

(2010) 10 KAR CK 0085

In the Karnataka High Court

Case No : Writ Petition No's. 32660-32670 of 2010

Sri. Gopala Krishna Belur and Others

APPELLANT

Vs

Sri. B.S. Yeddiyurappa and Another.

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection)
Rules, 1986 — Rule 6, 6 (5), 6 (5) (b), 6 (6)

Citation : (2010) ILR (Kar) 4767

Hon'ble Judges : J.S. khehar, C.J;N. kumar, J

Bench : Division Bench

Advocate : P.P. Rao, K.G Raghavan, A.S. Ponnannaand and Shivakumar N, for the Appellant; K. Soli J. Sorabji, Sr. Counsels, Satyapal Jain and K.N. Bhat, Sr. Counsels, Sriyuths M.B. Naragund, Vivek S. Reddy, Bhupender Yadav, Vikram Phadke, Vinod Kumar, Prasanna Kumar B.T., Muralidhara M. and L.N. Hegde, for the Respondent

Judgement

J.S. Khehar, C.J.—Through the instant writ petitions, the Petitioners have assailed an order dated 10.10.2010, passed by the Speaker of the Karnataka Legislative Assembly, whereby the Petitioners have been disqualified from their membership to the Karnataka Legislative Assembly, on account of having arrived at the conclusion that the Petitioners had defected from the Bharatiya Janata Party, on whose ticket they were elected to the Karnataka Legislative Assembly, in 2008.

2. Before dealing with the issues canvassed at the hands of the Learned Counsel for the rival parties (on the basis whereof they either assailed or supported the order dated 10.10.2010, passed by the Speaker of the Karnataka Legislative Assembly), it is essential to delineate material facts leading to the passing of the impugned order. The relevant factual position is therefore being narrated hereinafter.

3. Interestingly, the process leading to the passing of the impugned order came to be initiated at the hands of the Petitioners themselves. The Petitioners

addressed letters to the Governor of the State of Karnataka on 06.10.2010. The text of one of the communications addressed to the Governor is reproduced hereunder:

Date 06.10.2010

His Excellency

I was elected as an MLA on BJP ticket. I being an MLA of the BJP got disillusioned with the functioning of the Government headed by Shri. B.S. Yeddiyurappa. There have been widespread corruption, nepotism, favouritism abuse of power, misusing of government machinery in the functioning of the Government headed by Chief Minister Shri. B.S. Yeddiyurappa and a situation has arisen that the governance of the State cannot be carried on in accordance with the provisions of the constitution and Shri. Yeddiyurappa as Chief Minister has forfeited the confidence of the people. In the interest of the State and the people of Karnataka I hereby express my lack of confidence in the Government headed by Shri. B.S. Yeddiyurappa and as such I hereby withdraw my support to the Government headed by Shri B.S. Yeddiyurappa, Chief Minister, I request you to intervene and institute the constitutional process as constitutional head of the State .

(emphasis is mine)

It would be relevant to mention, that all the Petitioners addressed separate individual communications dated 06.10.2010, wherein the text of each of the aforesaid communications was identical. A perusal of the letters addressed by the Petitioners to the Governor of the State of Karnataka on 06.10.2010 reveal, that the Petitioners acknowledged therein, that they had been elected to the Karnataka Legislative Assembly on Bharatiya Janata Party tickets. According to the letter, they were disillusioned with the functioning of the Government under the leadership of Chief Minister Mr. B.S. Yeddiyurappa. It was alleged, that the Government under the leadership of the Chief Minister was responsible for widespread corruption, nepotism, favoritism, abuse of power and misuse of Government machinery. It was, accordingly, asserted, that it was in the interest of the people of the State of Karnataka, for the Petitioners to express their lack of confidence in the Government headed by Chief Minister Mr. B.S. Yeddiyurappa. It is, therefore, that the Petitioners, through the communications addressed to the Governor of the State of Karnataka, asserted, that they had withdrawn their support to the Government headed by Chief Minister Mr. B.S. Yeddiyurappa. Having withdrawn support, the Petitioners through the aforesaid communications also requested the Governor to intervene and institute a constitutional process, in his capacity as the constitutional head of the State of Karnataka.

4. Based on the 19 letters (including 11 letters received from the Petitioners on 06.10.2010) the Governor of the State of Karnataka, addressed a letter on the same day, i.e., on 06.10.2010 itself, to Chief Minister Mr. B.S. Yeddiyurappa. The aforesaid letter is being extracted hereunder :

RAJBHAVAN

BANGALORE

No. GS 102 GSE 2010

6th Oct. 2010

Dear Chief Minister,

Letters from 14 BJPML As and 5 independent ML As have been submitted to me today, withdrawing their support to the Government. List of ML As whose letters were submitted is enclosed. This includes 7 Ministers in the Government at the time of submitting the letter. Considering the relative strengths of different groups in Karnataka Legislative Assembly with the withdrawal of support of 19 members, a reasonable doubt has arisen about the support your Government enjoys in the Legislative Assembly.

In view of this, I request you to prove that you still continue to command the support of the majority of the Members of the Legislative Assembly by introducing and getting passed a suitable motion expressing confidence in your Government, in the Legislative Assembly on or before 12.10.2010 by 5.00 P.M. I have also requested the Hon"ble Speaker accordingly.

With warm regards,

Yours sincerely,

Sd/-

(H.R. BHARDWAJ)

Governor of Karnataka.

A perusal of the letter of the Governor of Karnataka reveals, that the 11 Petitioners herein belonging to the Bharatiya Janata Party, besides some other legislations belong to the Bharatiya Janata Party, and 5 independent members of the Karnataka Legislative Assembly, had withdrawn support to the Government. Out of the members of the Legislative Assembly, who had withdrawn support to the Government, there were seven Ministers in the Cabinet of Chief Minister Mr. B.S. Yeddiyurappa. Along with the letter of the Governor of Karnataka, a list of all the 19 members who had submitted letters withdrawing support, had also been appended. The list depicts, which amongst them were Ministers. The names of seven Ministers, mentioned in the list are being reproduced hereunder:

1. Mr. Renukacharya
2. Mr. Anand Asnotikar
3. Mr. Balachandra Jarkiholi
4. Mr. Shivaraj S. Tangadagi

5. Mr. D. Sudhakar

6. Mr. P.M. Narendra Swamy

7. Mr. Venktaramanappa

The first three of the aforesaid Ministers, admittedly, belong to the Bharatiya Janata Party, whereas, the remaining 4 Ministers were elected to the Karnataka Legislative Assembly as independent candidates. Having noticed the relative strength of different groups in the Karnataka Legislative Assembly, and having, taken into consideration the withdrawal of support to the Government, by 19 members of the Karnataka Legislative Assembly, the Governor came to entertain a doubt, whether Chief Minister Mr. B.S. Yeddiyurappa still continued to command support, of the majority of the members of the Karnataka Legislative Assembly. He, accordingly, requested the Chief Minister to introduce, and get passed, a suitable motion expressing confidence in his Government, on or before 12.10.2010.

5. Based on the communications dated 06.10.2010, addressed by the Petitioners as well as other members of the Karnataka Legislative Assembly to the Governor of the State of Karnataka, as also, the consequential communication addressed by the Governor of Karnataka to the Chief Minister, he (Chief Minister Mr. B.S. Yeddivurappa) filed a petition on 06.10.2010 under Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 (hereinafter referred to as the "Defection Rules"), with a prayer, that 13 members of the Karnataka Legislative Assembly, including the 11 Petitioners, who were elected to the Karnataka Legislative Assembly, on Bharatiya Janata Party tickets, should be disqualified from the membership to the Karnataka Legislative Assembly. A copy of the aforesaid petition was handed over to us in Court. The same has been taken on record and marked as Annexure-I. Since reference to the petition filed by Chief Minister Mr. B.S. Yeddiyurappa has been made repeatedly by the Learned Counsel for the rival parties, relevant text thereof, is also being extracted hereunder:

Subject: Disqualification of Membership of the conduct of the following Members of the Legislative Assembly.

1. The following members have contested the 2008 election as BJP candidates and have been elected as Member of B J P Party.

2. The BJP Legislature Party has unanimously elected me as the Leaders of Legislature Party & on the strength of that position I have formed the Government & carrying out administration as Chief Minister of the State.

3. The following Members of the BJP Legislature Party on 6/10/2010 have submitted letter to the Hon"ble Governor stating that they have withdrawn support to the Government headed by me. This matter has been communicated to me by the governor vide his letter dated 6.10.2010 enclosed under annexure 1 & further by intimating the Hon"ble Governor that support has been withdrawn

to the Government in the absence of any resolutions of the legislature party & any decision of the party they have clearly violated Schedule 10 of Constitution of India & because of this they are eligible for disqualification of the membership hence hereby humbly pray to disqualify with immediate effect their membership & issue suitable orders.

4. I would like to bring to your notice examples under similar circumstances action taken in the Cases of Shri. Avatar Singh Bhadana v. Khuldep Singh & Shri Rajesh Verma v. Shri. Mohammed Shahid Akhalak, BSP where in actions have been taken merely on press reports.

5. Due to the Statements made by Respondents before press & electronic media & as per the gist of the letter sent by Hon"ble Governor it proves the violation of Schedule 10 of the Constitution.

6. In view of that:

1. Shri. M.P. Renukacharya, MLA, Honnali Constituency
2. Shri. Gopalakrishna Belur, MLA Sagar Constituency
3. Shri. Anand Asnotiker, MLA Karwar Constituency
4. Shri. Balachandra Jarakiholi, MLA Arabhavi Constituency
5. Dr. Bagali Sarvabowma N. MLA Indi Constituency
6. Shri. Bharamagowda H. Kage, MLA Kagawada Constituency
7. Shri. Y. Sampangi MLA, KGF Constituency
- 8 G.N. Nanjunda Swamy, MLA Kollegala Constituency
9. Sri. M.V. Nagaraj, MLA, Nelamangala Constituency
10. Belubbi Sangappa Kallappa, MLA, Basavana Bagevadi Constituency
11. Shivana Gowda Nayak, MLA Devadurga Constituency
12. Narasimha Nayak (Raju Gowda), MLA Surapura Constituency
13. H.S. Shankaralingegowda, MLA. Chamaraj Constitutency

7. The above members have become ineligible to continue as legislations as per Schedule 10 of the Constitution of India

8. Hence I humbly pray to disqualify from membership with immediate effect the above Members & Issue Suitable Orders."

A perusal of the petition filed by the Chief Minister reveals, that all the 13 Respondents impleaded in the disqualification petition (including the 11 Petitioners herein), were liable to be disqualified on the basis of the letters dated 06.10.2010 addressed by them to the Governor of the State of Karnataka, as also, on account of the consequential letter dated 06.10.2010 written by the

Governor of the State of Karnataka to him (the Chief Minister). In the disqualification petition reference was also made to reports in the press and electronic media, to show, that the Petitioners had violated the provisions contained in the Tenth Schedule of the Constitution of India.

6. On receipt of the disqualification petition, filed under Rule 6 of the Defection Rules, the Speaker of the Karnataka Legislative Assembly addressed show cause notices to the Petitioners on 07.10.2010, calling upon them to respond to the allegations levelled against them, by the Chief Minister of Karnataka. The contents of the aforesaid show cause notice dated 07.10.2010 have been extracted in paragraph 2 of the writ petition. Accordingly, the contents of the show cause notice (as have been extracted in the writ petition) are being reproduced hereunder:

Shri. B.S. Yeddiyurapa, the Leader of the Legislative Party of Bhartiya Janata Party and also Chief Minister has submitted a letter on 6.10.2010 under Rule-6 of Karnataka Legislative Party Disqualification Rules 1986 and has stated in his petition that you being a Member of Legislative Assembly elected on Bharatiya Janata Party without any resolution or order from the party have submitted a letter to His Excellency Governor on 5.10.2010 withdrawing support to the Government headed by him. This is in violation of para 2(1) (a) of the 10th Schedule of the Constitution of India. Hence, he has submitted a petition to disqualify you from the Membership of the Legislature.

Therefore, you have been given time till 5.00 P.M. of 10th Oct. 2010 to reply if you have anything to say on the petition. In this regard, you are hereby informed to appear in person and make your statement either orally or in writing before the Speaker. In case, if you fail, it will be construed that you have nothing to say and future legal steps will be taken ex parte.

A perusal of the aforesaid show cause notice reveals, that the Petitioners were called upon to file their reply by 5.00 P.M on 10.10.2010. All the Petitioners were also invited to appear in person before the Speaker, so as to make their statement(s) either orally or in writing. All the Petitioners were further informed, that if they Med to respond to the show cause notice, it would be presumed that they had nothing to say, whereupon, further steps would be taken ex parte. It is the common case of the rival parties, that although the Speaker of the Karnataka Legislative Assembly had invited the Petitioners for an oral hearing at 5.00 P.M. on 10.10.2010, yet the aforesaid hearing was subsequently preponed to 3.00 P.M. on the same day.

7. All the Petitioners filed separate replies to the show cause notices issued to them. The contents of the reply of each of the Petitioners was identical. Since a detailed reply was filed by the Petitioners, it is not expedient to extract the same herein for reasons of brevity. The relevant assertions made in the replies filed by the Petitioners would however emerge by themselves, when different issues raised on behalf of the Petitioners, are taken up for consideration for the disposal

of the instant petitions.

