
(1997) 06 GAU CK 0003

In the Gauhati High Court

Case No : Writ Appeal Nos. 160 And 161 of 1997

President, Manipur Pradesh Congress Committee (I), Imphal	APPELLANT
Vs	
Speaker, Manipur Legislative Assembly	RESPONDENT

Date of Decision : 27-06-1997

Acts Referred:

Civil Procedure Code, 1908 — Section 11, 2
Civil Procedure Code, 1908 (CPC) — Section 11, 2
Letters Patent Act, 1865 — Clause 15, Clause 15

Citation : (1997) 2 GLJ 97 : (1997) 3 GLR 370 : (1997) 2 GLT 447

Hon'ble Judges : J.N.Sarma, J and V.Dutta Gyani, J

Bench : Division Bench

Advocate : N.M.Lahiri, J.P.Bhattacharjee, G.N.Sahewalla, B.Goyal, S.Senapati, P.Bora, T.Nandakumar Singh, P.K.Goswami, Advocates appearing for Parties

Judgement

V. Dutta Gyani, C.J. (Acting)

1. These writ appeals have a long drawn story of litigation between the parties extended over a period of almost 20 months during which petitions were filed and withdrawn again filed on the same set of facts seeking similar reliefs followed by appeals before this Court and even four SLPs before the Hon'ble Supreme Court, all of them dismissed by the Supreme Court. Even review petitions were dismissed. This is after long drawn litigation relating to disqualifications incurred by the respondent MLAs that the present petition has been brought and the learned Single Judge by order dated 28.2.97 holding there is a cause of action for maintaining the writ petition thereby unsettling settled position as regards disqualifications of respondents 15 to 17 and one Shri T. Gouzadou from being Members of the Manipur State Legislative Assembly. It is against this order that the present appeal have been filed.

2. To appreciate the points involved, it is necessary to note the events which lead to the disqualifications and also the long pending litigation proceeding to file this appeal.

3. Writ Appeal No. 161 of 1997 arises out of judgment and order dated 6th March, 1997 passed in Civil Misc Case No. 132 of 1997 arising out of Civil Rule No. 168 of 1997, by a learned Single Judge of this Court at Imphal, while Writ Appeal No. 160 of 1997 is directed against the judgment and order dated 6th March, 1997 passed in Civil Misc Case No. 131 of 1997 in Civil Rule No.245 of 1997 by a learned Single Judge of this Court at Imphal. Both these appeals are closely interlinked and the questions of law involved are also identical. In both these appeals, the President Manipur Pradesh Congress Committed (I) and the Speaker, Manipur Legislative Assembly are common parties as appellant and respondent, respectively.

4. The facts leading to the filing of these appeals are as follows :

5. In February, 1995, General Election to the Manipur State Legislative Assembly, with a total strength of 60 Members, were held. The election of one of the Constituencies was countermanded. So, elections were held for 59 Constituencies. The party position obtaining after the election, was as under :

1. Congress (I) 21 6. Samata party 2

2. MPP 18 7. BJP 1

3. JanataDal 7 8. Congress (S) 1

4. CPI 2 9. Federal Party 2

5. NPP 2 10. Independents 3

Total 59

6. The Congress (I) strength was increased to 22 after the by election. A Congress (I) Ministry with the support of various other parties was formed in the State.

7. At the time of formation of the Assembly, the Janata Dal comprised of 7 (seven) members, out of which four members as named below, had formed the Progressive Janata Dal (for short, PJD) with Shri Basant Kumar Wangkhem, respondent No. 16 (in WA No. 161 of 1997) as its President.

1. Shri Basant Kumar Wangkhem, 2. Shri Mayanlamba Babu Singh,

3. Shri O. Lohrii, and 4. Shri Sh Hangkhanpao

8. The original Janata Dal comprising of three members was further split with one of its members, Shri Sephu Haokip forming the Janata Dal (Sephu), which was also recognised as a separate political party by the Speaker, vide bulletin dated 23.3.95, Annexure 1.

9. The leader of Progressive Janata Dal, Shri Basant Kumar Wangkhem addressed a letter to the President, AICC (I) on 20th June, 1995 seeking merger of the PJD with Congress (I). He also enclosed a resolution dated 16.6.95 passed

by the PJD to this effect. Both the letter as well as the resolution are annexed and marked as Annexure 2. The process of merger was sought to be expedited and accordingly, the President, AICC (I) approved the merger of PJD with Congress (I), as indicated by office note dated 27.6.95, Annexure 3. The approval was conveyed by the General Secretary of AICC (I) to the Chief Minister, Manipur, vide letter dated 27.6.95, Annexure 4. The President, MPCC (I) by his letter dated 30th June, 1995 addressed to the four PJD MLAS and five others conveyed the approval of the AICC (I) President to the merger and also informed them that they had become members of Congress (I) Legislature Party (Annexure 5). A press release was also issued in this behalf by Manipur Pradesh Congress Committee (I) on 1st July, 1995 (Annexure 6).

10. That by a bulletin dated 1.7.95 (Annexure 7) issued by the Manipur Legislative Assembly Secretariat, the merger of PJD and other four parties with the Congress (I) on 27th June, 1995 was notified.

11. A development took place on 1st July, 1995. Three Congress (I) MLAs originally belonging to the PJD formed themselves along with six other MLAs into a front, calling themselves as United Democratic Front and addressed a communication to the Governor withdrawing their support to the Congress (I) Ministry headed by Shri Rishang Keishing. This led to lodging of a complaint before the Speaker, Manipur Legislative Assembly, respondent No.1, by respondents 7 to 12 against respondents 15, 16 and 17 seeking their disqualification from being members of the Manipur Legislative Assembly on 3rd July, 1995.

12. The Speaker, respondent No.1, by show cause notice dated 3rd July, 1995 called upon respondents 15, 16 and 17 to show cause within 7 days as to why they should not be disqualified as Members of the Legislative Assembly.

13. Thereupon, respondents 15, 16 and 17 filed writ petitions, being Civil Rule Nos.399 of 1995 and 400 of 1995 on 4.7.95 before this Court seeking to quash the Assembly bulletin dated 1 st July, 1995 recognising the merger of PJD with Congress (I). They also prayed for interim stay of the operation of the Speaker's bulletin. But, this prayer was rejected by order dated 6th July, 1995. It may be noted that no appeal was filed by respondents 15 to 17 against the rejection of their prayer for stay. The order dated 6th July. 1995 is filed as Annexure 8. Respondents 15 to 17 and two others withdrew the above mentioned writ petitions, being Civil Rule Nos 399 of 1995 and 400 of 1995 and they were allowed to be withdrawn with liberty to file a fresh petition, vide this Court's order dated 18,7.95 (Annexure 9).

14. On the same day, that is, 18th July, 1995, respondents 15 and 16 along with one Shri Hangkhanpao filed yet another petition, being Civil Rule No.460 of 1995, and respondent No. 17 filed a writ petition, being Civil Rule No.469 of 1995, on 20th July, 1995, with one Shri Gouzadou, challenging the bulletin dated 1.7.1995 issued by the Assembly Secretariat, essentially based on similar factual

statements and seeking relief as in the previous writ petitions. Civil Rule No.469 of 1995 came to be listed for hearing on interim relief and the learned Single Judge of this Court by his order dated 26.7.95 restrained the Speaker, respondent No.1, from taking any reprehensive action against the petitioner. A writ appeal was preferred against the said order by President, MPCC (I), and this Court by its order dated 28.7.95 stayed the operation of the order dated 26.7.95, as passed by the learned Single Judge.

