha is set aside. The said five MLAs would, therefore, be entitled to fully function as Members of the Haryana Vidhan Sabha without any restrictions, subject to the final decision that may be rendered by the Speaker in the disqualification petitions filed under Para 6 of Schedule X to the Constitution."

From the above decisions of the Hon^{ble} Supreme Court, it is seen that the Hon^{ble} Supreme Court or for that matter, the High Court can direct the Speaker to decide a petition for disqualification within a particular period or even to declare that a member of the Assembly is disqualified on the ground that he has voluntarily given his membership.

But a question whether a Speaker of a Legislative Assembly, acting under powers granted to him under the Tenth Schedule of the Constitution of India can be ordered by a High Court, exercising its writ jurisdiction under Article 226 of the Constitution of India, to decide a particular disqualification petition pending before him within a certain time came up before the Hon^{ble} Supreme Court in S.A. Sampath Kumar Vs. Kale Yadaih & ors., SLP No.33677 of 2015. This issue arose because of the decision rendered by the Hon^{ble} Supreme Court in Kihoto Hollohan case (supra). Accordingly, the Hon^{ble} Supreme Court, while referring the issue to a Constitution Bench passed the following order:

"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's case 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 paragraph 110 of Kihoto Hollohan's case. 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's case. 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 23rd August, 2014, and despite the hopes and aspirations expressed by the impugned judgment, 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 as appropriate Bench to decide this question as early as possible."

It is thus in not dispute that the issue whether the High Court has power and jurisdiction under Article 226 of the Constitution to direct the Speaker to dispose of the petition within a time frame, is pending for consideration by the Hon'ble Supreme Court. While the said SLP is pending, some writ petitions being WP(C) No.26017 of 2017 & ors., R. Sakkrapani Vs. The Secretary, Tamil Nadu Legislative Assembly came to be filed before the High Court of Judicature at Madras wherein the issue was as to whether the High Court, restrained by the Supreme Court from taking up prayer with regard to the issue of a mandamus to the Speaker to take appropriate action under the Tenth Schedule of the Constitution of India, can itself declare the 11 respondent MLAs as disqualified under Paragraph 2(1)(b) of the Tenth Schedule and thereby do indirectly that which cannot be done directly. The Hon'ble High Court

held:

"113. This Court exercising jurisdiction under Article 226 of the Constitution of India does not exercise appellate powers. This Court would not interfere with any action or inaction, unless the reasons put forward were so unreasonable and arbitrary that no person properly instructed in law and acting fairly and judiciously could possibly have acted or not acted on the basis of such reasons.

114. Moreover, even though the power of a constitutional court exercising its extraordinary jurisdiction under Article 226 of the Constitution of judicial review of executive or legislative actions is wide, its powers are not unlimited. The Court cannot take over the functions of the Speaker of deciding a disqualification application by giving full opportunity of hearing to the MLAs sought to be disqualified. The judgment in Rajendra Singh Rana, supra, was rendered by the Supreme Court in the special facts and circumstances of the aforesaid case, as an exception to the general rule and in any case, there was apparently a decision not to initiate disqualification proceedings. The judgment has no application in the facts and circumstances of this case.

119. We are constrained to hold that even assuming that this Court might embark upon the exercise of taking over the functions of the Speaker in exceptional circumstances and even assuming that those circumstances exist, by seeking the relief of an order of this Court disqualifying the respondent MLAs, the

petitioners are inviting this Court to do indirectly what it has been restrained by the Supreme Court from doing directly."

It has been submitted by the learned counsel appearing for the respondent No.3 that a petition for special leave to appeal has been preferred before the Hon'ble Supreme Court against the judgment and order dated 27-04-2018 of the High Court of Judicature at Madras and the same is pending for disposal by the Hon'ble Supreme Court. One of the issues involved therein is similar to that of this issue and therefore, it may not be appropriate for this Court to make any observation thereon.

[13.2] The alternative part of the issue (c) is altogether a different issue, in respect of which the prayer in the writ petitions is to issue a writ of quo warranto declaring the holding of the post of the Minister by the respondent No.3 as illegal, as it being without any authority of law. Before deciding the issue relating to issuance of quo warranto, this Court deems it appropriate to revisit the law laid down by the Hon'ble Supreme Court. In fact, this Court has already examined the law in a writ petition being WP(C) No.985 of 2014, Dr. Thounaojam Surendra Singh Vs. the Manipur University vide its judgment and order dated 17-11-2015, of which the paragraphs 6 is relevant. In the case of University of Mysore & anr. vs. C.D. Govinda Rao & anr., AIR 1965 SC 491, the Hon'ble Supreme

Court held:

"7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

In the case of B.R. Kapur vs. State of Tamil Nadu & anr., reported in (2001) 7 SCC 231, the Hon^{ble} Supreme Court held:

"80.The writ of *quo warranto* is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State ex inf. McKittrick v. Murphy. Information in the nature of *quo warranto* does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State ex inf. Walsh v. Thatcher."