8. Having issued a show cause notice to the Petitioners on 07.10.2010, and having received a written response thereof dated 09.10.2010, and having also afforded an opportunity of hearing to the Petitioners at 3.00 P.M. on 10.10.2010, the Speaker of the Karnataka Legislative Assembly, passed the impugned order on 10.10.2010 itself. A copy of the impugned order has been appended to the writ petition as Annexure-H, its English translation was handed over to us during the course of hearing, the same is taken on record and marked as Annexure H/T. By the impugned order dated 10.10.2010, the disqualification petition filed by the Chief Minister Mr. B.S. Yeddiyurappa against 13 members of the Karnataka Legislative Assembly was accepted qua all the 11 Petitioners, the same was however not accepted in respect of 2 legislators against Respondent Nos. 1 and 12, impleaded in the disqualification petition, i.e., Mr. M.P. Renukacharya and Mr. Narasimha Nayak. Dissatisfied with the aforesaid order dated 10.10.2010 passed by the Speaker of the Karnataka Legislative Assembly, all the 11 Petitioners who were disqualified from the Membership to the Karnataka Legislative Assembly, have approached this Court, by filing the present writ petitions.

9. Having dealt with the factual background leading up to the passing of the impugned order dated 10.10.2010, I shall now venture to deal with the submissions advanced by the Learned Counsel for the Petitioners, to assail the same.

10. The first contention advanced on behalf of the Petitioners was based on Rules 6 and 7 of the Defection Rules. Rules 6 and 7 aforementioned are being extracted hereunder:

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

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

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

(3) The secretary shall:

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

(b) as soon as may be after the House has elected a member in pursuance of the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule place the petition before such member.

(4) Before making any petition in relation to any member, the Petitioner shall satisfy himself that there are reasonable grounds for believing that a question

has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.

(5) Every petition, -

(a) shall contain a concise statement of the material facts on which the Petitioner relies; and

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

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

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

7. Procedure: (1) On receipt of a petition under Rule 6, the Speaker shall consider whether the petition complies with the requirements of that rule.

(2) If the petition does not comply with the requirements of Rule 6, the Speaker shall dismiss the petition and intimate the Petitioner accordingly.

(3) If the petition complies with the requirements of Rule 6, the Speaker shall cause copies of the petition and of the annexure thereto be forwarded:

(a) to the member in relation to whom the petition has been made; and

(b) where such member belongs to any legislature party and such petition has not been made by the leader thereof, also to such leader, and as such member or leader shall, within seven days of the receipt of such copies, or within such further period as the Speaker may for sufficient cause allow, forward his comments in writing thereon to the Speaker.

(4) After considering the comments, if any, in relation to the petition, received under Sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him.

(5) The Speaker shall, as soon as may be after referring a petition to the Committee under Sub-rule (4), intimate the Petitioner accordingly and make an announcement with respect to such reference in the House of, if the House is not then in Session, cause the information as to the reference to be published in the Bulletin.

(6) Where the Speaker makes a reference under Sub-rule (4) to the Committee,

he shall proceed to determine the question as soon as may be after receipt of the report from the Committee.

(7) The procedure which shall be followed by the Speaker for determining any question and the procedure which shall be followed by the Committee for the purpose of making a preliminary inquiry under Sub-rule (4) shall be, so far as may be, the same as the procedure for inquiry and determination by the Committee of any question as to breach of privilege of the House by a member, and neither the Speaker nor the Committee shall come to any finding that a member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

11. First of all, reference is being made, to the submissions addressed by the Learned Counsel for the Petitioners, on the strength of Rule 6 of the Defection Rules.

(i) Based on Sub-rule (4) of Rule 6, it is the contention of the Learned Counsel for the Petitioners, that it is imperative for a Petitioner(s) seeking disqualification of a member of the State Legislative Assembly, to satisfy himself themselves that there are reasonable grounds to believe that a member of the State Legislative Assembly, had rendered himself eligible for disqualification under the Tenth Schedule of the Constitution of India. It is asserted, that in the absence of the aforesaid condition a disqualification petition cannot be entertained. It is asserted that the narration of facts, in the disqualification petition filed by the Chief Minister Mr. B.S. Yeddiyurappa, having not disclosed any reasonable ground for disqualification, the same was liable to be rejected at the outset.

(ii) Based on Sub-rule (5) of Rule 6 of the Defection Rules, it is the submission of the Learned Counsel for the Petitioners, that every disqualification petition should not only contain a concise statement of material facts, but is also required to be supported by documentary evidence. It is submitted, that since the factual position depicted in the disqualification petition did not contain a concise statement of material facts, substantiating any ground of disqualification (contained in the Tenth Schedule of the Constitution of India), and additionally, because no documentary evidence supplementing the material facts, was furnished by Chief Minister Mr. B.S. Yeddiyurappa, there was no basis whatsoever for passing the impugned order dated 10.10.2010.

(iii) Based on Sub-rule (6) of Rule 6 of the Defection Rules, it is the contention of the Learned Counsel for the Petitioners, that the disqualification petition filed by Chief Minister Mr. B.S. Yeddiyurappa, was liable to be verified in the manner laid down by the Code of Civil Procedure, 1908, and since, it had not been so verified, the disqualification petition was liable to be rejected.

Based on the aforesaid procedural discrepancies emerging out of Rule 6 of the Defection Rules, it is the contention of the learned Counsel for the Petitioners, that the impugned order dated 10.10.2010 passed by the Speaker of the

Karnataka Legislative Assembly, should be set aside.

12. Secondly, reference is being made to the submissions addressed by the learned Counsel for the Petitioners, on the strength of Rule 7 of the Defection Rules.

(i) Based on Sub-rule (3) of Rule 7, it was contended, firstly, that if the requirements of Rule-6 of the Defection Rules have been complied with, copies of a disqualification petition (along with Annexures appended therewith) can be furnished to the member(s) concerning whom the said disqualification petition has been filed. Since in the present case even the ingredients of Rule 6 had not been complied with, (for details please refer to the foregoing paragraph), it was not proper for the Speaker of the Karnataka Legislative Assembly, to furnish copies of the disqualification petition to the Petitioners and to seek the Petitioners response.

(ii) Based on Sub-rule (3) of Rule 7 of the Defection Rules, it was contended, secondly, that a minimum of 7 days should have been granted to the Petitioners to file their response to the show cause notice issued by the Speaker of the Karnataka Legislative Assembly, whereas, in the instant case only 3 days time was afforded to the Petitioners so as to enable them to respond to the show cause notices. This action of the Speaker of the Karnataka Legislative Assembly, according to the Learned Counsel for the Petitioners clearly violates a mandatory condition contained in the Defection Rules. This violation, according to the Learned Counsel for the Petitioners, has deprived the Petitioners of an effective opportunity to defend themselves.

(iv) Based on a collective reading of sub-rules (4) and (7) of Rule 7 of the Defection Rules, it is the contention of the Learned Counsel for the Petitioners, that the procedure laid down for determining an issue of breach of privilege of the House, by a member had to be followed, and since the said procedure had not been followed, the entire action stood vitiated.

Based on the aforesaid procedural discrepancies, emerging out of Rule 7 of the Defection Rules, it is the contention of the Learned Counsel for the Petitioners, that the impugned order dated 10.10.2010 passed by the Speaker of the Karnataka Legislative Assembly, should be set aside.

13. So as to substantiate the submissions noticed in the foregoing two paragraphs, based on the provisions of the Defection Rules, Learned Counsel for the Petitioners placed emphatic reliance on the judgments rendered in *Shri. Filipe Nery Rodrigues v. Shri. Sadanand mhalu shet and Anr.* (2006) 108 Bom 227, by a Division Bench of the Bombay High Court (Goa Bench), and in *Sri. Paul Lyngdoh v. State of Meghalaya* (W.P (C) No. 60 (SH) 2009, decided on 18.3.2009) by a Single Judge of the Gauhati High Court (Shillong Bench).

14. Ordinarily, it would have been imperative for us to deal with all the submissions advanced on behalf of the Learned Counsel for the Petitioners

alleging violations of the provisions of the Detection Rules. I, however, find no necessity for doing so, after having heard the Learned Counsel for the Respondents, who invited our attention to the declared position of law (on the subject under reference) at the hands of the Apex Court. I am of the view that it would be an exercise in futility to deal with the submissions advanced by the Learned Counsel for the Petitioners on the basis of the Defection Rules.

15. Reliance at the hands of the Learned Counsel for the Respondents, to repudiate the submissions advanced on behalf of the Petitioners (on the strength of the Defection Rules), was firstly placed on the judgment rendered in Dr. Mahachandra Prasad Singh Vs. Hon. Chairman, Bihar Legislative Council and Others, wherein it was held as under:

16. Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said rule and Sub-rule (6) of the same rule provides that every petition shall be signed by the Petitioner and verified in the manner laid down in the CPC for the verification of pleadings. The heading of Rule 7 is "Procedure". Sub-rule (1) of this rule says that on receipt of petition under Rule 6. the Chairman shall consider whether the petition complies with the requirement of the said rule and Sub-rule (2) says that if the petition complies with the requirement of Rule 6. the Chairman shall dismiss the petition. These Rules have been framed by the Chairman in exercise of power conferred by Paragraph 8 of the Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by Paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provisions in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in Code of CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the

petition it will make no difference as a duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the Petitioner and verified in the manner laid down in CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which the Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under Paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under Sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires.

17. The petition filed by Shri. Salman Rageev was signed and verified in the following manner:

All the facts stated in this petition are true and correct to my knowledge and belief and no part of it is false.

(Salman Rageev)

MIX

10.6.2004

18. There cannot be any dispute that sub-rules (1), (2) and (3) of Order 6 Rule 15 CPC were complied with. Learned Counsel for the Petitioner has, however, laid great emphasis on the fact Shri. Salman Rageev had not filed any affidavit in support of his petition and consequently the provisions of Sub-rule (4) of Order 6 Rule 15 Code of CPC which provides that the person verifying the pleadings shall also furnish an affidavit in support of his pleadings were not complied with. For the reasons stated earlier, we are of the opinion that the provisions of Rules 6 and 7 are directory in nature and on account of non-filing of an affidavit is required by Sub-rule (4) of Order 6 Rule 15 Code of Civil Procedure, the petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis be adversely affected or rendered bad in any manner.

(emphasis is mine)

Secondly, reliance was placed on the decision rendered in Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, , wherein, in so far as the Defection Rules are concerned, the Court had held as under:

18. The submission of Shri. Sen is that the petitions that were filed by Khalap before the Speaker did not fulfil the requirements of Clause (a) of Sub-rule (5) of Rule 6 inasmuch as the said petition did not contain a concise statement of the material facts on which the Petitioner (Khalap) was relying and further that the

provisions of Clause (b) of Sub-rule (5) of Rule 6 were also not complied with inasmuch as the petitions were not accompanied by copies of the documentary evidence on which the Petitioner was relying and the names and addresses of the persons and the list of such information as furnished by each such person. It was also submitted that the petitions were also not verified in the manner laid down in the CPC for the verification of pleadings and thus there was non-compliance of Sub-rule (6) of Rule 6 also and that in view of the said infirmities the petitions were liable to be dismissed in view of Sub-rule (2) of Rule 7. We are unable to accept the said contention of Shri. Sen. The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule of the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in *Kihoto Hollohan's* case (1992 AIR SCW 3497) (supra). Moreover, the filed of judicial review in respect of orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as constructed by this Court in *Kihoto Hollahan's* case (supra) is confined to breaches of the constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity. We are unable to uphold the contention of Shri. Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the Rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in *Kihoto Hollohan* case AIR (1992 SCW 3497) (supra).

26. It is no doubt true that under Rule 7(3)(b) of the Disqualification Rules, it has been provided that the member concerned can forward his comments in writing on the petitions within seven days of the receipt of the copies of the petition and the annexures thereto and in the instant case the Appellants were given only two days time for submitting their replies. The Appellants, however, did submit their replies to the petitions within the said period and the said replies were quite detailed-Having regard to the fact that there was no denial by the Appellants of the allegation in paragraph 11 of the petitions about their having met the Governor on December 10, 1990 in the company of Dr. , Barbosa and Dr. Wilfred D'Souza and other Congress (I) ML As and the only dispute was whether from the said conduct of the Appellants an inference could be drawn that the Appellants had voluntarily given up their leadership of the MGR it cannot be said that the insufficient time given for submitting the reply has resulted in denial of

adequate opportunity to the Appellants to controvert the allegations contained in the petitions seeking disqualification of the Appellants.

(emphasis is mine)

Since Rules 6 and 7 of the Defection Rules have been held by the Apex Court in the aforesaid two judgments to be directory in nature, it would not be possible for me, merely on account of the violation of the procedure envisaged under the aforesaid Rules, to set aside the impugned order, unless the violation of the aforesaid procedure is shown to have resulted in prejudice to the Petitioners. The following inferences/conclusions clearly emerge from the pleadings in this case:

(i) Firstly, the factual position depicted in the disqualification petition filed on 06.10.2010 was not disputed by the Petitioners in their replies dated 09.10.2010 to the show cause notice issued to them, by the Speaker of the Karnataka Legislative Assembly.

(ii) Secondly, although 3 days time was afforded to the Petitioners, to respond to the show cause notice dated 07.10.2010, the Petitioners filed detailed and exhaustive replies dealing not only with the factual aspect of the matter, but also of the nuances of the law involved in the controversy.