15. In the meantime, the respondent No.1 by notices issued on 3.7.95,18.7.95 and 21.7.95 called upon the respondents 15 to 17 and other 2 MLAs facing disqualification proceedings for personal hearing on 27.7.95. These notices were given wide publicity in press, on the date fixed for hearing, respondent No. 16 appeared before the respondent No. 1 while others abstained. The respondent No. 1 by this reasoned order dated 29.7.95 filed as Annexure 10 disqualified respondents 15 to 17 and 2 other MLAs from being the Members of the Assembly.

16. The MLAs filed a writ petition being Civil Rule No.490 of 1995 before this Court praying for quashing the order dated 29.7.95 passed by the respondent No. 1. The writ petitioners applied for withdrawal of this writ petition on 9.9.95 with a liberty to file a fresh petition. The learned Single Judge by his order dated 11.8.95, Annexure 11 while permitting withdrawal of the petition (Civil Rule No.490 of 1995) refused to grant the liberty to file a fresh petition. No appeal or review was filed against the aforesaid order dated 11.8.95 (Annexure 11). But a Special Leave Petition before the Supreme Court was filed by respondents 15 to 17 and Sri T. Gouzadou challenging the disqualification order dated 29.7.1995. All these four Special Leave Petitions were dismissed by the Supreme Court by order dated 1.11.1995, Annexure 12.

17. The above order was based on earlier judgment of the Supreme Court as reported in AIR 1988 SC 88. The respondents 15 to 17 and Shri T. Gouzadou filed Writ Appeal No.320 of 1996 against the order dated 11.8.95, Annexure 11, this appeal was also dismissed vide order dated 23.7.1996, Annexure 13.

18. While respondent Nos. 15 to 17 and Sri T. Gouzadou were busy litigating in Courts, another MLA Shri Hangkhanpao who was also disqualified filed a review petition before the respondent No.1 explaining his absence on the date fixed on 27.7.95 for personal hearing and sought for rehearing on the ground that he was physically prevented in absenting himself in the said hearing. The respondent No. 1 rejected the prayer for review. It was the subject matter of challenge by him in a writ petition (Civil Rule No.4266 of 1995) before this Court, the learned Single Judge by order dated 28.9.95 directed the respondent No. 1 to afford opportunity of hearing to Sri Hangkhanpao, he was accordingly heard on 20.3.96 and by order dated 20.4.96, disqualification order passed against him was recalled as per Annexure ISA. It appears that the other MLAs, respondents 15 to 17 and Mr. T. Gouzadou filed a review petition before the Supreme Court making a specific plea that while Sri Hangkhanpao had been given a fresh hearing and his disqualification order recalled, they too were entitled of similar opportunity. But

the Apex Court by its order dated 30.10.96, Annexure 14 dismissed the review petition observing that "Apart from the fact that the petitions are delayed by 269 days, even on merits we see no ground to entertain these petitions. Hence the review petitions are dismissed." The same respondents 15 to 17 and Mr. T. Gouzadou had filed a Special Leave Petition challenging the order dated 23.7.96, Annexure 13 as passed by a Division Bench of this Court dismissing the Writ Appeal No.320 of 1996. Even this Special Leave Petition met with dismissal on 4.11.96 vide Annexure 15.

19. Mr. PK Goswami, learned senior counsel assisted by Ms. S. Senapati. learned counsel appearing for the appellant and in view of the long drawn litigations and the various orders passed by this Court as well as the Hon'ble Supreme Court fervently urged that the disqualification proceedings have attained its finality not only before this Court, but also before the Hon'ble Supreme Court as is evident from order dated 1.11.95 passed in SLP (C) Nos.19126, 19363, 19380 and 19383 of 1995 categorically hold that the respondents disqualified MLAs had abandoned their remedies after the order dated 11.8.95 passed by the learned Single Judge of this Court in Civil Rule No.490 of 1995. A Writ Appeal No.320 of 1996 was filed by the respondents and the same was also dismissed vide order dated 23.7.96, Annexure 13. The review petitions filed by disqualified MLAs, respondents 15 to 17 and Mr. T. Gouzadou claiming right of fresh hearing as was granted to Sri Hangkhanpao was also dismissed by the Supreme Court and right of rehearing claim was rejected vide order dated 30.10.96, Annexure 14.

20. Another off shoot of this litigation is the filing of two writ petitions, Civil Rule Nos.460 of 1995 and 469 of 1995 by the disqualified MLAs challenging the merger and the bulletin dated 1.7.95 as issued by the respondent No.3, Deputy Secretary, Manipur Legislative Assembly. These petitions were disposed of by the learned Single Judge by his judgment dated 22.1.97, Annexure 16 with the following observations :

"For the reasons stated above, I dispose of this writ petition with the observation that the impugned bulletin dated 1.7.96 stating that the President of the AICC (1) has allowed the merger of the Progressive Janata Dal with the Indian National Congress (I) is not an order of the Speaker of the Manipur Legislative Assembly accepting or recognising the disputed merger of the Progressive Janata Dal with the Indian National Congress (I) and it will have no legal consequences whatsoever on the question of the said disputed merger. Considering the facts and circumstances of the case, I make no order as to costs."

Learned counsel Mr. Goswami urged that the question of merger cannot be decided independently, it can only be decided under the context of the disqualification under paragraph 4 of the 10th Schedule of the Constitution.

21. After disposal of the above petitions on 22.1.97 vide Annexure 16, the disqualified MLAs again filed a fresh writ petition Civil Rule No. 168 of 1997 challenged the decision of the respondent No. 1 disqualifying the respondents

from membership of the State Legislative Assembly and the question of disqualification after so many innings and challenges are sought to be reopened on the ground that the judgment dated 22.1.97 gave them a fresh cause of action in the light of the observation as quoted above that the bulletin dated 1.7.95 did not effect the legal right of the respondents and Sri Hangkhanpao having been given a hearing by the respondent No. 1, they were also entitled to the same. The learned Single Judge by impugned judgment and order dated 28.2.97, Annexure 19 held that disqualified MLAs had a cause of action available to them for maintaining the petition, Civil Rule No. 168 of 1997. This judgment is the subject matter of challenge in the present appeal along with the order dated 6.3.97 passed by the learned Single Judge in Misc Case No. 132 of 1997 thereby directing the Election Commission, respondent No. 16 not to issue any notification calling for election in 4 Kshetrigao, 49 Tadubi ST) and 57 Henglep (ST) Constituencies during the pendency of this writ petition. The connected appeal No. 160 of 1997 is directed against the order dated 6.3.97 passed by the same learned Single Judge in Civil Misc Case No. 131 of 1997 in Civil Rule No.245 of 1997 whereby a similar order directing the Election Commission of India not to issue notification calling for election in respect of 60 Smghat (ST) Constituency was passed by the learned Single Judge.

22. Mr. Goswami, learned counsel for the appellants has laisedthe following points:

(a) That the finding recorded by the learned Single Judge that there was cause of action for maintaining the petition is manifestly wrong on jurisdictional facts and one patently without jurisdiction in law.

(b) That the petition was barred by the principle of constructive resjudicata.

(c) That the observations made by the learned Single Judge in judgment dated 22.1.97 decided in Civil Rule No.460 of 1995 does not confer any cause of action on the disqualified MLAs, respondents 15 to 17 and one Sri Gouzadou.

(d) That the question of merger has relevance and can only be taken up in the context of disqualification proceedings wherein it is available as a defence and it cannot be independently decided, ignoring the fact that the issue of disqualification had attained finality, and the challenge to bulletin dated 1.7.95 issued bythe respondent No.3, had been rejected by the Court, by no stretch of imagination there could be any cause of action, as made out by the learned Single Judge without assigning and advancing any reasons and merely recording submissions of the parties.