In the case of High Court of Gujarat & anr. vs. Gujarat Kishan Mazdoor Panchayat & ors., reported in (2003) 4 SCC 712 the Hon^{ble} Supreme Court held:

"22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of *quo warranto*. The jurisdiction of the High Court to issue a writ of *quo warranto* is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See R.K. Jain v. Union of India, SCC para 74.)

23. A writ of *quo warranto* can only be issued when the appointment is contrary to the statutory rules. (See Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana.)"

In the case of B. Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees Assn. & ors., reported in (2006) 11 SCC 731 (II), the Hon^{ble} Supreme Court held:

"49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of *quo warranto*. The jurisdiction of the High Court to issue a writ of *quo warranto* is a limited one which can only be issued when the appointment is contrary to the statutory rules."

In the case of Haribansh Lal vs. Sahodar Prasad Mahto & ors., reported in (2010) 9 SCC 655, the Hon^{ble} supreme Court held that a writ of *quo warranto* lies only when appointment is contrary to a statutory provision and for issuance of a writ of *quo warranto*, the High Court has to satisfy that the appointment is contrary to the statutory rules.

In the case of Centre for PIL & anr. vs. Union of India & anr., reported in (2011) 4 SCC 1, the Hon^{ble} Supreme Court held:

"64. Even in R.K. Jain case, this Court observed vide para 73 that judicial review

is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction. We do not wish to multiply the authorities on this point."

In the case of Central Electricity Supply Utility of Odisha vs. Dhobei Chandra Jena & ors., reported in (2014) 1 SCC 161, the Hon'ble Supreme Court, after referring to its earlier decisions, has observed that from the aforesaid exposition of law it is clear that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

In Bharati Reddy Vs. State of Karnataka & ors, (2018) 6 SCC 162, the Hon'ble Supreme Court held:

"36. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat in a concurring judgment S.B. Sinha, J. (as his Lordship then was) noted that the High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. However, the jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. The Court went on to observe that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules as held in *Mor Modern Coop. Transport Society Ltd. v. State of Haryana*. The Court also took notice of the exposition in *R.K. Jain v. Union of India*. The Court noted that with a view to find out as to whether a case has been made out for issuance of quo warranto, the only question which was required to be considered was as to whether the incumbent fulfilled the qualifications laid down under the statutory provisions or not. This is the limited scope of inquiry. Applying the underlying principle, the Court ought not to enquire into the merits of the claim or the defence or explanation offered by the appellant regarding the manner of issuance of income and caste certificate by the jurisdictional authority or any matter related thereto which may be matter in issue for scrutiny concerning the validity of the caste certificate issued by the jurisdictional statutory authority constituted under the State Act of 1990 and the Rules framed thereunder. That inquiry may require examination of all factual aspects threadbare including the legality of the stand taken by the appellant herein.

38. In *Rajesh Awasthi v. Nand Lal Jaiswal*, the Court noted that a writ of quo

warranto will lie when the appointment is made contrary to the statutory provisions as held in *Mor Modern Coop. Transport Society Ltd.* Further, relying on the decisions in *B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees' Assn.* and *Hari Bansh Lal v. Sahodar Prasad Mahto*, wherein the legal position has been restated that the jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued if the appointment is contrary to the statutory rules and the Court has to satisfy itself that the appointment is contrary to the statutory rules. In that case, the Court after analysing the factual matrix found, as of fact, that there was non-compliance with sub-section (5) of Section 85 of the Electricity Act, 2003, in the matter of appointment of the incumbent to the post of Chairperson of the Commission for which it became necessary to issue a writ of quo warranto. In the supplementing judgment by one of us Dipak Misra, J. (as his Lordship then was), the settled legal position expounded in *B.R. Kapur, University of Mysore, High Court of Gujarat, Centre for PIL v. Union of India* has been recapitulated in paras 29 to 33 of the reported decision.

39. We have adverted to some of those decisions in the earlier part of this judgment. Suffice, it to observe that unless the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, which satisfaction should be founded on the indisputable facts, the High Court ought not to entertain the prayer for issuance of a writ of quo warranto."

[13.3] From the aforesaid decisions of the Hon^{ble} Supreme Court, it is also seen that the jurisdiction of the High Court to issue a writ of quo warranto is a limited one and a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. With a view to find out as to whether a case has been made out for issuance of quo warranto, the only question which is required to be considered by the High Court is as to whether the incumbent fulfilled the qualifications laid down under the statutory provisions or not. In other words, the petitioner must satisfy the High Court that the office in question is a public office and is held by usurper without legal authority.

[13.3] In the present case, the post held by the respondent No.3 is undoubtedly a public office which is being held by him without any authority of law. There is no any provision in the Constitution of India, for that matter Tenth Schedule or any provision in any of the laws enacted by the Parliament that a member of a Legislative Assembly elected on the ticket of a political party, can be appointed as a Minister in a Government led by another political party without having any alliance between them. Moreover, the constitutional mandate as enshrined in the Tenth Schedule prohibits such appointment in the sense that such appointment of a member as a Minister will entail disqualification for the reason that it will amount to an act of voluntarily giving up the membership of the party. The illegality or the unconstitutionality of the respondent No.3 being allowed to hold

the office as a Minister continues on account of the failure on the part of the Speaker to decide the petitions for disqualification within a reasonable time.