(iii) Thirdly, it is not the case of the Petitioners in the pleadings of the writ petitions, that they have been deprived of an opportunity to substantiate any of their pleas (which they could have raised before the Speaker of the Karnataka Legislative Assembly) on account of paucity of time furnished to them. Or that, they would have been able to controvert a factual aspect of the matter relied upon by the Speaker, had further time been afforded to them.

(iv) Fourthly, the factual position depicted in the impugned order dated 10.10.2010, has not been disputed by the Petitioners in the pleadings of the instant writ petition as well, even though the impugned order dated 10.10.2010 is the precise order which has been assailed by the Petitioners though the instant writ petitions.

Thus, viewed, we are of the view that no prejudice whatsoever was caused to the Petitioners on account of any of the aspects of the matter dealt with by the Learned Counsel for the Petitioners, while relying upon the provisions of the Defection Rules. Based on the two judgments rendered by the Supreme Court, (i.e., in Dr. Mahachandra Prasad Singh's case (supra) and also in Ravi S. Naik's case (supra) and the declared legal position expressed therein (which has been duly highlighted) it is not possible to accept the contentions advanced on behalf of the Learned Counsel for the Petitioners, on the strength of the Defection Rules. I, therefore, find no merit in the first contention advanced by the learned Counsel for the Petitioners.

16. The second contention advanced by the Learned Counsel for the Petitioners was based on the plea of violation of the rules of natural justice. In this behalf, a series of submissions were advanced at the hands of the Learned Counsel for the

Petitioners.

(i) Firstly, on the plea advanced by the Learned Counsel for the Petitioners under the rules of natural justice, it was submitted, that the entire procedure of disqualification adopted against the Petitioners, was carried out in extreme haste, only to complete the minimum requirements of the rules of natural justice, without effectively affording the Petitioners a reasonable opportunity to defend themselves. It was pointed out, that even the show cause notices issued by the Speaker of the Karnataka Legislative Assembly dated 07.10.2010, were not served on the Petitioners. The said show cause notices were merely pasted at their addresses at Karnataka Legislative House, Vidhana Soudha, Bangalore, when the Petitioners were out of Bangalore. Despite that, the Petitioners had responded to the show cause notices on 09.10.2010, even without knowing the full particulars/contents of the show cause notices. It was asserted, that the Petitioners were given complete copies of the show cause notices (as also the enclosures), on the morning of the date of hearing fixed by the Speaker, i.e., on 10.10.2010 . It is further submitted, that only three days time was afforded to the Petitioners to submit their reply, "even though the Petitioners had sought further time, and even though, a minimum of seven days time had to be afforded to the Petitioners under Rule 7(3) of the Defection Rules, no further time was afforded to them. It was accordingly submitted, that the haste with which all the formalities were carried out and the denial of appropriate time to the Petitioners, had resulted in the denial of a reasonable opportunity to the Petitioners to defend themselves.

(ii) Secondly, on the plea advanced by the Learned Counsel under the rules of natural justice, it was the contention of the Learned Counsel for the Petitioners, that extensive facts were relied upon by the Speaker in the impugned order dated 10.10.2010, even though no reference was made to the same in the show cause notice dated 7.10.2010. In this behalf it is sought to be pointed out, that facts were placed before the Speaker, by the State President of the Bharatiya Janata Party, who had no right to do so. It is also submitted, that an affidavit filed by the State President of the Bharatiya Janata Party, on the date of hearing itself (i.e., on 10.10.2010) was taken into consideration to adjudicate the matter. It was contended that an effective opportunity to the Petitioners under the rules of natural justice would necessarily envisage, adequate advance notice of all relevant materials, which were to be taken into consideration. Since substantial factual details, which were relied on by the Speaker (while passing the impugned dated 10.10.2010) were not incorporated in the show cause notices issued to the Petitioners, it was asserted that the entire exercise initiated at the hands of the Speaker of the Karnataka Legislative Assembly was liable to be set aside. So far as the instant contention is concerned, pointed reference has been made by the Learned Counsel for the Petitioners, invited our attention, to the following observations recorded in the impugned order dated 10.10.2010:

Personally I have also observed that the Respondents have been issuing such

statements. The Respondents have not denied arguments of the Applicant that the Respondents have negotiated with another party of the State JD (S), its members and Leader Sri. H.D. Kumara Swamy regarding formation of another Government and that thereafter they have stated that there is no question of withdrawing the letter of withdrawal. In support of this, the reports of media are also observed. In the affidavit filed by the State President of Bharatiya Janata Party, it is stated that the Respondents have gone to Chennai, Goa and other places in group, were seen along with Sri. H.D. Kumara Swamy, the State President of JD (S), Karnataka and that they have stated that they would vote against the Government in the Confidence Vote. In the affidavit it is made clear that the Respondents have appeared along with the leader of JD (S) Sri Jameer Ahmed Khan and that they have moved from place to place.

The Respondents have not denied the same. In the affidavit filed by the State President of Bharatiya Janata Party. It is stated that the Respondents have voluntarily given up the membership of the party and that therefore they are disqualified under Schedule 10 of the Constitution".

It is sought to be pointed out that none of the aforesaid facts were incorporated in the show cause notice issued by the Speaker of the Karnataka Legislative Assembly. For this, reference was also made to the disqualification petition filed by the Chief Minister Mr. B.S. Yeddiyurapa (which has also been extracted in the instant order) to show, that the case set up against the Petitioners, also did not refer to any such facts. It is, therefore sought to be asserted that the Petitioners have been severely prejudiced by the procedure adopted by the Speaker, and as such, the entire action taken by the Speaker of the Karnataka Legislative Assembly is liable to be set aside.

(iii) Thirdly, the contention advanced by the Learned Counsel for the Petitioners, on the plea advanced by him under the rules of natural justice was, that being an adjudication of a dispute between two parties, it was not open to the Speaker of the Karnataka Legislative Assembly to produce evidence or material to substantiate the charges contained in the disqualification petition filed by the Chief Minister, Mr. B.S. Yeddiyurapa. By his act of doing so. the Speaker had sided with the Chief Minister, although he was required to decide the matter as a neutral umpire. In this behalf, learned Counsel for the Petitioners placed reliance on the decision in *State Of U.P. v. Mohammad Nooh* AIR 1958 SC 86, and specially on the following observations recorded therein:

It will be recalled that the forged letter of December 8, 1947, was suspected to have been manufactured or sent by or at the instance of the Respondent to further his interest. The case against the Respondent was that the offending letter had been typed by one Shariful Hasan, the typist attached to the office of the Superintendent of Police, Fathepur and, therefore, it was essential for the department to establish that the Respondent was in friendly relations with Shariful Hasan who was said to have typed the letter. Apparently in some preliminary enquiry and in the presence of Shri. B.N. Bhala one Mohammad

Khalil, a Head Constable had spoken about Shariful Hasan being very friendly with the Respondent. But while giving his evidence at the departmental trial the said Mohammad Khalil denied having made any such statement. In the circumstances it became necessary to contradict him by the testimony of Shri. B.N. Bhalla in whose presence that witness had, on a previous occasion, stated that Shariful Hasan was very friendly with the Respondent. But while giving his evidence at the departmental trial the said Mohammad Khalil denied having made any such statement. In the circumstances it became necessary to contradict him by the testimony of Shri. B.N. Bhalla in whose presence that witness had, on a previous occasion, stated that Shariful Hasan was very friendly with the Respondent. Accordingly Shri. B.N. Bhalla had his testimony recorded by a Deputy Superintendent of Police. This was done at two stages, namely once before the charges were framed and again after the framing of the charges. The Respondent's grievance is that Shri. B.N. Bhalla, who had thus become a witness in the case, ought not to have further continued to act as the presiding officer and that his continuing to do so vitiated the trial and his order was a nullity. That Shri. B.N. Bhalla had his own testimony recorded in the case is not denied. Indeed the Appellant State, in opposition to the Respondent's writ application, filed an affidavit affirmed by Shri. B.N. Bhalla, paragraph 8 of which runs as follows:

8. That the deponent gave his first statement on 13th October, 1948, which was recorded by Shri. Mohammad Sadiq, Deputy Superintendent of Police before the charge and the second statement on 25th October, 1948, which was recorded by another Deputy Superintendent of Police after the charge. One Head Constable, Mohammad Khalil, who was prosecution witness in the case, when cross-examined denied to have said that the Appellant and Shariful Hasan were on friendly terms. He turned hostile and it became necessary for the deponent to depose about certain facts which had happened in his presence and which belied the testimony of Mohammad Khalil".

The salient facts being thus admitted there can be no escape from the conclusion that Shri. B.N. Bhalla should not have presided over the trial any longer. The point in issue was whether Shariful Hasan was in friendly relationship with the Respondent. Mohammad Khalil had in his evidence at the trial denied having made any statement to this effect. Shri. B.N. Bhalla gave evidence that Mohammad Khalil had in his presence admitted this friendship of Shariful Hasan with the Respondent. Which of the two witnesses. Mohammad Khalil and Shri. B.N. Bhalla. was to be believed was the duty of the person presiding over the trial to determine. Shri. B.N. Bhalla was obviously most ill suited to undertake that task. Having pitted his evidence against that of Mohammad Khalil, Shri. B.N. Bhalla vacated the Judge's seat and entered the arena as a witness. The two roles could not obviously be played by one and the same person. Indeed Shri. B.N. Bhalla himself realized it and accordingly had his own evidence recorded on both the occasions by other high officers. It is futile to expect that he could, in the circumstances, hold the scale even. It is suggested that there might have

been other evidence establishing the friendship between Shariful Hasan and the Respondent and that the evidence of Shri. B.N. Bhalla might not have been relied on or might not have been the deciding factor. There is nothing on record before us to support this suggestion. But assuming that Shri. B.N. Bhalla did not rely on his own evidence in preference to that of Mohammad Khalil - a fact which is hard to believe, especially in the face of his own affidavit quoted above-the act of Shri. B.N. Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerable bias against the Respondent. If it shocks our notions of judicial propriety and fair play, as indeed it does, it was bound to make a deeper impression on the mind of the Respondent as to the unreality and futility of the proceedings conducted in this fashion. We find ourselves in agreement with the High Court that the rules of natural justice were completely discarded and all canons of fair play were grievously violated by Shri. B.N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding

17. On the issue of natural justice itself, specially the plea taken on behalf of the Petitioners that the entire proceedings held by the Speaker of the Karnataka Legislative Assembly were carried out in extreme haste, thereby depriving the Petitioners of a reasonable opportunity to defend themselves, Learned Counsel for the Respondents placed reliance on the judgment rendered in *Ravi S. Naik v. Union Of India* (Supra) wherein, on the issue of natural justice, the Courts attention was invited, to the observations extracted hereunder:

20. Principles of natural justice have an important places in modern Administrative Law. They have been defined to mean "fair play in action". (See: *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another, Bhagwati, J*). As laid down by this Court "they constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men" (*Union of India and Another Vs. Tulsiram Patel and Others*, An order of an authority exercising judicial or quasi judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairman by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.

26. It is no doubt true that under Rule 7(3)(b) of the Rules, it has been provided that the member concerned can forward his comments in writing on the petitions within seven days of the receipt of the copies of the petition and the annexures

thereto and in the instant case the Appellants were given only two days time for submitting their replies. The Appellants, however, did submit their replies to the petitions within the said period and the said replies were quite detailed. Having regard to the fact that there was no denial by the Appellants of the allegation in paragraph 11 of the petitions about their having met the Governor on December 10, 1990 in the company of Dr. Barbosa and Dr. Wilfred D'Souza and other Congress (I) ML As and the only dispute was whether from the said conduct of the Appellants an inference could be drawn that the Appellants had voluntarily given up their leadership of the MGP, it cannot be said that the insufficient time given for submitting the reply has resulted in denial of adequate opportunity to the Appellants to controvert the allegations contained in the petitions seeking disqualification of the Appellants.

28. The grievance that the Appellants have been denied the opportunity to adduce the evidence is also without substance. The Appellants were the best persons who could refute the allegations made in the petitions. In the impugned order the Speaker has mentioned that the Appellants were present before him but they did not come forward to give evidence. Moreover, they could have sought permission to cross-examine Dr. Jhalmi in respect of the statement made by him before the Speaker that the Appellants had given up their membership of their political party and had said so openly to him and to others, in order to refute the correctness of the said statement. They, however, failed to do so.

29. In the light of the aforesaid facts and circumstances we are unable to hold that the impugned order of disqualification was passed by the Speaker in violation of the principles of natural justice. Since we are of the view that the Appellants have failed to make out a case for interference with order dated December 13, 1990 passed by the Speaker disqualifying the Appellants, we do not consider it necessary to go into the question about the Appellants having disentitled themselves from invoking the jurisdiction of the High Court under Article 226 of the Constitution. The judgment of the High Court dismissing the writ petition of the Appellants must be upheld and C.A. No. 3309 of 1993 filed by the said Appellants must be dismissed.

On the issue of haste at the hands of the Speaker, it is the contention of the Learned Counsel for the Respondents relying on the decision in *Ravi S. Naiks*" case (supra) that two days time granted to file a reply to the aggrieved party was held to be sufficient, because a detailed reply was actually filed within the time allowed, and also because, there was no denial of the allegations levelled in the disqualification petition. And as such, the Court declined to interfere with the impugned order on account of the alleged violation of the rules of natural justice.