23. Apart from raising a preliminary objection as regards the maintainability of these appeals, Shri JP Bhattacharjee, learned counsel appearing for the respondents argued that since the vary plank or basis for issuance of show cause notice for disqualification is an order passed by the Speaker, recognising merger of Progressive Janata Dal, with Congress (I) which also forms the basis of order of disqualification dated 29.7.95, what would be the effect and impact of such

merger on the order of disqualification proceedings, in the totality of facts, is a question which still remains to be answered by the Court and whether or not the disqualified MLAs are entitled to challenge the disqualification order on the above ground, in other words, are they precluded from challenging it ? It is this thematic thrust which he elaborated with the arguments.

24. The preliminary objection is that the impugned order is not a judgment within the meaning of clause 15 of the Letters Patent, as such, these appeal are not maintainable.

25. Placing reliance on a judgment of a Division Bench of this Court Sant Kumar Bajoria & others vs. State of Meghalaya & others, as reported in (1993) 2 GLR 260 (which in turn relies on Shree Chamundi Moped Ltd vs. Church of South India Trust, (1992) 3 SCC 1 and Shah Babulal Khimji vs. Jayaben, AIR 1981 SC 1786) holding that granting or refusing stay of implementation of any notification affecting the rights of a party is a judgment within the meaning of clause 15 of the Letters Patent, hence it is appealable. The Supreme Court in Madhu Limaye's case (AIR 1978 SC 47) has held that order rejecting a plea which if accepted, will conclude the proceedings, is not an interlocutory order, but "final" in nature. Rejecting appellant's contention about maintainability of petition and issuing notice is a judgment within the meaning of clause 15, so as to confer a right of appeal, although the said judgment may suffer from the vice of lack of reasons and not stand the test of true judicial decision, nonetheless, it is a judgment within the meaning of clause 15.

26. Let us have close look at the impugned judgment running into 38 pages with 14 paragraphs. The first two paras are narration of facts relating to holding of elections and the passing of disqualification order on 29.7.95. The subsequent five paragraphs 3 to 7 contain the history of litigation, the orders passed in various civil rules and appeals and some comment or submissions. Para 8 is the submissions made by the learned Advocate General concluding with the following submission as noted by the learned Judge.

"Mr. Ashok Potsangbam submits that the matter .which has already been decided by the Apex Court should bind this Court because according to him the order of the Apex Court has already reached its finality."

27. Para 9,10,12 and 13 take note of submissions made by learned counsel for the petitioners. Para 11 contains the submissions made by the counsel for respondent No.4, (appellant herein) and para 14 is the conclusion which is quoted below:

"14. After carefully considering the facts and circumstances of the case and in the light of submissions made on behalf of the parties as recorded by me in the foregoing paras, I hold that there is cause of action for filing the present petition."

28. There is much force in the criticism made by the learned counsel Mr. Goswami that by recording a definite finding that there is a cause of action for

maintaining the petition (Civil Rule 168 of 1997), the learned Single Judge unsettled a settled position relating to disqualifications of respondents 15 to 17 and Shri T. Gauzadou from being members of the Manipur State Legislative Assembly. This finding cannot be said to be a mere issuance of notice to show cause. That apart, there is an interim order, passed on 6.3.97, restraining the Election Commission, respondent No. 16 from issuing notification calling election in three Assembly Constituencies during pendency of writ petition. In face of such orders impugned in three appeals, the preliminary objection as raised by Mr. Bhattacharjee, learned counsel for the respondents is liable to be rejected, it is accordingly rejected.

29. The impugned judgment has been assailed by Mr. Goswami on yet another ground, while it merely takes note of submissions and counter submissions made by learned counsel for the parties., but fails to assign any legal reasoning for arriving at the above conclusion that there is cause of action for maintaining the petition. There is no reasoning at all to support the above finding. It was Lord Davlin who not only recognised but also emphasised the link between law and logic in *Hedley Byrue vs. Hellev and Partners* (1994) AC 465, saying "The common law is tolerant of much illogicality especially on the surface but no system of law can be workable if it has not got logic at the root of it."

30. In *Cooper vs. Silson*, 1937 (2) KB 309, an attempt was made to define and distinguish a "judicial" decision from quasi judicial in the following words:

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.

A quasijudicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2) but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice."

The same has been followed by the Supreme Court in *Maqbool Hussain vs. State of Bombay*, AIR 1953 SC 325, while laying the test of a true judicial decision without being too formal, about notions of reasoning, it can safely be said, that any Judge who records a finding arrives at a particular conclusion, has to employ some legal reasoning, it cannot be mere ipse dixit of the Judge. It is reasoning in any kind of decision making process which is dominant, a judicial decision is based on reason and is known to be so because it is supported by reasons (See

Lord Denning Freedom Under the Law, 1949 Edn Page 91).

31. Although there are several references and cross references to authorities, what is really lacking in the impugned judgment is "Reason" to support the finding.

32. The impugned finding relates to existence of cause of action. Cause of action has not been defined under the law but its legal connotation and meaning is well understood.

33. Black's Law Dictionary Sixth Centennial Edition 1991 describes cause of action "The fact or facts which give a person a right to judicial redress or relief against another. The legal effect of an occurrence in terms of redress to a party to the occurrence. A situation or state of facts which would entitle party to sustain action and give him right to seek a judicial remedy in his behalf. Thompson vs. Zurich Ins Co. DC Minn, 309 F. Suppl 1178,1181. Fact or a state of facts to which law sought to be enforced against a person or thing applies. Facts which give rise to one or more relations of rightduty between two or more persons. Failure to perform legal obligation to do, or refrain from performance of, some act. Matter for which action may be maintained. Unlawful violation or invasion of right The right which a party has to institute a judicial proceeding. See also Case; Claim; Failure to state cause of action; Justiciable controversy Right of action, Severance of action, Splitting cause of action; Suit."

34. The expression cause of action means every fact which if traversed, it would be necessary for the plaintiff to prove in order to support the right to the judgment of the Court.

35. The meaning of the expression cause of action has been very succinctly dealt with by the Supreme Court in State of Madras vs. CP Agencies, AIR 1960 SC 1309 in the following words :

"The only question is whether the cause of action has been stated in the notice. The answer to the question depends on the interpretation of the notice given under section 80. This being the true position, it is not necessary for us to refer to the decisions requiring the identity of the person who issues the notice and the person who brings the suit as in Vellayan Chettiar vs. Govt of Madras, 74 Ind App 223 (AIR 1947 PC 197) and in Govt of the Province of Bombay vs. Pestonji Ardeshir Wadia, 76 Ind App 85 (AIR 1949 PC 143) or those requiring the identity of the cause of action in two suits brought by the same plaintiff against the same defendant as a condition for the applicability of Order n, Rule 2," Code of Civil Procedure, as in Md Khalid Khan vs. Mahbub Ali Mian, 75 Ind App 121 (AIR 1949 PC 78).

We have been referred to the well known observations of Brett J in Cooke vs. Gill, (1873) 8 CP 107 and to the definition of cause of action given in Read vs. Brown, (1888) 22 QBD 128 which are all referred to in 75 Ind App 121 (AIR 1949 PC 78) (supra). In (1888) 22 QBD 128 (supra), Lord Esher MR defined "cause of

action" to mean

Every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved." Fry LJ agreed and said:

"Everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action." To the same effect are the Observations of Lopes LJ in *Mst Chand Kour vs. Partab Singh* 15 Ind App 156.

Lord Waston observed:

Now the cause of action has not relation whatsoever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

36. The disqualified MLAs, respondents 15 to 17 and Shri T. Gouzadou, claim accrual of cause of action, for filing the writ petitions 169 of 1997 and 245 of 1997 on the basis of observation made in the judgment dated 22.11.97, Annexure 16 delivered by a learned Single Judge of the Court in CR No.460 of 1995. Mr. Bhattacharjee, learned counsel appearing for the respondents contended that it was revealed for the first time from the judgment that there was no order passed by the Speaker as regards merger of Progressive Janata Dal with Congress (I) and it is this revelation of fact, which gives a cause of action of the disqualified MLAs. He invited pointed attention to the concluding part of the judgment (Annexure 16 apart from paragraphs 4, 12 and 19).