[14.1] In *Jagjit Singh case* (supra), it has been observed by the Hon^{ble} Supreme Court that the Speaker enjoys a very high status and position of great respect and esteem in the parliamentary traditions. He, being the very embodiment of propriety and impartiality, has been assigned the function to decide whether a member has incurred disqualification or not. The Speaker enjoys a pivotal position which is and has been held by people of outstanding ability and impartiality. It may be noted that after an elected member of the Assembly is appointed as the Speaker, he ought to be neutral in the discharge of his duty and function and ought to be above politics. While deciding such petition for disqualification, the Speaker shall not be influenced by anyone, for that matter the party to which he is affiliated. A member of a House belonging to any political party shall be disqualified for being a member of the House if he has voluntarily given up his membership of such political party. As has been held in *Dr. Mahchandra Prasad Singh case* (supra), the final authority to take a decision on the question of disqualification of a member of the House vests with the Speaker but since no discretion is conferred upon it, the role of the Speaker is to ascertain the relevant facts on the basis of which the Speaker will have to make a decision to that effect. In the present case, the facts are to be gathered from the documents which remain undisputed by the respondents. As has been observed hereinabove, the fact that the respondent No.3 has voluntarily given his membership of the Congress Party, is well established and therefore, it is the duty of the Speaker to take a decision thereon. The use of the expression "shall be disqualified" in paragraph 2 of the Tenth Schedule demonstrates that a duty is cast upon the Speaker to decide the petition for disqualification at an early date. But the Speaker has utterly failed to discharge its solemn duty. The Speaker appears to be concerned only with the power and function vested upon him by the provisions of the Tenth Schedule but he appears to have forgotten or ignored deliberately for certain reasons best known to him that he is required to discharge the duty enjoined upon him in the Tenth Schedule. The continuation of the respondent No.3 as a Minister is absolutely illegal as it being without any authority of law. The failure on the part of the Speaker to take a decision on the petition for disqualification within a reasonable time, has led to the continuance of the illegality which is likely to continue further, probably, till the end of the term of the Assembly.

[14.2] The people in the State of Manipur appear to have some reservations in the manner in which the petitions for disqualification are being dealt with by the Speaker. It may be noted that in the discussion being telecast in the local TV channels, some people appear to have started expressing their views stating that the State of Manipur appears to be a State in the country where the rule of law is not in force. The rule of law is the basis of good governance and the scheme of our constitution is based upon the concept of rule of law. Howsoever high a person may be, he is not above the rule of law. Similar is the case with the

Speaker who is also not above the rule of law and he appears to have forgotten it. The objects sought to be achieved in the Tenth Schedule remain unfulfilled and after the validity of the Tenth Schedule being upheld by the Hon^{ble} Supreme Court in Kihoto Hollohan case (supra) in the year, 1992, many acts of defection appear to have taken place in the country. In this regard, the observations made by the Hon^{ble} Supreme Court in a case may be relevant which states that without meaning any disrespect for any particular Speaker in the country, but only going by some of events of the recent past, certain questions have been raised about the confidence in the matter of impartiality on some issues having political overtones which are decided by the Speaker in his capacity as a Tribunal. It has been urged that if not checked, it may ultimately affect the high office of the Speaker.

[14.3] It has been reported recently in some of the local newspapers that in some of the petitions for disqualification, the Speaker appears to have taken prompt action by issuing notice which is a right approach and a good sign. This is what is contemplated in the Tenth Schedule. The Speaker is expected to follow the mandate of the Tenth Schedule in letter and spirit and if he keeps on postponing his decision on such petition, the objects sought to be achieved in the Tenth Schedule will stand defeated and the Tenth Schedule to the Constitution of India may be rendered a mere paper mandate.

[15] This alternative issue appears to have not been directly involved in the cases pending before the Hon^{ble} Supreme Court which are brought to the notice of this Court and mentioned hereinabove. But on a careful perusal of the order dated 08-11-2016 passed by the Hon^{ble} Supreme Court in SLP No.33677 of 2018, it appears that while deciding the issues involved therein, the Hon^{ble} Supreme Court is likely to examine and consider the scope of Article 226 of the Constitution of India in relation to the exercise or non-exercise of power and function by the Speaker as enshrined in the Tenth Schedule. In this regard, the observation of the Hon^{ble} Supreme Court "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's case" is significant. Therefore, this Court is of the view that it may not be appropriate for this Court to pass any order, for the time being, as regards the inaction or indecision on the part of the Speaker to take a decision on the petitions for disqualification and moreover, the judicial discipline and propriety demand that this Court shall refrain from issuing a writ of quo warranto too declaring the public office of a Minister being held by the respondent No.3 as illegal.

[16] In view of the above, the instant writ petitions stand disposed of with the above observations.