18. According to the Learned Counsel for the Respondents, a substantial answer to the assertions made on behalf of the Petitioners, on the issue of taking into consideration facts beyond those depicted in the show cause notice can be drawn from the judgment rendered by the Supreme Court in *Jagjit Singh Vs. State of Haryana and Others*, In the instant case the Speaker of the Legislative Assembly

had extensively relied upon the facts within his personal knowledge. The facts relied upon by the Speaker, had not been put to the Petitioners in the show cause notice. They were facts which the Petitioners were confronted with, only at the time when an opportunity of hearing was granted to them by the Speaker. In so far as the factual aspect in Jagjit Singh's case (supra) is concerned, it emerges that on 31.12.2003 a complaint was filed before the Speaker under the Tenth Schedule of the Constitution of India, seeking the disqualification of the Petitioner - Jagjit Singh, on account of his alleged defection. On 17.03.2004, the Speaker issued a show cause notice to the Petitioner. Since the aforesaid show cause notice was not served upon the Petitioner, a further notice dated 23.04.2004 was issued to him, and thereafter, through another notice dated 18.05.2004, he was called upon to file his reply on or before 04.06.2004. The aforesaid notice dated 04.06.2004 was served on the "staff" of the Petitioner on 31.05.2004. The Petitioner filed an interim reply (as in the instant case) on 4.6.2004, and sought an extension of time by four weeks to file his final reply (as in the instant case 7 days time was sought to file a reply). On 23.06.2004, a request made by the Petitioner for an adjournment of the proceedings beyond 28.6.2004 (as in the instant case beyond 10.10.2010) was rejected by the Speaker. The Speaker after hearing the arguments on 23.06.2004 listed the matter for further consideration on 24.6.2004. Along with an application dated 23.06.2004, an affidavit of one Ashwani Kumar was filed before the Speaker asserting, that he (Ashwani Kumar) had seen certain news television channels affirming, that the Petitioner had joined the Indian National Congress on 14.06.2004. The original compact disc of the telecast and an English transcript thereof, was also appended therewith. The Petitioner's Counsel alleged, that the recording in the compact disc was not genuine. The Counsel (representing the Petitioners) also denied the Petitioner- Jagjit Singh's, signatures in the photocopy of the proceedings register of the Congress Legislature Party, in respect of proceedings held on 16.6.2004. On 24.6.2004, the Counsel representing the Petitioner - Jagjit Singh, was asked to watch the interviews conducted by the news television channels, which were available on compact disc, as part of additional evidence with the application dated 23.6.2004. The said proposal was not accepted. In the background of the aforesaid factual position, the Apex Court in Jagjit Singh's case (supra) held as under:

38. It has to be remembered that the specific averment in respect of materials filed had already been made in the complaint dated 15.6.2004. The material filed on 23.6.2004 was supplementary to further support the allegations in the complaint dated 15.6.2004. The Petitioners, despite the grant of opportunity, had declined to watch the recorded interview. It is one thing to watch the interview, point out in what manner the recording was not genuine but instead of availing that opportunity, the Petitioners preferred to adopt the course of vague denial.

39. Under these circumstances, the Speaker concluded that" there is no room for doubting the authenticity and accuracy of the electronic evidence produced by the Petitioner". The Speaker held:

... In this regard, it is to be noted that the Petitioner has produced the original compact disks (C Ds), containing the interviews conducted by Zee News and Haryana News (Punjab Today television channel) of the six independent Members of the Haryana Vidhan Sabha including the Respondent and the same have been duly certified by both the televisions channels as regards their contents as well as having been recorded on 14.6.2004 at New Delhi. It has also been certified by both the television channels through their original letters (P-9 and P-12) duly signed by their authorized signatures that the original C Ds were handed over to Ashwani Kumar who was authorized by the Petitioner in this regard and whose affidavit is also on the record as Annexure P-8 wherein he stated that he had handed over the original C Ds to the Petitioner. The letters, Annexures P-9 and P-12, also give out that the coverage of their interviews on 14.6.2004 was also telecast by both the television channels. In fact, the certificate given by the Haryana News (Punjab Today television channel) authenticates the place of the interview as the residence of Mr. Ahmed Patel at 23, Mother Teresa Crescent in Delhi which interview as per the certificate was conducted by the corRespondent of the said television channel, namely, Shri. Amit Mishra on 14.6.2004. The same certificate, P-12 also authenticates the coverage of the CLP meeting held in Chandigarh on 16.6.2004 conducted by their corRespondent, Mr. Rakesh Gupta. Therefore, the electronic evidence which as per the Petitioner is supplementary to the evidence of print media already on the record deserves to be taken on the record as it is admissible as per law .

(emphasis is mine)

In addition to the aforesaid, in paragraph 41, the Speaker took into consideration the additional facts personally known to him. Paragraph-41 is being extracted hereunder:

41. In the impugned orders, Respondent 2 has further noted that while examining and considering the aforenoted electronic evidence, he was fortified by the fact that being the Speaker of the Haryana Vidhan Sabha. on many occasions as well as during the sessions of the House, he has seen and heard these Members. He found that these Members as seen and heard in the electronic evidence are genuinely identified as also their voices which are easily and clearly identified. The Speaker, thus, held that in view of the irrefutable and overwhelming documentary and electronic evidence, no other conclusion was possible other than that on 14.6.2004 these independent Members of the Haryana Vidhan Sabha joined the Congress Party. He has also referred to the documentary evidence regarding CLP meeting held on 16.6.2004 in the form of original sheet of proceedings" register of CLP containing the signatures of the Petitioners. In respect of the signatures also, the Speaker has noted that the signatures of the Petitioners on the original sheet of the CLP proceedings are the same as their signatures on the vakaltnama filed by their counsel as is clear after comparison".

(emphasis is mine)

Having taken into consideration the totality of the facts and circumstances of the case, the Apex Court held as under:

42. It was strenuously contended by Learned Counsel for the Petitioners that the Speaker while passing the impugned orders has relied upon his personal knowledge which is wholly impermissible for a tribunal and contrary to the principles of fair play and violative of principles of natural justice. In support, reliance is placed on *Dewan Singh Vs. Champat Singh and Others*, wherein this Court considered misconduct of the arbitrators who decided the disputes referred to them on the basis of their personal knowledge. On consideration of the arbitration agreement, it was held by this Court that it does not empower the arbitrators either specifically or by necessary implication to decide the disputes referred to them on the basis of their personal knowledge.

43. The principles laid down in the above case, have no application to the facts of the present case. The two situations have no similarity. The Speaker has only noticed that he has had various opportunities to see the Petitioners in the Assembly and those shown in the recording are the same persons. We are unable to find fault with this course adopted by the Speaker. There is also nothing wrong or illegal in comparing signatures and coming to the conclusion that the same are that of the Petitioners. These proceedings before the Speaker are not comparable with the arbitration proceedings before arbitrators.

44. Undoubtedly, the proceedings before the Speaker which is also a tribunal albeit of a different nature have to be conducted in a fair manner and by complying with the principles of natural justice. However, the principles of natural justice cannot be placed in a straitjacket. There are flexible rules. Their applicability is determined on the facts of each case. Here, we are concerned with a case where the Petitioners had declined to avail of the opportunity to watch the recording on the compact disc. They had taken vague pleas in their replies. Even in respect of signatures on CLP register their reply was utterly vague. It was not their case that the said proceedings had been forged. The Speaker, in law, was the only authority to decide whether the Petitioners incurred or not, disqualification under the Tenth Schedule to the Constitution in his capacity as Speaker. He had obviously opportunity to see the Petitioners and hear them and that is what has been stated by the Speaker in his order. We are of the view that the Speaker has not committed any illegality by stating that he had on various occasions seen and heard these ML As. It is not a case where the Speaker could transfer the case to some other tribunal. The doctrine of necessity under these circumstances would also be applicable. No illegality can be inferred merely on the Speaker relying upon his personal knowledge of having seen and heard the Petitioners for coming to the conclusion that persons in the electronic evidence are the same as he has seen and so also their voices. Thus, even if the affidavit of Ashwini Kumar is ignored in substance it would have no effect on the questions involved.

For the same proposition, Learned Counsel for the Respondents also placed

reliance on Dr.Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council (Supra), and invited this Court's attention to the following conclusions recorded therein:

Regarding the complaint of non-supply of the copy of the letter sent by Prof. Arun Kumar, Leader of Indian National Congress in the Bihar Legislative Council, whereby he had informed that the Petitioner Shri. Mahachandra Prasad Singh had ceased to be a member of Indian National Congress for violating the party discipline, the only relevant fact stated therein is that the Petitioner had been elected as a member of the Bihar Legislative Council on a Congress ticket, but he had contested the parliamentary election as an independent candidate. These facts have never been disputed by the Petitioner in his replies. which he submitted before the Chairman of the Legislative Council and have also been admitted in Paragraphs 5 and 7 in the present writ petition. Therefore, the non-supply of copy of the letter of the leader of Congress Legislative Party has no bearing at all as no prejudice can be said to have been caused to the Petitioner and consequently in the facts of the present case, no principle of natural justice can be said to have been violated.

Based on the legal position expressed in the aforesaid extracts it is asserted at the hands of the Learned Counsel for the Respondents, that the plea of natural justice can lead to an effective result, only when facts taken into consideration, to pass the offending order are disputed. In the aforesaid situation, the aggrieved person would be justified in contending, that he had been prevented from repudiating the facts taken into consideration.

19.I have given my thoughtful consideration to the second contention advanced by the Learned Counsel for the Petitioners, based on the violation of the rules of natural justice.

(i) On the first of the three pleas advanced under the second contention in so far as the grant of reasonable opportunity to the Petitioners is concerned, there is no denial that a show cause notice dated 07.10.2010 was issued to the Petitioners by the Speaker of the Karnataka Legislative Assembly. The Petitioners submitted identical and detailed written replies on facts, and took all the legal objections available to them, on 09.10.2010. There is also no denial of the fact, that even an opportunity of hearing was afforded to the Petitioners at 3.00 p.m. on 10.10.2010. From the submissions made to us, by the Learned Counsel who represented the rival parties before the Speaker, it emerges that hearing had continued before the Speaker of the Karnataka Legislative Assembly, for several hours. Since the procedure required to be followed under the rules of natural justice was admittedly followed, should the proceedings conducted by the Speaker, culminating in the passing of the impugned order dated 10.10.2010 be set aside ? I am of the view, that the answer to the aforesaid question has to be in the negative, because the procedure adopted has not resulted in any prejudice to the Petitioners. At the cost of repetition it may be stated, that it is not the case of the Petitioners that any false/ wrong fact has been taken into

consideration by the Speaker, without affording the Petitioners an opportunity to repudiate the same. The impugned order notices that the Petitioners did not dispute the facts with which they were confronted during the course of hearing. That apart, it is not even the case of the Petitioners even before us, that the facts relied upon by the Speaker in the impugned order are false or incorrect. As such, I am of the view, that the Petitioners have not been adversely affected by the procedure adopted by the Speaker. Since no prejudice has been caused to the Petitioners, I, find it difficult to accept the contention advanced on behalf of the Petitioners that the entire proceedings held by the Speaker of the Karnataka Legislative Assembly, deserved to be set aside on account of an alleged hurried determination of the disqualification proceedings. The instant conclusion is completely in consonance with the decisions rendered by the Apex Court in Ravi S. Naik's case (supra) and Dr. Mahachandra Prasad Singh's case (supra). Relevant extracts from the aforesaid judgments, (reproduced above) have been duly highlighted to depict the conclusions relevant to the present controversy.

(ii) On the second of the three pleas advanced under the second contention, i.e., the assertion that facts in addition to the facts reflected in the show cause notices, were taken into consideration by the Speaker to pass the impugned order dated 10.10.2010. Out of the three submissions advanced on the plea of violation of the rules of natural justice, the instant contention seems to be the most serious. The affidavit filed by the State President of the Bharatiya Janata Party, is the first cause for agitation. The fact that the aforesaid affidavit was produced during the course of hearing before the Speaker, is the second cause of agitation. The consideration of facts recorded in the said affidavit by the Speaker while passing the final order, is the third cause for agitation. It was, therefore, important to peruse the said affidavit. It was produced for our consideration during the course of hearing. The affidavit of the State President of the Bharatiya Janata Party, along with its annexures, is taken on record and marked as Annexure-J. In fact its perusal reveals, that the same was only comprised of news paper cuttings. The facts narrated in the impugned order itself reveal, that during the course of hearing on 10.10.2010, none of the Petitioners disputed the factual position expressed in the newspaper reports, produced before the Speaker. Even in the present petitions, the Petitioners have not disputed the facts contained in the said newspaper articles. It is not even the case of the Petitioners, that if they had been afforded more time, they would have shown that the facts recorded in the newspaper articles were not correct. The position in the present case is akin to JAGJIT SINGH'S case (supra), wherein on 23.06.2004 an application along with an affidavit of one Ashwani Kumar was filed, while the final hearing was fixed on 24.06.2004. The Petitioner-Jagjit Singh's, Counsel was confronted with the contents of the application, the compact disc and other material appended thereto. Similar pleas as have now been raised before us, were also raised before the Supreme Court in Jagjit Singh's case, were not accepted. In the present case also, Chief Minister Mr. B.S. Yeddiurappa, in paragraph 5 of the disqualification petition dated 06.10.2010, made a reference

to the statements made by the Petitioners to the press and the electronic media. The actual press reports produced by the State President of the Bharatiya Janata Party, were therefore, merely in the nature of additional facts to supplement the factual position depicted in the disqualification petition. For the reasons, as have been recorded by the Apex Court in JAGJIT SINGH'S case, I am of the view, that taking into consideration additional facts, to supplement the factual position depicted in the disqualification petition at the hands of the Chief Minister Mr. B.S. Yeddiyurappa cannot be accepted as a valid plea for setting aside the impugned order dated 10.10.2010. The instant plea would have been acceptable, if the Petitioners had contested the veracity of the facts taken into consideration. But that is not so in the present case. We, therefore, find no merit even in the second contention of the Learned Counsel for the Petitioners based on the rules of natural justice.