37. Mr. Goswami, learned counsel for the appellant have taken us through the judgment dated 22.1.97 Annexure 16, propounded the following three propositions emerging therefrom.

1. That the question of merger cannot be decided independently and the same can be decided only in the context of disqualification provisions and only under paragraph 4 of the Xth Schedule.

2. That, the disqualification proceedings have attained finality. The same being upheld by this Hon"ble Court as well as the Hon"ble Supreme Court.

3. The challenge to the bulletin dated 1.7.95 has been rejected, notifying the merger of various parties with the Congress (I) and the increase in strength of the Congress (I) to 31 MLAs.

38. Be it also noted that in the written arguments submitted on 5.5.97 by the contending respondents, it is sought to be suggested that it was the appellants counsel Mr. Goswami who misunderstood the respondents case and erroneously submitted that writ petitioner respondents case was that they for the first time came to know from the judgment dated 22.1.97 that there was no order about

merger passed by the Speaker. To quote the respondents own words from the written arguments as submitted on 5.5.97.

"The appellant of the present writ appeal has misunderstood the case of the contesting respondents/writ petitioners inasmuch as in the course of the hearing of the writ appeal the writ appellants" counsel had wrongly submitted that the case of the contesting respondents/writ petitioners" are that they came to know for the first time about the nonexistence of the decision of the Speaker, Manipur Legislative Assembly only on 22.1.97 on which Hon"ble Single Judge passed judgment and order dated 21.1.97 in Civil Rule No.460 of 1995 and Civil Rule No. 469 of 1995. But the case of the contesting respondents/writ petitioners in Civil Rule No. 168 of 1997 and Civil Rule No.245 of 1997 are that Hon"ble Single Judge vide his judgment and order dated 22.1.1997 had finally decided that there is no decision or/order of the Hon"ble Speaker, Manipur Legislative Assembly regarding merger of Progressive Janata Dal, National Peoples Party (NPP) and Janata Dal (Sephur), with the Congress (I) and also that Bulletin dated 1.7.1995 is not the decision of the Speaker regarding the merger of the said political parties with Congress (I)."

39. The oral arguments as advanced has been correctly noted and there was no such misunderstanding as suggested. In any case the controversy raised is of no consequence. Approaching the judgment dated 22.1.97 (Annexure 16) from the stand point of the written arguments as submitted by the respondents, on 5.5.97 the first question that arises is whether in fact the learned Single Judge decided the point as is now being sought to be canvassed by the respondents.

40. It needs to be noted that the judgment dated 22.1.97 (Annexure 16) is not being cited as a precedent but is relied upon as a source and base of accrual of cause of action to the disqualified MLAs. What was the case of the writ petitioner/respondents the disqualified MLAs before the learned Single Judge, can well be seen from the judgment. para 3.

"At the hearing Mr. Nilamoni Singh assisted by Mr. T. Nandakumar Singh, learned counsel appearing for the petitioner challenged the impugned bulletin dated 1.7.95 on various grounds. They contended that the copy of the minutes of the emergency meeting of the Progressive Janata Dal Legislators held on 16.6.95 annexed to the civil rule as Annexure A/2 would show that they agreed to the merger of the Progressive Janata Dal with the Congress (I) subject to the certain conditions. The condition mentioned in clause (b) was that a formal reception of the Progressive Janata Dal Legislators and the workers of the Block and District level would be arranged by the MPCC (I) and some of the members of the Progressive Janata Dal would be accommodated at the PCC, Dpt and BCC level but this condition had not been fulfilled by the MPCC (I). Mr. Nilamoni Singh cited the judgment of the Supreme Court in the case of All Party Hill Leaders Conference, Shiilong vs. Capt WA Sangma, AIR 1977 SC 2155 in support of his submission that a political party does not only comprise of its leaders but also all those people who constitute its membership and contended that a mere

understanding between the leaders of two political parties does not result in a merger unless the cadres of the two political parties also merge with each other. According to Mr. Nilamoni Singh, the merger of the Progressive Janata Dal party with the Congress (I) would have taken place"only after the workers of the Progressive Janata Dal at the Block and District levels were absorbed in the Congress (I) party. But since this has not taken place the impugned bulletin dated 1.7.95 issued under the authority of the Speaker of the Manipur Legislative Assembly to the effect that the Progressive Janata Dal has merged with the Indian National Congress (I) is illegal and was liable to be set aside by this Court."

41. A judgment means the declaration or final determination of the rights of the parties in the matter brought before the Court. (See *S. Kukhuswami Rao vs. The King*, AIR 1949 FC 1).

42. Let us therefore see what the learned Judge has decided. We would like to make it clear at this stage itself that we are not examining the correctness or lawfulness of the findings, what we are primarily concerned with for the present, is the factual correctness of the submission as made by the respondents.

43. The learned Single Judge having posed the question states that the first question that needs to be decided in this case is as to whether the Court could enquire into the grievances of the two petitioners in this writ petition after the Speaker of the Manipur Legislative Assembly has passed the orders dated 29.7.95 disqualifying the two writ petitioners from the membership of the Manipur Legislative Assembly and the attempts of the two petitioners to challenge the said orders of disqualification have finally failed both before this Court as well as before the Supreme Court. The learned Single Judge further held that in the present case, the two petitioners were not only members of the Manipur Legislative Assembly but were also leaders and members of the Progressive Janata Dal Party and in case they make a grievance before this Court that by the impugned bulletin issued under the authority of the Speaker of the Manipur Legislative Assembly, the very identity of the Progressive Janata Dal party has been effaced and the petitioners and their erstwhile colleagues in the said political party are now without a political party.

44. Referring to *Ravi S. Nayak vs. Union of India*, AIR 1994 SC 1558, the second point raised by the respondents was that it is for the Speaker to decide on the materials placed before him as to whether there has been a split of a political party, and argued that similarly in the present case when there was a dispute between the petitioners and the respondent No.4 as to whether or not there was a merger of the Progressive Janata Dal with the Congress (I), the Speaker should have determined the dispute on the basis of material placed before him after following the principles of natural justice.

45. Dealing with this question the learned Judge held :

"The Court can look into the grievance of the petitioners even after the orders of

disqualification have been passed by the Speaker against the two petitioners under the Tenth Schedule of the Constitution. While examining such a grievance the Court will however have to bear in mind the fact that subsequent to the filing of the writ petition, the Supreme Court has dismissed the Special Leave Petition filed by the two petitioners challenging the said orders of disqualification and would not grant relief to the two petitioners which have been refused by the Supreme Court."

46. Posing the question "whether by the impugned bulletin, the Speaker of the Manipur Legislative Assembly has passed any order in violation of the Constitutional mandate or in violation of the principles of natural justice or any order which is vitiated by malafides or perversity calling for interference by this Court.

47. Having quoted the bulletin issued on 1.7.95 and discussing the contentions and argument the learned Judge held "The impugned bulletin was issued prior to the initiation of disqualification proceedings against the two petitioners and by the said bulletin the Speaker has not passed any orders preempting the defence of the two petitioners that their political party Progressive Janata Dal had merged with the Indian National Congress (I) and it was open for the "two petitioners to take this defence when such proceedings were initiated against them. The impugned bulletin does not therefore violate the provisions of the Tenth Schedule of the Constitution."