(iii) On the last, i.e., (third) of the three pleas advanced under the second contention, I am satisfied that the plea raised by the Petitioner on the strength of the judgment in MOHAMMAD NOOH'S case (supra), is clearly inapplicable to proceedings initiated under the Tenth Schedule of the Constitution of India, because as it has been held in JAGJIT SINGH'S case (supra), the Speaker is the "only" authority competent to decide whether a legislator had incurred the disqualification envisaged under the Tenth Schedule of the Constitution of India. The proceedings are to be held by the Speaker alone and by none else. If due procedure has been followed, based on a correct analysis of facts, the order passed by the Speaker can not be assailed. As such, the only way out for the Petitioner to succeed is, to establish that the factual position taken into consideration by the Speaker was incorrect. Since there is no denial of the correctness of facts taken into consideration by the Speaker (while passing the impugned order) it is not possible for me, to accept the instant contention of the Petitioners.

20. The third contention advanced by the Learned Counsel for the Petitioners, was based on paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India. Paragraph 2(1)(a) is being extracted hereunder:

2. Disqualification on ground of defection: (1) Subject to the provisions of paragraphs 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 gives up his membership of such political party;.

Since Learned Counsel for the Petitioners did not place reliance on paragraphs 4 and 5 of the Tenth Schedule of the Constitution of India, I find no justification to extract the same herein. The assertion at the hands of the Learned Counsel for the Petitioners relying paragraph 2(1) (a) of the Tenth Schedule of the Constitution of India was that the Petitioners had never voluntarily given up their membership of the Bharatiya Janata Party, and as such, cannot be deemed to have suffered the disqualification on account of defection contemplated in

paragraph 2(1)(a) in the Tenth Schedule of the Constitution of India. In this behalf, learned Counsel for the Petitioners, in the first instance, placed reliance on the letter dated 06.10.2010 addressed by the Petitioners to the Governor of the State of Karnataka. It is the vehement contention of the Learned Counsel for the Petitioners on the basis of the aforesaid letters, that the Petitioners emphasized therein, that they were genuine well wishers of the Bharatiya Janata Party. Yet having been elected to the Karnataka Legislative Assembly on tickets of the Bharatiya Janata Party, they were disillusioned with the functioning of the Government headed by the Chief Minister Mr. B.S. Yeddiyurappa. According to the Petitioners, the manner of functioning of the Government had led to widespread corruption, nepotism, favouritism, abuse of power and misuse of Government machinery. It was, therefore, that the Petitioners opposed the Government headed by Chief Minister Mr. B.S. Yeddiyurappa. It is submitted, that the Petitioners never expressed any dissatisfaction with the functioning of the Bharatiya Janata Party, nor expressed any intention of giving up their association with the Bharatiya Janata Party. As such, it was submitted, that it was unjustified for the Speaker of the Karnataka State Legislative Assembly to conclude, on the basis of the letter dated 06.10.2010 (addressed by the Petitioners to the Governor of the State of Karnataka), that the Petitioners had defected from the Bharatiya Janata Party, or had voluntarily given up their membership of the said party. Learned Counsel for the Petitioners also invited this Court's attention to the detailed reply dated 09.10.2010 filed by the Petitioners. Reading extensively therefrom, it was pointed out, that the Petitioners repeatedly asserted therein, that they had neither voluntarily given up their membership of the Bharatiya Janata Party, nor had joined hands with any other political party, so as to attract their disqualification under Tenth Schedule of the Constitution of India. It was also asserted, that the Petitioners had not supported or staked their claim to form Government, with any other political party. The Petitioners also asserted in their reply, that their withdrawal of support from the Chief Minister Mr. B.S. Yeddiyurappa, should be construed as a honest act of a true supporter/worker of the Bharatiya Janata Party. Through their act(s), according to learned Counsel, the Petitioners wanted to salvage the image and reputation of the Bharatiya Janata Party, which had put up the Petitioners as candidates for election to the Karnataka Legislative Assembly. It was also sought to be asserted, that the Petitioners had nowhere (in their letter dated 06.10.2010) stated, that they were not interested to continue as members of the Karnataka Legislative Assembly as members of the Bharatiya Janata Party. It was submitted, that the image of the Bharatiya Janata Party, could be salvaged only by getting rid of the Chief Minister Mr. B.S. Yeddiyurappa. The Petitioners asserted that they would continue to support the Bharatiya Janata Party and would continue to be a part of the Bharatiya Janata Party, or any other Government formed by the BJP, headed by any other leader (other than the Chief Minister Mr. B. S. Yeddiyurappa). As such, it is asserted, that the insinuation leveled against the Petitioners, that they have defected from the Bharatiya Janata Party was not truthful, and was a mere device to disqualify the Petitioners from their membership of the Karnataka

Legislative Assembly.

21. While refuting the third contention advanced by the Learned Counsel for the Petitioners, the first and the foremost submission at the hands of the Learned Counsel for the Respondents was, that the letter dated 06.10.2010 addressed by the Petitioners itself clearly demonstrates the intention of the Petitioners. In this behalf, learned Counsel for the Respondents invited our attention to the following expressed intention contained in the letter dated 06.10.2010; "... a situation has arisen that the governance of the State cannot be carried on in accordance Constitution ..." Yet, again, our attention was invited to the last sentence recorded in the aforesaid letter dated 06.10.2010: " I request you to intervene and institute the constitutional process as constitutional head of the State". It is the submission of the learned Counsel for the Respondents, that what was sought to be suggested was, the adherence to the procedure envisaged under Article 356 of the Constitution of India, wherein exactly the same language (which has been used by the Petitioners), has been used. Article 356(1) of the Constitution is being extracted hereunder:

356. Provisions in case of failure of constitutional machinery in States:

(1) If the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation:

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts

It was the contention of the Learned Counsel for the Respondents, that the provisions of Article 356 of the Constitution of India, are only invoked, when on account of failure of the constitutional machinery in a State, the proclamation of President's rule has to be declared. This is a situation when the Government in a State is brought down, to install President's rule. It is therefore the contention of the Learned Counsel for the Respondents, that the tenor of the letter dated 06.10.2010 addressed by the Petitioners, was to bring down the Government of

Bharatiya Janata Party, in the State of Karnataka, It was also contended, that the language of the letter dated 6.10.2010 was merely a camouflage. The factual intent thereof was clear, and was rightly assessed by the Governor, when on receipt of the letter dated 06.10.2010 (from the Petitioners), he addressed a letter dated 06.10.2010 to the Chief Minister Mr. B.S. Yeddiyurappa requiring him to prove his majority on the floor of the Legislative Assembly on or before 12.10.2010 (by 5.00 p.m.). By withdrawing support, according to learned Counsel, the Petitioners in conjunction with other independent members of the Karnataka State Legislative Assembly, had ventured to bring down the Bharatiya Janata Party led Government in Karnataka and not only the Chief Minister of the State of Karnataka. It is, therefore, submitted, that the Speaker had correctly arrived at the conclusion, that the Petitioners by their acts of omission and commission must be deemed to have voluntarily given up their membership with the Bharatiya Janata Party.

22. In order to substantiate, that the action of the Petitioners was sufficient to establish the plea of defection, under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India, learned Counsel for the Respondents placed reliance on the judgment rendered in *Sri Rajendra Singh Rana and Others Vs. Swami Prasad Maurya and Others*, In the instant case, the factual matrix which resulted in the disqualification of the Petitioners, was that 8 ML As of the BSP legislature party followed by another 5 members of the BSP party addressed identical letters dated 27.8.2003 to the Governor. The aforesaid letters reads as under:

We under mentioned ML As whose signatures are marked below humbly request you that Shri Mulyam Singh Yadav Ji be invited to form the Government because the public of Uttar Pradesh neither wants election nor wants President Rule.

The plea raised in their defence, by the Petitioners in *Rajendra Singh Rams*" case (supra) was, that their was a split in the original political party, and as such, the letter addressed by the Petitioners, who were members of the BSP, to the Governor on 27.08.2003 did not constitute defection contemplated in the Tenth Schedule of the Constitution of India. The question that came to be adjudicated by the Apex Court was, whether the act on the part of 13 ML As in giving letters to the Governor (extracted above), requesting the Governor to call upon the leader of the other side to form the Government, would itself amount to voluntarily giving up of the membership of the party on whose ticket they had got elected ? The Apex Court answered the aforesaid question as under:

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 Samjwadi Party. In *Ravi Naik 1994 (2) SCC 641* 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 gives up his membership of the political party to which he belongs".

49. Clearly, from the conduct of meeting the Governor accompanied by the General Secretary of the Samajwadi Party, the party in opposition and the submission letters requesting the Governor to invite the leader of that opposition party to form a Government as against the advise of the Chief Minister belonging to their original party to dissolve the assembly an irresistible inference arises that the 13 members have clearly given up their membership of the BSP. No further evidence or enquiry is needed to find that their action comes within para 2(1)(a) of the Tenth Schedule. Then the only question is whether they had shown at least prima facie that a split had occurred in the original political party on 26.8.2003 and they had separated from it along with at least 24 others, so as to make up one-third of the legislature party".

52. As we have indicated, nothing is produced to show that there was a split in the original political party on 26.8.2003 as belatedly put forward or put forward at a later point of time. But, still, the plea was of a split on 26.8.2003. On the materials, the only possible inference in the circumstances of the case, is that it has not been proved, even prima facie, by the ML As sought to be disqualified that there was any split in the original political party on 26.8.2003 as claimed by them. The necessary consequence would be that the 24 members, who later joined the 13, could not also establish a split in the original political party as having taken place on 26.8.2003. In fact even a split involving 37 ML As on 26.8.2003 is not established. That was also the inference rightly drawn by the Learned Chief Justice in the judgment appealed against.

53. In view of our conclusion that it is necessary not only to show that 37 ML As 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 ML As 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 ML As, 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 the Respondents 2, 3, 4, 5, 6, 9, 10, 14, 16, 19, 20, 21 and 37, in the writ petition filed by Mauyra, stand disqualified in terms of Article 191(2) 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 writ Petitioner has to be allowed even while dismissing the appeals filed by the 37 ML As, 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.

(emphasis is mine)

Reference deserves also to be made to the decision in *Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council*, (Supra). The facts of the aforesaid case disclose, that the Petitioner (Dr. Mahachandra Prasad Singh) was elected as a member of the Bihar Legislative Council as a candidate of the Indian National Congress in 1998. The Petitioner, despite being a member of the Bihar Legislative Council, also contested the fourteenth Lok Sabha election in 2004, as an independent. A member of the Bihar Legislative Council filed a petition on 10.6.2004 before the Chairman of the Legislative Council, stating that the Petitioner who was a member of the Congress Party, having contested the Lok Sabha election as an independent candidate had become disqualified for being a member of the Legislative Council. The Petitioner was issued a show cause notice dated 12.6.2004. In response, he submitted his explanation on 18.6.2004. By an order dated 26.6.2004, the Chairman of the Legislative Council arrived at the conclusion, that the Petitioner had contested the election to the Bihar Legislative Council as a candidate of the Congress Party, and thereafter, his action in contesting the election to the Fourteenth Lok Sabha as an independent candidate, amounted to his having voluntarily given up his membership of the Indian National Congress Party, and therefore, he was disqualified from being a member of the Bihar Legislative Council under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India. The Supreme Court while examining the controversy in *Dr. MAHACHANDRA PRASAD SINGHS*" case (supra) ruled as under:

No new point has been urged by Shri. P.S. Mishra in the present case. It is admitted in paras 4 and 6 of the writ petition that the Petitioner had been elected as member of the Legislative Council in the year 1998 as a candidate of Indian National Congress Party and that he filed his nomination papers for contesting the parliamentary election held in May 2004 as a candidate of Samajwadi Party. This factual position was not disputed by the Petitioner in the replies given by him to the Chairman of the House. In such circumstances, there cannot be even the slightest doubt that the Petitioner has voluntarily given up his membership of Indian National Congress Party. No exception can, therefore, be taken to the decision taken by the Chairman of the House that the Petitioner has incurred the disqualification for being a member of the House under Paragraph 2(1)(a) of the Tenth Schedule and Article 191(2) of the Constitution and the seat held by him had fallen vacant.

23. I have examined the rival submissions, on the third contention advanced on behalf of the Petitioners. In my considered view, a debate on the floor of the house is for enacting legislation. and in a debate on the floor of the house, all

elected members will have a right to express their views, as also to cast their vote, as per their individual thought and wisdom, as long as a party whip has not been issued. If a party whip has been issued, all the members of the legislature in question, elected on the ticket of such party, (which has issued the whip), will have to vote as per the mandate of the party. Any breach of a party whip will result in earning a disqualification under paragraph 2(1)(b) of the Tenth Schedule of the Constitution of India. Paragraph 2(1)(b) aforesaid is being extracted hereunder:

2(1)(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 authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation: For the purpose of this sub-paragraph:

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

(b) a nominated member of a House shall,

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188.

The issue in the present case, is not in respect of the manner in which the Petitioners voted during the course of a debate. The issue is also not, that of violating the partys direction to vote in a particular fashion. The issue here is, whether the Petitioners, can be stated to have broken from the party, on whose ticket they were elected, and as such, can be deemed to have given up their allegiance to the said party. In other words, whether their actions can lead to the inference that they have voluntarily given up their membership to the political party to which they are affiliated ?

24. When a voter votes during the course of an election, he does not cast his vote for the Government which will eventually be formed. He votes for one of the candidates contesting the election. If he votes for a candidate belonging to a particular party, the vote is cast keeping in mind the political compulsions of the candidate, as also, the ideology of the political party which has sponsored him. It is the collective mandate of all the constituencies, which will determine the constitution of the Government in the concerned legislative body. It would therefore, not be correct to assume, that there can be a duality in the obligations of the elected member, wherein, one of his obligations require him to act in one

manner, and the other, to act in a diagonally opposite fashion.

25. After the addition of the Tenth Schedule to the Constitution of India, the sincerity of a member who is elected on a party ticket has to be such, that his actions can never be construed as leading to the conclusion, that he has voluntarily given up the membership of the political party on whose ticket he was elected. If a candidate desires to be free from any such obligations, he must contest as an independent. After the addition of the Tenth Schedule to the Constitution of India, even the electorate, while voting for a candidate sponsored by a political party, is conscious of the obligations and commitment of such a candidate, to the political party. There can thus be no duality, whether it is the mind of the electorate, or in the mind of the candidate elected (on the strength of political sponsorship). If this is not so, there would be no difference between, being elected as an independent, and being elected on a party ticket. If the strength of the conscience of a candidate is such, that he does not desire to support the political party on whose ticket he was elected. He must resign, and forego the membership of the legislature, which he had procured on the basis of his sponsorship by the political party in question. Any action to the contrary, would expose him to the disqualification contemplated under the Tenth Schedule of the Constitution of India.

26. Likewise the leader of the party which forms the Government, is elected on the basis of the collective wisdom of the political party in question. For a change in such leadership, the rightful forum can only be within the political party. It is not open to a candidate elected on a party ticket, to seek a change in the leadership of the Government, either from the electorate or from any other forum, contrary to the collective wisdom of the political party which had required him (the leader) to run the Government. Such an act, in a given situation, could be construed against the concerned individual, as having voluntarily abandoned his membership, of the said political party. In the present controversy, this is the precise question arising for consideration.

27. I have no doubt whatsoever in my mind, that the letter dated 06.10.2010 addressed by the Petitioners to the Governor of the State of Karnataka, was by itself sufficient to conclude, that the Petitioners had suffered the disqualification envisaged under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India. It is surprising, that out of the letters addressed by 19 legislators (including the 11 Petitioners) there were no less than 7 Ministers in the cabinet of Chief Minister Mr. B.S. Yeddiyurappa. If the Petitioners were dissatisfied with the manner of functioning of the Government headed by Mr. B.S. Yeddiyurappa, which according to them, had led to widespread corruption, nepotism, favoritism, abuse of power, and misuse of Government machinery, they ought to have resigned from their Ministerial berths, before taking recourse to any other action. It was their Ministerial position, which associated them with the Chief Minister, in respect of the allegations leveled by them. This was however not done by the Petitioners, as some of the Petitioners continued to be Ministers even when they

met the Governor, and submitted the letters dated 06.10.2010 to him . The 11 Petitioners herein belong to the Bharatiya Janata Party. All the Petitioners, along with some other legislators belonging to the Bharatiya Janata Party, besides 5 independent members of the Karnataka Legislative Assembly, had collectively informed the Governor of the State of Karnataka through individual written communications dated 06.10.2010, that they were withdrawing their support to the Government, headed by Chief Minister Mr. B.S. Yeddiyurappa. Interestingly, in their letters the Petitioners informed the Governor, that a situation had arisen that the governance of the State could not be carried out in accordance with the Constitution of India. Both the aforesaid factual aspects are of significance. Legislators elected on party tickets, and those elected as independent candidates, are treated as two separate entities under paragraph 2 of the Tenth Schedule of the Constitution of India. The object of the Petitioners in meeting the Governor along with others who did not belong to the Bharatiya Janata Party was clear, i.e., they collectively desired to bring down the Bharatiya Janata Party led Government in the Karnataka Legislative Assembly. By asserting, that the governance in the State cannot be carried out in accordance with the provisions of the Constitution of India, the Petitioners had expressly conveyed to the Governor of the State of Karnataka, that the Bharatiya Janata Party led Government in the Karnataka Legislative Assembly was not running according to the manner contemplated under the Constitution of India, and as such, deserved to be changed. The clear objective in the instant assertion again was, that the Petitioners did not desire the Bharatiya Janata Party led Government to continue in the Karnataka Legislative Assembly. The manner in which the Governor of the State of Karnataka reacted to the Petitioners letters, demonstrates that the Governor also understood the said letters as per the conclusions recorded hereinabove, by requiring the Chief Minister to prove his strength on the floor of the house. The non-denial of the factual assertions recorded in the impugned order, through the pleadings in the writ petition, also discloses the hollowness of the Petitioners contention. The decision of the Petitioners not to support the Bharatiya Janata Party led Government in the Karnataka Legislative Assembly, as long as it was headed by Chief Minister Mr. B.S. Yeddiyurappa was unequivocal and voluntary. The written assertions made by the Petitioners leave no room for any doubt, that the Petitioners would oppose the Bharatiya Janata Party led Government as long as it was led by Chief Minister Mr. B.S. Yeddiyurappa, even on the floor of the Karnataka Legislative Assembly. In other words, the Petitioners were determined to remove the leader of the Government who had been elected on the collective wisdom of the party which had sponsored them. Thus viewed, the wisdom of the Petitioners was sought to be asserted, over and above the collective wisdom of the political party, which had brought them into the legislature itself. And as such, were even willing to bring down the Government led by their own political party itself, even though all the Petitioners had been elected to the Karnataka Legislative Assembly on its tickets. This anti-party action of the Petitioners, in my view, fully demonstrates that the Petitioners had voluntarily given up their membership to Bharatiya Janata Party.

28. Reference also deserves to be made to the observations of the Apex Court in *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*,

But a political party functions on the strength of the shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its Members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay, indeed, its very survival. Intra-party debates are of course a different thing. But a public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable state of things. Griffith and Ryle on *Parliament Functions, Practice and Procedure* (1989 end., p. 119) say:

Loyalty to party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for Members to accept the opinion of their Leaders and Spokesmen on the wide variety of matters on which those Members have no specialist knowledge. Generally Members will accept majority decisions in the party even when they disagree. It is understandable therefore that a Member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy. To abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other wise snacks of conspiracy.

The sentiment referred to in the judgment extracted above, equally applies to actions outside the legislature also. This clearly emerges from the facts of all the cases referred to by the learned Counsel representing the Respondents, i.e., *RAJENDRA SINGH RANAS*" case (supra), *Dr. MAHACHANDRA PRASAD SINGHS*" case (supra) and *JAGJIT SINGH*"S case (supra). The Act of withdrawal of support to the Government headed by the Chief Minister Mr. B.S. Yeddiyurappa, keeping in mind the judgments of the Supreme Court referred to above, in my view, fully justifies the conclusion recorded by the Speaker of the Karnataka Legislative Assembly, that the Petitioners had incurred the disqualification contemplated under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India.

29. The last i.e., the fourth contention advanced by the learned Counsel for the Petitioners was, that the entire action initiated by the Respondents to disqualify the Petitioners smacked of mala fides, and therefore, the impugned order dated 10.10.2010 deserved to be set aside. In this behalf it is the contention of the Learned Counsel for the Petitioners that the Chief Minister Mr. B.S. Yeddiyurapa and the Speaker of the Karnataka Legislative Assembly were hand in glove with one another to manipulate the disqualification of the Petitioners, so as to continue in their respective positions of authority. In so far as the plea of mala fides is concerned, the same is sought to be asserted on behalf of the Petitioners, on the basis of the averments made in paragraph 6 of the writ petitions, which is

being extracted hereunder:

6. That this is a clear case of abuse of constitutional power conferred on the Speaker by Paragraph 6 of the Schedule 10, going out of the way to save his own chair and the chair of the Chief Minister on which it depends. As such, the Show Cause Notice under reply is ex parte not only unconstitutional and illegal but motivated and mala fide and devoid of jurisdiction.

In the grounds raised in the writ petitions, the Court's pointed attention was invited to paragraph 19K, in so far as the plea of mala fides is concerned, which is also being extracted hereunder:

19K Because the alleged petition made by Shri. B.S. Yeddiyurapa is clearly mala fide and has been made with an oblique motive knowingly in violation of Rule 6(4) of Disqualification Rules, 1986, which require him to satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule. No reasonable person would in the facts of this case could come to the conclusion that the Petitioner has incurred any disqualification on the ground of defection ever prima facie defection means leaving the party and joining another. Petitioners did not leave the B.J.P. at all.

It is on the aforesaid basis, that the Learned Counsel for the Petitioners has pressed the plea of mala fides.

30. I have examined the plea of mala fides raised at the hands of the Learned Counsel for the Petitioners. In my considered view the allegations of mala fide contained in the pleadings of the writ petitions are vague and bereft of specific details, and as such, it is not possible to accept the same. Moreover, Respondent No. 2, i.e., the Speaker of the Karnataka Legislative Assembly, against whom the plea of mala fides have been leveled, and who was the author of the impugned order dated 10.10.2010, has not been impleaded as party Respondent by name. In the absence thereof, it is apparent that the Petitioners have not invited the Speaker of the Karnataka State Legislative Assembly in his personal capacity, to respond to the allegations contained in the writ petitions. As such, it is not possible for me to accept the plea of mala fides raised at the hands of the learned Counsel for the Petitioners to annul the entire action of disqualification, which eventually culminated in the passing of the impugned order dated 10.10.2010. Accordingly, I find no merit even in the last contention advanced by the Learned Counsel for the Petitioners.

31. Since I have found no merit in any of the four contentions advanced by the teamed Counsel for the Petitioners, I am of the view, that the order of disqualification dated 10.10.2010, passed against the Petitioners by the Speaker of the Karnataka Legislative Assembly, suffers from no infirmity. Besides being in consonance with law, the order of disqualification passed by the Speaker of the Karnataka Legislative Assembly on 10.10.2010, is fully justified in terms of the provisions contained in the Tenth Schedule of the Constitution of India (for

reasons, see paragraphs 23 to 28 above).

32. The writ petitions are, accordingly, hereby dismissed.

Per N. Kumar J.,

33. I have gone through the judgment prepared by the Hon'ble Chief Justice, wherein His Lordship has set out the facts of the case, referred to the material documents and recorded His Lordship's conclusions on all the contentions which arise for consideration in these Writ Petitions. Except on third contention, regarding the interpretation to be placed on Paragraph 2(1)(a) of the Tenth Schedule, I am in agreement with the reasoning dealing with the rest of the contentions. My views on the said third contention are as under:

PARLIAMENTARY DEMOCRACY

34. In a Parliamentary Democracy, the mandate to rule the State is given to a political party, and not to any individual. All the members who are elected from a political party to the House form Legislature Party of that party. It is the Legislature Party which elects its leader. He becomes the leader of the Legislature Party. He also is amenable to party discipline. He will be one of the leaders of that political party and not the sole leader of that political party. When he is elected as a leader of the Legislature Party, it may be an unanimous choice or a person who has the majority support. Therefore, to become a leader of the Legislature Party one does not need the support of all the members. That is how Democracy works in practice. However, it is the leader who enjoys the majority in the House, and not the majority in the Legislature Party, who is called upon to form the Government. Such a leader is appointed by the Governor as Chief Minister. On the advice of the Chief Minister the Governor appoints the other Ministers. The Ministers hold office during the pleasure of the Governor. The Council of Ministers headed by the Chief Minister can continue in the office as long as they enjoy the confidence of the majority of the Members of the House. If the House expresses no confidence in the Chief Minister, it is not only the Chief Minister, but his entire Council of Ministers who ceases to be in office.

35. Till the fourth General Election in the Country, i.e., for nearly two decades after independence the principle underlying this Parliamentary Democracy was strictly adhered to by the elected members of all the political parties. Probably, the new generation of people who entered the political arena, who had not made any significant contribution to the freedom struggle got elected to these legislative bodies. Lure of office and the privileges attached to such office and money, became the sole consideration. It resulted in legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects. This evil of political defections became a matter of national concern. To combat this evil, which undermines the very foundation of the Democracy in the country and the principle which sustain it, on December 8, 1967, the Parliament by an unanimous resolution appointed a high level committee consisting of representations of political parties and constitution experts to

consider this problem. The said committee known as the "Committee on Defections" in its report dated 7th January, 1969, inter alia observed:

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 .

36. However, it took more than two decades before Tenth Schedule, "anti defection law" became a reality.

37. The word "defection" is not defined under the Tenth Schedule. But, the grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule.

CONSTITUTIONAL PROVISION

38. Paragraph 2 of the Tenth Schedule reads as under:

2. Disqualification on ground of defection.

(1) Subject to the provisions of paragraphs 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 gives up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within 15 days from the date of such voting or abstention.

Explanation.- For the purpose of this sub-paragraph,-

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

(b) a nominated member of a House shall, -

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on commencement of the constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,-

(i) where he was a member of a political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party.