48. Further it is held "But even if the publication of the impugned bulletin is not supportable by any provisions of the said Rules, as already held by me, the said bulletin does not accept or recognise the merger of the Progressive Janata Dal in the Indian National Congress (I) and does not affect the rights of the petitioners as members of the said political party. Thus, the publication of the impugned may amount to an irregularity of procedure but cannot be held to be vitiated by perversity or illegality or malafides. It has been held by the Supreme Court in the reference under Article 143 of the Constitution reported in AIR 1965 SC 745 and reiterated by the Supreme Court in the case of Kihota Hollohon vs. Zachihu, AIR 1993 SC 412 that a complaint made before a Court that a particular procedure adopted by the Speaker of the House is irregular is beyond the scope of judicial review. In the case of Ravi S. Nayak vs. Union of India, the Supreme Court further held that any violation of the Disqualification Rules framed by the Speaker under paragraph 8 (1) of the Tenth Schedule to regulate the procedure that is to be followed by the Speaker in exercising his powers under the Tenth Schedule of the Constitution cannot be regarded as violation of constitutional mandate and would only amount to an irregularity in procedure in respect of which the power of the judicial review cannot be exercised by the Courts. Hence the impugned bulletin cannot be quashed by the Court in exercise of its powers of judicial review."

49. It is in the light of the above findings that the concluding observation as contained in paragraph 19 already quoted above is to be viewed and appreciated.

A judgment or decision which is pronounced, must be a declaration of the mind of the Court as at the time of pronouncement (See *SurendraSingh vs. State of UP*, AIR 1954 SC 194). However liberally read and construed, the judgment dated 22.1.97, Annexure 16 as seen above, does not confer any cause of action even or otherwise, on principle a judgment seldom confers or creates any cause of action for institution of fresh proceedings save in exceptional cases where adverse findings or remarks are made in a judgment behind the back of the party. Indeed, as defined in Black's Law Dictionary to sustain action and seek judicial redress and relief a declaration of one's rights the party seeking a judgment, must have a cause of action for institution of proceedings or suit. It is not as if cause of action follows judgment.

50. It was vehemently argued by Mr. Bhattacharjee that it was for the first time decided by the Court that there was no order passed by the Speaker accepting the merger of Progressive Janata Dal with Congress (I). The findings of the learned Judge have already been quoted above. There is a categorical finding recorded after an elaborate discussion of all aspects, upholding the validity of the bulletin notifying merger and the fact that the strength of Congress (I) had increased to 31 MLAs the learned Judge has held

"Hence the impugned bulletin cannot be quashed by the Court in exercise of its power of judicial review."

51. The learned Judge has further held that the disqualification proceedings have attained finality, the same having been upheld by this Court as also the Supreme Court and the question of merger is not an issue to be independently decided, it can only be gone into in the context of provisions relating to disqualification as contained in paragraph 4 of the Xth Schedule. Thus even on facts, however, the disqualified MLAs may try to explore the judgment dated 22.1.97, Annexure 16, it does not confer or create by deciding anything any right for institution of fresh proceedings.

52. Now coming to the question of *res judicata*, it was argued by Mr. Goswami, learned senior counsel for the appellant that the learned Single Judge has failed to consider the preceding judgments and orders of this Court as well as the Hon'ble Supreme Court, passed in respect of the same issue and controversy sought to be raised and reopened by the disqualified MLAs, seeking the same reliefs which in fact they had abandoned the case was squarely covered by the doctrine of *res judicata*. It is here on this point that a host of authorities have been cited by the learned counsel for the respondents, but let us first clear through the mass of judgments and orders passed by this Court and the Apex Court litigations between the parties. To recapitulate the same in chronological order, an instant reference would keep more than any precedent in deciding the issue raised.

(1) The order of disqualification was first challenged by respondents 15 to 17 in writ petition Civil Rule No.490 of 1995 it was dismissed as withdrawn by order

dated 11.8.95, Annexure II.

"Upon hearing the learned counsel of both sides I allow to withdraw the above mentioned civil rule, but I refuse to pass any order regarding the second part of the prayer i.e. liberty to file fresh petition.

Accordingly the Civil Rule No.3248 of 1995 (Gauhati) CR No.490 of 1995 (Imphal) is dismissed on withdrawal.

The misc petition is disposed of accordingly."

(2) SLPs filed before the Supreme Court against the above order were also dismissed vide order dated 1.11.95 (Annexure 12). Relying on its earlier judgment as reported in *Sarguja Transport Service vs. State Transport Appellate Tribunal*, (1987) 1 SCR 200 : AIR 1987 SC 88, the Supreme Court held :

"In view of the aforesaid decision of this Court based on the principle of the Order XXIII Rule 1 of the Civil Procedure Code, which in turn is based on the public policy that a litigant will not be wise, we find that this petition brought under Article 136 of the Constitution is unsustainable."

Meeting the contention advanced on behalf of the petitioner that the petitioner was not aware of the Speaker's orders, the Apex Court observed :

"It must, however, be realised that the order appearing in the bulletin Part II was in consequence of the order passed by the Speaker of the Legislative Assembly. In any case, by the date the writ petition was withdrawn, the petitioner was aware of the order impugned in this petition and therefore, this distinction which is sought to be drawn is meaningless because the petitioner knew that the order which he had challenged in the writ petition before the High Court was in consequence of the order passed by the Speaker which is the subject matter of challenge in the present proceedings under Article 136 of the Constitution. The proper course in that case was to amend the writ petition rather than to withdraw it. It was for the learned counsel appearing for the petitioner to decide whether he should withdraw the writ petition when the learned Single Judge was declined to reserve on to the petitioner the liberty to file a fresh writ petition, if so advised. Not only that, even thereafter, the petitioner has acquiesced that order and has not made it the subject matter of any further proceedings by way of review or an appeal under Article 136 of the Constitution of this Court. That is the reason why relying on the principle underlying Order XXIII Rule 1 of the Civil Procedure Code, this Court observed that it tantamounted to abandonment of proceedings. That being so, we do not entertain this petition. The Special Leave Petition is dismissed."

(3) A Writ Appeal 320 of 1996 was filed before the High Court, against the order dated 11.8.95 passed by the learned Single Judge in Misc Case No.911 of 1995 in CR No.490 of 1995. The Division Bench dismissed the same by order dated 23.7.96, Annexure 13 with the following observations :

"In our opinion, the Apex Court inter parties having recorded a finding in the judgment rendered in the SLP that the appellants had abandoned their rights of taking further action against the order of the learned Single Judge and have acquiesced in the order we are of the opinion that in view of the aforesaid findings the appellants cannot get these findings reversed by now filing the present appeal."

(4) Review petitions were preferred before the Supreme Court and were dismissed vide order dated 30.10.96 Annexure 14 as quoted below :

"Apart from the fact that the petitions are delayed by 269 days, even on merits we see no ground to entertain these petitions. Hence, the review petitions are dismissed."

(5) That the disqualified MLAs challenged the order dated 23.7.96, Annexure 13 in SLP No. 16719 of 1996 before the Supreme Court, and the same was dismissed upon hearing the parties vide order dated 4.11.1996 (Annexure 15).

53. It would be seen from the above, that the question of disqualification had attained finality by judgment and orders passed in various proceedings, not only before this Court but also the Supreme Court. The Supreme Court having categorically held in its order dated 1.11.95, Annexure 12 passed in SLP 19126/95, 19365/95, 19380/95 and 19383/95 that the disqualified MLAs had abandoned their remedies against disqualification, and acquiesced in the order dated 11.8.95, Annexure 11, not granting liberty to them to file fresh petition, the review petitions having been dismissed by the Supreme Court, it passes one's comprehension, how could there be any surviving cause of action in face of the above orders ?