(ii) In any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

INTERPRETATION BY APEX COURT

39. In interpreting Paragraph 2 of the Tenth Schedule the Constitution Bench of the Apex Court in the case of *Kihoto Hollohan v. Zachillhu and Ors.* (Supra) has held as under:

10. Paragraph 2(1) relates to a Member of the House belonging to a political party by which he was set up as a candidate at the election. Under Paragraph 2(1)(a) such a Member would incur disqualification if he voluntarily gives up his membership of such political party. Under Clause (b) he would incur the disqualification if he votes or abstains from voting in the House contrary to "any direction " issued by the political party to which he belongs or by any person or authority authorised by it in this behalf without obtaining, in either case, prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority

within fifteen days from the date of such voting or abstention. This sub-para would also apply to a nominated Member who is a Member of a political party on the date of his nomination as such Member or who joins a political party within six months of his taking oath.

11. Paragraph 2(2) deals with a Member who has been elected otherwise than as a candidate set up by any political party and would incur the disqualification if he joins any political party after such election. A nominated Member of a House would incur his disqualification under sub-para (3) if he joins any political party after the expiry of six months from the date of which he takes his seat.

12. Paragraphs 3 and 4 of the Tenth Schedule, however, exclude the applicability of the provisions for disqualification under Paragraph 2 in cases of "split" in the original political party or merger of the original political party with another political party.

13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election.

(Underlining by me)

14. Paragraph 2(1)(b) deals with a slightly different situation i.e., a variant where dissent becomes defection. If a Member while remaining a Member of the political party which had set him up as a candidate at the election, votes or abstains from voting contrary to "any direction " issued by the political party to which he belongs or by any person or authority authorised by it in this behalf he incurs the disqualification. In other words, it deals with a Member who expresses his dissent from the stand of the political party to which he belongs by voting or abstaining from voting in the House contrary to the direction issued by the political party.

40. In the case of *G. Viswanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras* and another, , explaining the scope of paragraph 2(1)(a) held that even if a member is thrown out or expelled from the party, for the purposes of the Tenth schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as "unattached". The act of voluntarily giving up the membership of the political party may be

either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member.

41. The Apex Court in the case of *Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council and Ors.* (supra) has held as under:

7. Paragraph 2 of the Tenth Schedule lays down the contingencies under which a member of the House belonging to any political party shall be disqualified for being a member of the House and they are enumerated in sub-paras (1), (2) and (3). Sub-para (2) deals with a situation where a member of the House elected as an independent candidate joins any political party after such election and sub-para (3) deals with a situation where a nominated member of the House joins any political party after the expiry of six months from the date on which he takes a seat. Sub-para (1) deals with a situation where a member of a House belonging to any political party voluntarily gives up his membership of such political party. It also deals with a situation where he votes or abstains from voting in the House, contrary to any direction issued by the political party to which he belongs, without obtaining prior permission of such political party and such voting or abstention has not been condoned by such political party within fifteen days from the said voting or abstention.

The scrutiny of the provisions of sub-para (2) would show that a member of a House belonging to any political party becomes disqualified for being a member of the House if he does some positive act which may be either voluntarily giving up his membership of the political party to which he belongs or voting or abstention from voting contrary to any direction issued by the political party to which he belongs and in the case of an independent or nominated member, on his joining a political party. On the plain language of paragraph 2, the disqualification comes into force or becomes effective on the happening of the event. Paragraph 4 is in the nature of an exception to paragraph 2 and provides for certain contingencies when the rule of disqualification will not apply in the case of merger of parties.

42. The Constitution Bench of the Apex Court in the case of *Rajendra Singh Rana And Ors. v. Swami Prasad Maurya And Ors.*, (Supra) the Supreme Court has held as under:

33. It may be true that collective dissent is not intended to be stifled by the enactment of sub-article (2) of Articles 102 and 191 of the Tenth Schedule. But at the same time, it is clear that the object is to discourage defection which has assumed menacing proportions undermining the very basis of democracy. Therefore, a purposive interpretation of para 2 in juxtaposition with paras 3 and 4 of the Tenth Schedule is called for. One thing is clear that defection is a ground for disqualifying a member from the House. He incurs that disqualification if he

has voluntarily given up his membership of his original political party, meaning that party on whose ticket he had got elected himself to the House. In the case of defiance of a whip, the party concerned is given an option either of condoning the defiance or seeking disqualification of the member concerned. But the decision to condone must be taken within 15 days of the defiance of the whip. This aspect is also relied on for the contention that relevant point of time to determine the question is when the Speaker actually takes a decision on the plea for disqualification.

SCHEME OF TENTH SCHEDULE

43. From the scheme of the Tenth Schedule it is clear it applies only to a Member of the House. He may be a person elected from the ticket of any political party or as an Independent. All Members of a political party are not Members of the House or the Legislature Party. However, every Member of a Legislature Party/ Member of House, also, need not be a Member of the political party. But, a member of a political party who is elected as a Member of the House would automatically become Member of the Legislature Party in the said House. Paragraph 2 deals with disqualification of such Members of the House. Paragraph 2(1) deals with disqualification of a Member of a House who belongs to a political party. Paragraph 2(2) deals with disqualification of a Member of a House elected as an Independent. In case of a Member of a House elected as an Independent candidate, the question of his voluntarily giving up his membership of a political party would not arise. Similarly, when he does not belong to any political party, the question of voting or abstaining from voting in such House contrary to the directions issued by the political party would not arise. These two instances apply only to a Member of a House who is also a Member of a political party. In the case of a Member of a House elected as an Independent he incurs disqualification only when if he joins any political party after such election. Therefore, it is clear once a person gets elected as an Independent candidate, the mandate of the voters is that he shall remain as an Independent throughout his tenure in the House. Under no circumstances he can join any political party.

44. In the case of a Member of a House belonging to a political party, the disqualification occurs when he voluntarily gives up the membership of the political party. It is because the mandate of the people is that he shall continue to be the member of that political party which set him up as a candidate for the election. If he wants to give up his membership of the House, he has to resign from the membership of the House as well as the membership of the political party and then contest for election in the vacancy caused because of his resignation and then only he is at liberty to have an independent course of his choice. If he does not want to resign from the political party, in other words, if he does not want to give up his membership of the political party, then he is bound by the party discipline. On the floor of the House, at the time of voting, if the political party to which he belongs issues a direction, which is popularly known as a "whip", he has to cast his vote in accordance with the said whip. He has no

discretion. He has to attend the House, cast the vote in accordance with the whip. If he abstains from voting or votes contrary to the whip, then he incurs disqualification under paragraph 2(b) of the Tenth Schedule. If he abstains or casts contrary to the whip, it is open to the political party to condone the same. But, if they are not prepared to condone the said act, it is open to the political party to initiate proceedings for his disqualification.

45. Therefore, it is clear under Paragraph 2(1)(a) a Member of a House belonging to a political party by which he was set up as a candidate at the election would incur disqualification, if he voluntarily gives up his membership of such political party. That is if a member after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election. If a member has no intention to leave the political party which had set him up as a candidate at the election, and he has no intention of changing the affiliation, he intends to continue in the party, and fight for a cause which is dear to his heart, it does not constitute giving up his membership of the party. In his perception the conduct of the leader of the Legislature Party of the party, is contrary to the policy of the party, on the basis of which, his electors reposed confidence in the party and voted him, and his right to express dissent cannot be construed as an act of defection. Such an expression of dissent in public, outside the party forums, if it embarrasses the party and Government, it may attract disciplinary action by the party. He may be suspended or expelled from the party. It also would not amount to his leaving the party voluntarily and giving up his membership. If he expresses his intention to withdraw the support given to the Government of the party in writing to the Governor of the State, a Constitutional authority, it would also do not bring down the Government of the party. The said dissent also do not become defection. Only when the expression of such intention is given effect to by either actually voting or abstains from voting on the floor of the House, the Government of the party may fall. It is to meet such a contingency Clause (1)(b) of Paragraph 2 is enacted. That is where dissent becomes defection. If a member while remaining a member of the political party which had set him up as a candidate at the election, votes or abstains from voting contrary to "any direction" issued by the political party to which he belongs incurs disqualification, under para 2(1)(b) of the Tenth Schedule.

46. The language employed in paragraph 2(1)(a) and 2(1)(b) is significant. The Anti Defection Law, i.e., Tenth Schedule was enacted to prevent floor crossing, thereby destabilizing the Government which is duly elected for a term. If a member of the House voluntarily gives up his membership, the object was to prevent him from extending support to the opposition party to form the Government by his vote or if he resigns from his membership, his support is not available for forming the alternative Government by the opposite party. Therefore that is precisely the menace which was sought to be prevented by enacting the Tenth Schedule. Therefore the Parliament took care to see, once such an act happens, he forfeits the right to be a member of the house and therefore instantly he is disqualified of being a member of the House. Once the

act of disqualification occurs, the question of condoning such act or taking him back to the party or on his tendering the apology or expressing his intention to come back to the party would not arise. Such a discretion is not given to a political party. Therefore, if the act falls under paragraph 2(1)(a), his membership becomes void. However, in the case of disqualification being incurred under paragraph 2(1)(b), it is not void. It is voidable at the option of the political party. The political party has been given the discretion to condone such act, i.e., the act of voting or abstain from voting in the House contrary to any directions/whip issued by such party within 15 days from such act of disqualification. Only in the event of the political party not condoning such disqualification, the disqualification become effective. Therefore the intention is very clear. Remaining in the party, if a member of the House expresses his no confidence in the leader of a Legislature Party and if votes against him in a confidence motion to be taken on the floor of the House, the disqualification is not automatic. Such a disqualification can be condoned by a political party.

It underlines the basic premise of democracy, that right to dissent is to be accommodated even in respect of Tenth Schedule which is brought with the avowed object of preventing defection and crossing the floor. Therefore expressing want of confidence in the leader of the political party which has formed the Government cannot be equated to such a member giving up voluntarily the membership of the political party. Such a conduct is outside the scope of paragraph 2(1)(a). Such an act falls within the scope of paragraph 2(1)(b).

47. When a Member of a House expresses his no confidence in the leader of his Legislature Party and if he happens to be the Chief Minister who is heading the Council of Ministers, to the Governor in writing that act by itself would not result in the act of floor crossing. Similarly, if the Governor after taking note of the said expression of no confidence is satisfied that the Chief Minister has lost majority in the House, he may call upon the Chief Minister to prove his majority on the floor of the House. If the Chief Minister on such request fails to establish majority support on the floor of the House, his Ministry would fall. The said act of fall of Ministry or his resignation would not constitute defection under Tenth Schedule. By that act the political party which had formed the Government do not lose its right to form a Government again. After the fall of the Government, it is not as if the Governor either can recommend for the President's rule under Article 356 of the Constitution or call upon the leader of the opposition to form an alternate Government. Before he could embark upon those two options he is excepted to explore the possibility of formation of an alternate Government. He can call upon only that leader who enjoys majority support of the members of the House. It is open to the political party whose Government has fallen on the floor of the House, again to stake a claim before the Governor either with the same leader by producing necessary evidence showing the majority support of the members of the House or put forth its claim to form a Government by electing another leader of the party. Therefore, the stability of the Government of the political party is

not really disturbed. What is disturbed by such an act is the Government of the political party with a particular leader against whom the members of the House of the same political party has no confidence. But, all this would not constitute the Member of the political party to which the Chief Minister belongs, voluntarily vacating the membership of that political party. In order to meet such a situation the Constitution provides for issue of direction to such dissenting members. By issuing such a direction/ whip, those who have expressed their no confidence in the leader of the House, be directed to vote in his favour at the time of voting on the floor of the House. Contrary to that direction the member cannot neither abstain from voting nor vote contrary to such direction. If he does so, he incurs disqualification under Paragraph 2(1)(b) of the Tenth Schedule. In fact, the said provision also provides for such an Act being condoned so that by persuasion or by entering into any understanding, still their support could be cobbled up by the party and, either save the Government before voting or form a fresh Government after such voting, if in the voting the Government fails. The said dissent is a dissent within the party.

48. Therefore, these two grounds which are set out in paragraph 2 of the Tenth Schedule are mutually exclusive. It operates in two different fields. Paragraph 2(1)(a) deals with a Member who voluntarily walks out of the party. Clause 2(1)(b) deals with a person who remains in the party and acts contrary to the directions of the party.

49. When once the member voluntarily gives up his membership of the party, then paragraph 2(1)(b) is not attracted. The condition precedent for application of the said provision is that member against whom any direction issued must be a member of a political party, by which he was set up as a candidate for election as such member. In order to avoid the disqualification under paragraph 2(1)(b) a member may choose to give up his membership of such political party. In order to meet such a situation, paragraph 2(1)(a) is enacted. In either event, it is the political party which is aggrieved by such conduct. However, it is open to the party to condone the conduct contemplated under paragraph 2(1)(b). It is purely a discretion left to them. However, such conduct has to be condoned within 15 days from the date of such voting or abstention. It only shows an opportunity is given to a political party to respect honest dissent, re-think, retrace its steps and take corrective methods, if its members do not agree with the official line of the party. It is a wake up call by the members of the party who are in minority, to the party, not to curb internal democracy, stifle dissent, to see reason, and confirm to the true democratic principles. This is an option available to a member of a House by remaining within the party and fighting against what he perceives as acts pursued by persons in power contrary to the programmes and policies of the political party. In such a fight though the Government headed by a leader falls, if the party still commands majority in the House, the party can form the Government with another leader. To give such an opportunity, the Parliament has advisedly provided for condoning such an act, within 15 days from such voting and abstention, in true spirit of democracy, respecting the wisdom of the elected

representative. The intention is not to drive the dissenting members to the corner and make them desperate, which ultimately lead to floor crossing and leaving the party. The underlying premise is that dissent is the essence of democracy. The same concern is not shown to a person who voluntarily leaves the party. Paragraph 2(1)(a) do not provide for condoning such act. Because in a Parliamentary democracy, the right to dissent is acknowledged. Loyalty to the party is the norm, being based on shared beliefs. To vote against a party is disloyalty. Still it could be condoned. But to join other party, and extending support to the other party, or trying to form a Government with the support of the other party smacks of conspiracy. Therefore, such an act cannot be condoned and therefore once a member voluntarily gives up his membership, to achieve the aforesaid object, then the disqualification incurred by him cannot be condoned. Tenth Schedule is introduced into the Constitution to combat this conduct of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects. It should be an unprincipled defection. Lure of office and money should be the consideration for such defection.