54. A word about the host of authorities cited at the bar by the respondents learned counsel. A precedent emblems a principle, and the principle is simply that of constructive res judicata underlying the public policy. Order 23 Rule 1 CPC as enunciated and propounded by the Supreme Court in its interpanes judgment dated 1.11.95, Annexure 12. The above noted facts glaring as they are, really speaking cannot be altered or strengthened by precedents.

55. Before dealing with, the case law on the point one factual aspect needs to be cleared. Seeking shelter behind the case of Shri Hangkhanpao, who had been given a fresh hearing and whose disqualification order was recalled by the Speaker, it was contended by the respondents disqualified MLAs that they were also entitled to similar right of hearing. It was on this basis and it was one of their main contentions before the Supreme Court, in the review petition which the Supreme Court dismissed by its order dated 30.10.96 (Annexure 14)".

"Apart from the feet that the petitions are delayed by 269 days, even on merits we see no ground to entertain these petitions. Hence, the review petition are dismissed."

56. On facts, the case of Shri Hongkhanpao was that he had filed a review

petition before the Speaker explaining his absence on the date fixed for personal hearing i.e. on 27.7.1995 and seeking a rehearing in respect of the disqualification proceeding. The explanation advanced by Shri Hangkhanpao, respondent No. 13 herein was that he had been physically prevented and coerced into absenting himself from the said hearing. The respondent No. 1 however, rejected on 22.9.95, the prayer for review of the disqualification order dated 29.7.95 and thereafter challenging the rejection order Shri Hangkhanpao, respondent No. 13 herein filed a writ petition being Civil Rule No.4266 of 1995 before this Court. The learned Single Judge after issuing notice to the respondent No. 1 and after hearing the parties, by judgment and order dated 28.9.1995, directed the respondent No. 1 to give a fresh opportunity of hearing of Shri Hangkhanpao: was thereafter given a fresh hearing on 20.3.1996 and vide order dated 20.4.1996 his disqualification order was recalled by the respondent No. 1 as per Annexure 13/A.

57. Ignoring the above factual aspect, the respondents who had tried to make out a case for rehearing in the Review Petitions 1616 to 1619/96 before the Supreme Court and failed in their bid, the learned Single Judge erroneously carved out a room for furnishing cause of action to the respondents, in respect of the same subject matter namely the order of disqualification and what is surprising is that no reasons are assigned. The impugned judgment has already been discussed in detail in the foregoing paragraphs. And the learned Single Judge ignored the following two decisions as laid down by the Supreme Court and placed before him for consideration by the learned Advocate General, though quoted in the impugned judgment, but there is not a word as to why it does not apply to the case at hand.

"The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided." (See (1982) 2 SCC 587).

"It is the settled principle of law that any order or direction pronounced by this Apex Court in exercise of its jurisdiction in any matter pending before it, that order or direction is binding on all Courts within the territory of India and should be implemented and executed in all its rigour." (See 1990 (Supp) SCC 315).

58. Even the learned Single Judge from whose judgment dated 22.1.97, it is Annexure 16, is made the basis of and source for accrual of cause of action to the respondents disqualified MLAs, has had exercised a word of caution that while examining the respondents grievance, the Court will have to bear in mind the petitions, writ appeals, special leave petitions, review petitions filed by the respondents and their ultimate dismissals by the Court.

59. The Supreme Court in *Sarguja Transport Service vs. STAT, Gwalior*, AIR 1987 SC 88 has unequivocally held reproducing the orders passed by the High Court and dealing with the policy underlying Order 23 Rule 1 CPC, its applicability to

writ proceedings under Article 226 and 227, the Apex Court posed the question:

"The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the Code is adopted in respect of writ petitions filed under Article 226/227 of the Constitution also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in *Daryao vs. State of UP* (1962) SCR 574: (AIR 1961 SC 1457) in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in *Daryao's* case (*supra*) is to be found at page 593 and it is as follows :

57. Ignoring the above factual aspect, the respondents who had tried to make out a case for rehearing in the Review Petitions 1616 to 1619/96 before the Supreme Court and failed in their bid, the learned Single Judge erroneously carved out a room for furnishing cause of action to the respondents, in respect of the same subject matter namely the order of disqualification and what is surprising is that no reasons are assigned. The impugned judgment has already been discussed in detail in the foregoing paragraphs. And the learned Single Judge ignored the following two decisions as laid down by the Supreme Court and placed before him for consideration by the learned Advocate General, though quoted in the impugned judgment, but there is not a word as to why it does not apply to the case at hand.

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"If the petition is dismissed as withdrawn it cannot be a bar to a subsequent ! petition under Article 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other."

The only exception carved out to the above principle is a petition for a writ of habeas corpus. What is significant to be noted that following the above the Supreme Court dismissed the SLPs preferred by the respondents vide order dated 1.1.1995,

Annexure 12. Review petitions filed were also dismissed by order dated 30.10.96 vide Annexure 14. Subsequent Special Leave Petition 16719/96 against this Court's judgment dated 23.7.96 in Writ Appeal No.320 of 1996 was also dismissed after hearing the parties on 4.11.96, vide Annexure 15. All the above judgments and orders were inter parties. What remained thereafter for the learned Single Judge to still find a subsisting cause of action in favour of the disqualified MLAs ? Res judicata pro veritate accipitur A thing adjudicated is received as true and must therefore be accepted.

60. Learned counsel appearing for the respondents however in his bid to avoid

the applicability of the doctrine of res judicata has adopted a larger canvass urging that disqualification being depended on merger, and the key question of merger and its impact having not been decided in any of the proceedings prior to judgment dated 22.1.97, Annexure 16 by a learned Single Judge of this Court and the issue of merger was still open to the respondents. Tracing the legislative history of section 11 CPC he also cited some judgments distinguishing Sarguja Transport (supra) in order to avoid res judicata. Before taking the question of merger, I propose to deal with the cases cited by the learned counsel.

61. Referring to a judgment of the Supreme Court as reported in Krishan Lal vs. State of J&K, (1994).4 SCC 422, it was contended by the learned counsel that the principles of res judicata is inapplicable where there was no decision on merits in the earlier proceedings. It was also urged that despite amendment to the Code of Civil Procedure in 1976, Explanation 4 to section 11 CPC has remain unchanged and intact by the amending Act, 1976. Placing reliance on a judgment of the Supreme Court as reported in State of UP vs. Civil Judge, Nainital, AIR 1987 SC 16, it was contended that in absence of finding on merits, the principle of res judicata would not be attracted. Referring to Smti Gangabai vs. Vijay Kumar, AIR 1974 SC 1126, learned counsel submits that if the Court giving finding on unnecessary irrelevant issue, the same cannot operate as res judicata.

62. As has been pointed out by the Supreme Court in Sulochana Amma vs. Narayanan Nair, AIR 1994 SC 152, the object of section 11 CPC is to prevent multiplicity of the proceedings and accords finality to an issue, which directly and subsequently had arisen in the former suit between the same parties of their privies, been decided and became final, so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the Court is saved. It is based on public policy, as well as private justice. They would apply, therefore to all judicial proceedings whether civil or otherwise. It equally applies to quasi judicial proceedings of the Tribunals other than the civil Courts.

63. The jurisdictional facts in both the cases are materially different as can be seen from paragraph 2 of the judgment in State of UP vs. Civil Judge, Nainital, AIR 1987 SC 16 which runs as follows :

"At the outset it should be stated that the reason given by the High Court for holding that the contentions urged on behalf of the State Government were barred by the rule of res judicata is wholly untenable since the learned District Judge, who disposed of the appeal on 14.2.1977 had not recorded any finding on the merits of the contentions of the parties. He had set aside the order of the Prescribed Authority passed earlier only on the ground that a proceeding which had been commenced against a dead person was a nullity."

It was a case of nullity proceedings which had been initiated against a dead person and it was for this reason the Supreme Court held that the High Court was wrong in dismissing the petition on the ground. The other point dealt with by the Supreme , Court relates to provisions of UP Imposition of Ceiling on Land

Holdings Act with which we are not concerned. Similarly, in Krishnanlal (supra) the Court was dealing with a service matter. The appellant who was a clerk in the office of the Commandant, Home Guards at Poonch, the conduct came to be enquired by Anticorruption Commission under the J&K (Govt Servants) Prevention of Corruption Act, 1962. The Commission recommended dismissal of the appellant from the service. A show cause notice was thereupon issued to the appellant, who asked for supply of copy of the proceedings of the enquiry including the report of the Commission to enable him to submit the explanation. This not having been done, the appellant challenged the action by approaching the High Court. The High Court directed the authorities to supply the copy of the proceedings. But before the order had come to be passed, the appellant had been dismissed from service by an order dated January 31, 1978, which was challenged by a writ petition. That petition was dismissed. Thereafter a suit was filed by the appellant challenging the order of dismissal as void and illegal. The trial Court decreed the suit principally on the ground that the appellant had not been supplied with a copy of enquiry proceedings and the dismissal order was passed in violation of the mandatory provisions of section 17 (5) of the Act. The District Judge dismissed the State's appeal as being barred by limitation. The High Court dismissed the revision application, whereupon the Supreme Court was approached and it directed the District Judge to hear the appeal on merits by its order dated April 25, 1985. The District Judge thereafter, took the appeal on his file and upheld the decree of the trial Court on the ground that dismissal order having been passed in violation of section 17 (5) of the Act was null and void. The High Court allowed the second appeal on two grounds : (1) the civil Court had no jurisdiction to entertain the suit; and (2) the suit was barred by res judicata. A writ petition was also filed directly in the Supreme Court alleging illegal termination of service and seeking a declaration that the dismissal was void and non est.

64. It was contended on behalf of the appellant that as the order of dismissal had been passed in violation of a mandatory requirement, the view taken that the civil Court had no jurisdiction is untenable in law. As to res judicata it was urged that the stand taken by the High Court that this principle applied, because of earlier proceedings in the High Court was misconceived.

65. The Supreme Court referring to violation of section 17 (5) of the J&K Act and its judgment in Managing Director, ECIL, Hyderabad vs. B. Karunakar, (1993) 4 SCC 727 and in Ramzan Khan case (1991) 1 SCC 588 held that proper order to be passed in the case was that despite a mandatory provisions have been violated the employer was directed to furnish a copy of the proceeding and the High Court was called upon to decide thereafter as to whether nonfurnishing of the copy prejudices to the petitioner and the same made itself to the ultimate punishment given. If this question is answered affirmative, the High Court could have dismissed the consequential reliefs as deem fit and proper. Going by the principle laid down in Krishanlal's case (supra) in order of constitute a res judicata, the decision in earlier proceedings must be on merits.

66. Now let us have a look at the judgment dated 1.11.1995 (Annexure 12) passed by the Supreme Court in Special Leave Petition (C) No. 19126 of 1995 with SLPs Nos. 19365, 19380 and 19383 of 1995, can it be said by any stretch of imagination that this elaborate judgment running into 7 pages is not a judgment on merit, in fact it is this judgment which refers to and relies upon Sarguja Transport Service case (supra), the learned Single Judge who had dismissed the petition as withdrawn had not made any such reference in his order. As though it was not enough, review petitions filed before the Supreme Court were also met with dismissal and it cannot be overlooked that the above judgment of the Supreme Court, (Annexure 12) is between the same dispute dealing with the same questions of law on which the relief was sought and the same points are canvassed for the same reliefs in subsequent proceedings.

67. The order of disqualifications having thus attained finality under the law, it is not open for to the respondents to file fresh proceeding before any Court challenging the order of disqualifications.

68. Before concluding this point and taking up the next one, one more aspect, as supplemented by Mr. Singh in his arguments, picking up the thread where Mr. Bhattacharjee had left, raising questions relating to jurisprudence of precedents, such as, ratio decidendi and stare decisis and sub silentio judgment, with reference to certain authorities and contending that unless there be a judgment on merits of the case the question of attracting the principle of constructive res judicata would not arise. The above concepts are well known and well settled. What is sub silentio judgment has been amply explained by the Supreme Court in M/s Corporation Delhi Vs. Gurunam Kaur, AIR 1989 SC 38, also referred to in State of UP vs. Synthetics and Chemicals Ltd, (1991) 4 SCC 439. Learned counsel has also referred AIR 1986 SC 468, PA Shah vs. State of Gujrat. When we talk of ratio decidendi its legal connotation is well understood and commonly referred as the ratio of a judgment which may be running into several pages, it is the reason for deciding, which operates as a binding precedent hence the principle "stare rationibus decidendis" meaning let the decision stand.

69. Apply this very principle of Sarguja Transport Service (supra) as referred to by the Supreme Court in its judgment dated 1.11.96, Annexure 12, while dismissing the SLPs filed by the respondents. Why should it not be followed and applied to the case at hand ? Any more discussion, to my mind would be purely academic, more so in face of the latest pronouncement of the Apex Court as reported in (1997) 2 SCC 534, Avinash Nagra vs. Navoday Vidyalaya Smriti, reiterating the same principle as laid down in Sarguja Transport Service held :

"The High Court also was right in its conclusion that the second writ petition is not maintainable as the principle of constructive res judicata would apply. He filed the writ petition in first instance but withdrew the same without permission of the Court with liberty to file the second writ petition which was dismissed. Therefore, the second writ petition is not maintainable as held by the High Court in applying the correct principle of law, thus considered we find no merit in the

appeal for interference."

70. Coming now to the question of merger, a larger issue as sought to be raised by the respondents as according to them the order of disqualification as passed by the Speaker depends on proof of validity of merger. It was urged that the question of merger has not been adverted to in any proceedings prior to the judgment dated 22.1.97 delivered by the learned Single Judge of this Court in Civil Rule No.460 of 1995, Annexure 16 and therefore the writ petition, Civil Rule No. 168 of 1997 was maintainable on this cause of action as rightly held by the learned Single Judge by the impugned judgment dated 28.2.97, Annexure 19. Mr. Goswami, learned counsel appearing for the appellant, on the otherhand, submitted firstly on fact it is not correct to say that the issue of merger was not raised; secondly, the bulletin issued by the Manipur Legislative Assembly Secretariat on 1st July, 1995, Annexure 7 has not only been referred to in earlier proceedings but also upheld. Thirdly, the question of merger is not and cannot be an independent issue, it is relevant only in the context of disqualification proceedings under paragraph 2 of the Xth Schedule and can be raised as a defence to such proceedings as provided under paragraph 3 and 4 of the Xth Schedule.

71. It would be pertinent to note here that specific prayer made by the disqualified MLAs in Civil Rule No.460 of 1995 was to quash the bulletin dated 1.7.95, Annexure 7 as is evident from the opening paragraph of the judgment dated 22.1.97, Annexure 16 but the prayer has not been granted and the bulletin, Annexure 7, upheld.

72. It is equally important to note that the question of merger was in fact raised in Special Leave Petition No. 16719 of 1996 (filed as Annexure). Ground NoXXI at page 89 of the paper book filed as Annexure is pertinent to be noted.

73. The disqualified MLAs in SLP No. 16719 of 1996 had taken a specific ground (Ground II at page 70 of the Paper Book, filed as Annexure, claiming right of hearing as accorded to Shri Hangkhanpao and its not consideration by the Supreme Court in its earlier dated 1.11.95 (Annexure 12) in SLPs No. 19126 of 1995 with 19365,19380, 19383 of 1995, raised as Ground Nb.III at page 72 of the Paper Book, this Special Leave Petition 16719 of 1996 was dismissed upon hearing counsel for both the parties vide order dated 4.11.96 Annexure XV. Apart from the underlying principle of Order 2 Rule 2 CPC, which does not permit a plaintiff entitle to severalreliefs to split up the claim so as to omit one part of the claim and sue for the others, the cause of action which is the same he has to place all his claims together. The rule is based on a cardinal principle that the defendant should not be vexed twice for the same cause of action. In the instant case, apart from the underlying principle of Order 2 Rule 2 CPC, the relief was in fact sought before the Supreme Court but the same was dismissed. Viewed in the totality of the facts and circumstances of the case, with the numerous judgment and orders preceding of this Court as well as the Apex Court, the order of dismissal dated 4.11.96, Annexure XV clearly operates as constructive res

judicata in face of the specific grounds taken by the respondents they cannot be allowed to be reargued the same after the above dismissal. (See RK Vijayan vs. Kamalakshmi Amma, (1994) 4 SCC 53 and Deva Ram vs. Ishwar Chand, (1995) 6 SCC 733, on Order 2 Rule 2 CPC).

74. The Supreme Court in the same vein in Commissioner of Income Tax, Bombay vs. TP Kumaran, (1996) 10 SCC 561, on appeal invoking the doctrine of constructive res judicata quashed an order passed by the Central Administrative Tribunal directing payment of interest holding that

"The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive res judicata under section 11, Explanation IV CPC which envisages that any matter which might and ought to have been made ground of defence or attack in former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on an earlier occasion, he should have or might have sought and secured decree for interest. He did not seek so and, therefore, it operates as res judicata. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2 Rule 2 CPC prohibits the petitioner to seek the remedy separately. In either event, the OA is not sustainable."

75. The Supreme Court in Forward Construction Co vs. Prabhat Mandal, Andheri, reported in AIR 1986 SC 391, has not only held that in view of Explanation IV to section 11 CPC it could not be said that the earlier judgment would not operate as res judicata as one of the grounds taken in the subsequent petition was conspicuous by its absence in the earlier petition. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. But the Supreme Court has gone a step further that in view of Explanation IV to section 11, the doctrine of constructive res judicata would apply even to a public interest litigation provided of course it is bonafide.

76. Learned counsel appearing for the respondent, however, placing reliance on a judgment of the Supreme Court as reported in AIR 1996 SC 2124 in State of Manipur vs. Thingujam Brojen Meetei, and Union of India vs. Sher Singh & others, (1997) 3 SCC 555 submitted that the dismissal of a Special Leave Petition cannot be so construed as to operate as a bar to the present petition. It was urged that the question of merger as now being raised, was not at all raised in the earlier proceedings. This judgment does not help the respondents, inasmuch as, the order dated 1.11.95 Annexure 15 is an elaborate reasoned order and going through the same it cannot be said that the question of merger was not there as can be seen from the following passage extracted from the said order :

"However, counsel for the petitioner submitted that while in the earlier petition

filed in the Gauhati High Court, the challenge was restricted to the order appearing in bulletin Part II of the Manipur Legislative Assembly Secretariat, the challenge in the present petition is to the Speaker's order, of course, of even date. It must, however, be realised that the order appearing in the bulletin Part II was in consequence of the order passed by the Speaker of the Legislative Assembly. In any case, by the date the writ petition was withdrawn, the petitioner was aware of the order impugned in this petition and therefore, this distinction which is sought to be drawn is meaningless because the petitioner knew that the order which he had challenged in the writ petition before the High Court was in consequence of the order passed by the Speaker which is the subject matter of challenge in the present proceedings under Article 136 of the Constitution."

77. It would thus be clear that even on facts the submission made by the learned counsel for the respondent cannot be accepted as correct.

78. What is now being sought to be pressed and projected by the writ petitioner respondents, the disqualified MLAs, is the want of specific order by accepting merger of the Progressive Janata Dal in Congress (I) an omission on the part of the Speaker, so as to enable them to claim and carve out a new cause of action, avoiding the applicability of constructive res judicata which both in fact and law stands on quick sand. In this connection it would be pertinent to note that apart from Rules of Procedure and Conduct of Business in the Manipur Legislative Assembly, a separate set of rules namely Members of the Manipur Assembly (Disqualification on Grounds of Defection) Rules, 1986, for short Defection Rules, have been framed by the Speaker under paragraph 8 (1) of the Xth Schedule to the Constitution for giving effect to its provisions.

79. A vital fact which needs to be noted and borne in mind is that the impugned bulletin dated 1.7.95 Annexure 7 was issued prior to the initiation of disqualification proceedings, against the writ petitioner respondents as has also been held by the learned Single Judge in his judgment dated 22.1.97 (Annexure 16) in Civil Rule No.460 of 1995. What is the precise nature of challenge? Merger can only be pleaded as defence in disqualification proceeding under Xth Schedule and it cannot be independently decided. It is only in context of disqualification proceedings initiated against a member of the house under para 2 of the Xth Schedule that he had voluntarily given up his membership of the political party or had voted or remained absent from voting in the house contrary to the directions issued by the political party to which he belongs. The member can take defence of merger as contemplated by paragraph 4 of the Xth Schedule and in that event the Speaker or Chairman of the House will have to consider such defence relating to merger and decide the same on the basis of materials that may be placed before him. It was open to the writ petitioner respondents to take this defence, as rightly urged by the learned counsel appearing for the appellant. The question of merger has relevance only in the context of disqualification.

80. There is no provision in the Defection Rules providing for a separate

independent order as regards merger to be passed by the Speaker. Nor any such provision has been brought to our notice.

81. Assuming for the sake of argument that the impugned bulletin, Annexure 7 dated 1.7.1995 has not been issued under the Defection Rules, but under the Rules of Procedure and Conduct of Business in the Manipur Legislative Assembly, the question is how does, it effect the validity of this bulletin while no one claims immunity from judicial review of such bulletin or notifications, nor can it be claimed in face of law laid down by the Apex Court in the reference case under Article 143 of the Constitution as reported in AIR 1965 SC 745, a principle again reiterated in *Kihota Holohon vs. Zachilhu*, AIR 1993 SC 412. Irregularity of the procedure adopted by the Speaker of the House is beyond the scope of judicial review as has also been held in *Ravi S. Nayak vs. Union of India*, AIR 1994 SC 1555, that any violation of the Disqualification Rules framed by the Speaker under paragraph 8 (1) of the Xth Schedule cannot be treated as violation of constitutional mandate and at best would only amount to an irregularity in procedure in respect of which power of judicial review cannot be exercised by the Court as has also been held by the learned Single Judge by his judgment dated 22.1.1997 (Annexure 16) in Civil Rule No.460 of 1995, before whom the impugned bulletin Annexure 7 was challenged. It is significant to note that even the learned Single Judge has not quashed the bulletin, Annexure 7.

82. As has already been noted in the beginning, the present petition is preceded by long drawn history of litigations and the plea which has now been sought to be raised was very much available to the disqualified MLAs. Merger of the political party being a defence available in disqualification proceeding, in any case and at any rate, it ought to have been raised. The learned Single Judge was palpably wrong in holding that there was a cause of action for filing the present petition in face of the numerous judgments and orders inter parties of this Court as well as that of the Supreme Court.

83. For the foregoing reasons, these appeals deserve to be allowed, they are accordingly allowed. The impugned judgment and order dated 28.2.1997 as passed by the learned Single Judge in Civil Rule No. 168 of 1997 is liable to be quashed and accordingly quashed. The Civil Rule No. 168 of 1997 and Civil Rule No.245 of 1997 are dismissed. Needless to say that the interim orders dated 6.3.97 automatically stand set aside. There shall be no order as to costs.