50. The Apex Court while upholding the constitutional validity of the Tenth Schedule, took note of the competing interests of constitutionally stated principles and attempted harmonizing them, in the working of the constitution of which parliamentary democracy is a part, in the case of *Kihoto Hollohan v. Zachillhu and Ors.* (SUPRA) as under-

33. The points raised in the petitions are, indeed, far-reaching and of no small importance- invoking the "sense of relevance of constitutionally stated principles to unfamiliar settings". On the one hand there is the real and imminent threat to the very fabric of Indian democracy posed by certain levels of political behaviour conspicuous by their utter and total disregard of well recognised political proprieties and morality. These trends tend to degrade the tone of political life and, in their wider propensities, are dangerous to and undermine the very survival of the cherished values of democracy. There is the legislative determination through experimental constitutional processes to combat that evil.

34. On the other hand, there are, as in all political and economic experimentations, certain side effects and fall out which might affect and hurt even honest dissenters and conscientious objectors. These are the usual plus and minus of all areas of experimental legislation. In these areas the distinction between what is constitutionally permissible and what is outside it is marked by a "hazy gray line" and it is the Court's duty to identify, "darken and deepen " the demarcating line of constitutionality - a task in which some element of Judges' own perceptions of the constitutional ideals inevitably participate. There is no single litmus test of constitutionality. Any suggested sure decisive test, might after all furnish a "transitory delusion of certitude " where the "complexities of the strands in the web of constitutionality which the Judge must alone disentangle" do not lend themselves to easy and sure formulations one way or

the other. It is here that it becomes difficult to refute the inevitable legislative element in all constitutional adjudications.

51. The parliament was also conscious of this problem which they have to encounter. Therefore, though they were anxious to prevent the imminent threat to the very fabric of Indian Democracy posed by political behaviour by their utter and total disregard of well recognized proprieties and moralities, they did not want to stifle the honest dissenters and conscious objectors. After all this Tenth Schedule is the legislative determination through experimental constitutional process to combat that evil. Therefore, they have adopted middle path. Debate, discussion and persuasion are the means and essence of the democratic process. During the debates the Members put forward different points of view. The members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter. Not unoften the views expressed by the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of Parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines. When Clause (b) of sub para (1) of paragraph 2 of the Tenth Schedule gives effect to the principle that loyalty to the party is the norm, being based on shared beliefs and to vote against a party is disloyalty and imposes a disqualification on a member who votes or abstain from voting contrary to any directions issued by the political party, the Constitution, however, recognizes two exceptions. One when the Member obtains from the political party with prior permission to vote or abstain from voting and the other when the Member has voted without obtaining such permission but his action has been condoned by the political party. This provision itself accommodates the possibility that there may be occasions when a Member may vote or abstain from voting contrary to the direction of the party to which he belongs. This, in itself again, may provide a clue to the proper understanding and construction of the expression "any direction" in Clause (b) of Paragraph 2(1) - whether really all directions or whips from the party entail the statutory consequences or whether having regard to the extraordinary nature and sweep of the power and the very serious consequences that flow including the extreme penalty of disqualification, the expression should be given a meaning confining its operation to the contexts indicated by the objects and purposes of the Tenth Schedule.

52. In this regard it is necessary to notice the inter-relationship between the constituency and its elected representative. It is the avowed endeavour of the latter to fulfil the expectations of his voters. Occasionally, this might conflict with his political obligations to the political party sponsoring him which expects and exacts in its own way loyalty to it. This duality of capacity and functions may pose certain problems in his functioning as a member of the House. His function as a Member could be broadly classified into two kinds. When a voter at a

general election puts his cross against the name of the candidate he is most often consciously performing two functions. He is seeking to return a particular person to the House. Secondly, seeking to return to power as the Government of the Group of individuals of the same party as that particular person. The voter votes for a representative and for a Government. When a candidate is elected as a Member of the House, he reflects those two aspirations of a voter. Therefore, he must listen to their grievances and often seek to persuade those in authority to provide remedies. He must have no regard to the political leanings of his constituents for he represents those who voted against him or who did not vote at all, as much as those who voted for him. It is because, after the elections he will be the representative of the Constituency consisting of voters irrespective of their party affiliation. So far as his own personal views on freedom of conscience are concerned, there may be exceptional occasions when the elected representative finds himself compelled to consider more closely how he should act. He may feel that the policy of his party whether it is in office or in opposition, on a particular matter is not one of which he approves. On many occasions, he may support the party despite his disapproval. But occasionally the strength of his feeling will be such that he is obliged to express his opposition either by speaking or by abstaining on a vote or even by voting with the other side. Thirdly, he may find his party after obtaining majority in the House and forming the Government, the leaders who are vested with the power to run the Government, may forget the electoral promises, party's programs and policies and act contrary to the same. With power, money and advantages attached to the office they hold, they may try to stifle the honest dissent and conscious objectors, who are concerned about the party, as they are conscious that they have to again go to the voters after the term of the House seeking votes. In such circumstances, if within the Legislature Party of the party, they are unable to dislodge the leader who is well entrenched in the office, who is continuing in office by manipulations and who has become a despot, if they attempt to dislodge him from his seat, would it run counter to the object of the Tenth Schedule. The people give mandate to the party and not to a leader of the party. Therefore, a person who gets elected on a party ticket should be loyal to the party and loyal to the programs and policies of that party. Loyalty to the party is not synonyms with loyalty to the leader of the party Being loyal to the party, in the interest of the party and in implementing the policies and programs of the party on the basis of which the party has been given the mandate to form the Government, if the leader of the party is acting contrary to such mandate, they should have a right to dislodge such leader of the party and elect another leader. Dislodging a leader of the party and seeking for a new leader of the party is not what is sought to be prevented by the Tenth Schedule. It does not amount to defection, floor crossing or conspiracy. Recognising this important aspect of Parliamentary Democracy, that "dissent is the essence of Democracy" which is inherent in such Parliamentary Democracy, law recognizes that collective dissent is no disqualification under paragraph 2(1)(b). Therefore, it recognizes a split or merger and it would not constitute a defection as is clear from paragraph 4 of

the Tenth Schedule, where not only the leader of the political party of which those members belong is dislodged, consequently the Government formed by such leader is thrown out of office, they are permitted to form a Government of their own, in coalition with the opposite groups of the House.

53. Therefore, to constitute a defection a Member should voluntarily give up his membership of the party from which he is elected. Further, it must be with an intention to join another political party or form a new party with the lure of office or money. It is that act which is sought to be forbidden by enacting paragraph 2(1)(a). What is sought to be prevented is an unprincipled defection which is a political and social evil. The anti defection law seeks to recognise the practical need to place the proprieties of political and personal conduct whose awkward erosion and grotesque manifestations have been the bane of the times. However, if the act of a Member is within the parameters of the Constitution and the object to be achieved is legitimate, the means adopted to that end are appropriate, it is constitutional. A Member petitioning to the Governor a Constitutional functionary expressing his intention to withdraw his support to the Chief Minister of the day who is heading the Government of the party in pursuance of his mission in fighting corruption in the Government cannot be construed as unconstitutional. It is done within the framework of the Constitution. Similarly, if a Member who is also a Member of the Government brings to the notice of the Governor, the Government of the day headed by the Chief Minister of which he is a part, is unable to carry on the Government of the State in accordance with the provisions of the Constitution, it does not amount to his requesting the Governor to dissolve the House and impose President's rule. Dissolution of the House and imposition of the President's rule can happen only if the President of India on receipt of a report from the Governor or otherwise is satisfied that such a situation has arisen. When it is brought to the notice of the Governor, that the Chief Minister heading the Council of Ministers of the day, do not enjoy the confidence of the majority of the Members of the House, an obligation is cast on the Governor to take prompt steps to find out whether the Chief Minister enjoys the majority support in the House. If he requests the Chief Minister to prove his majority again it is not an unconstitutional act.

54. The Apex Court in the case of S.R. Bommai and others Vs. Union of India and others etc. etc., has considered what the Governor is expected to do when the support of the Ministry is withdrawn by some legislators. It is held that, the proper course to be adopted by the Governor for testing the strength of the Ministry is holding the test on the floor of the House. That alone is the constitutionally ordained forum for seeking openly and objectively the claims and counter-claims in that behalf. The assessment of the strength of the Ministry is not a matter of private opinion of any individual, be he the Governor or the President. It is capable of being demonstrated and ascertained publicly in the House. Private assessment is an anathema to the democratic principle, apart from being open to serious objections of personal malafides. The Constitution does not create an obligation that the political party forming the ministry should

necessarily have a majority in the Legislature. Minority Governments are not unknown. What is necessary is that, that Government should enjoy the confidence of the House. Whether the Council of Ministers have lost the confidence of the House is not a matter to be determined by the Governor or for that matter anywhere else except the floor of the House. The House is the place where the democracy is in action. It is not for the Governor to determine the said question on his own or on his own verification. This is not a matter within his subjective satisfaction. It is an objective fact capable of being established on the floor of the House. Exceptional and rare situations may arise where because of all pervading atmosphere of violence or other extraordinary reasons, it may not be possible for the members of the Assembly to express their opinion freely. The Governor should be left free to deal with the situation according to his best judgment keeping in view the Constitution and the conventions of the Parliamentary system of Government. The Governor should be alive to the situation but he would be the sole Judge on the question whether or not conditions are conducive to resort to floor test. Therefore, when some legislators withdrew support to the Ministry and the Chief Minister in the absence of any exceptional and rare situation, the Governor is under a constitutional obligation to ask the Chief Minister to face the assembly and prove his majority within the shortest possible time. As far as possible, the verdict has to majority support claimed by the Chief Minister and his Council of Ministers should be left to the legislator and, therefore, if the Governor asks the Chief Minister to demonstrate his majority on the House on a representation being made by the legislators withdrawing their support and expressing their lack of confidence in the Chief Minister and the Ministry headed by them, neither those legislators nor the Governor committed any illegality and the conduct of such legislators cannot be construed as an act of defection under the provisions of the Tenth Schedule of the Constitution. It is a constitutional remedy and for pursuing a constitutional remedy, a person cannot be penalized under the Tenth Schedule. That is not the object of enacting Tenth Schedule.

55. The question as to when a member of a house belonging to a political party can be said to have given up his membership of such political party has been considered by the Apex Court in the following decisions-

In Dr. Mahachandra Prasad Singh's case, the Petitioner was elected as a member of the Bihar Legislative Council from Tirhut Graduate Constituency as a candidate of Indian National Congress. He contested from Maharajganj Parliamentary Constituency as an independent candidate. By contesting the Parliamentary election as an independent candidate, he voluntarily gave up the membership of the Congress Party. Therefore it was held that he had incurred disqualification within the meaning of paragraph 2 (1)(a) of the Tenth Schedule. Therefore it is a case of a member of a political party who was a member of a House, contesting the Parliamentary election as an independent candidate. Therefore, he ceases to be a member of the political party which had set him up in the election to the Graduates Constituency of the Bihar Legislative Council. The intention was clear.

He voluntarily gave up membership of the political party and contesting as independent. Even in the absence of any formal resignation letter, it amounts to voluntary giving up his membership of the political party to which he belongs.

56. In G. VISWNATHAN's case the Appellants were members of the Tamil Nadu Legislative Assembly elected in the General Elections held in 1991 by All India Anna Dravida Munnetra Khazhagam (for short "AIADMK"), which had set them up as its candidates. Both of them were expelled from AIADMK party on 08.01.1994 for anti party activities. Thereafter, they joined another (new) party called Marumalarchi Dravida Munnetra Khazhagam (for short, MDMK). They were treated as unattached members of the Assembly by the Speaker. Therefore it was contended that as they were expelled from the AIADMK and they did not incur disqualification under paragraph 2(1)(a) of the Tenth Schedule. Repelling the said contention, the Apex Court held that if a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise, he voluntarily gives up his membership of the political party and incurs the disqualification. Therefore, when he joined another political party its presumed that he has given up the membership of the original political party even if he is expelled by such a political party.

57. In Ravi S Naik v. Union Of India and Ors. (Supra), Ravi Naik did not dispute that he has given up his membership of his original political party but he claimed that there has been split in the said party. It is in that context as the High Court did not accept the case of split, it held that Ravi Naik and others had incurred disqualification under paragraph 2(1)(a), i.e., voluntarily giving up the membership of the original party. When the Supreme Court held that the split set up by Ravi Naik is proved from the material on record, then paragraph 2(1)(a) is not attracted by virtue of paragraph 4.

58. In the case of Rajendra Singh Rana And Ors. v. Swami Prasad Maurya and Ors. (Supra) 13 members belonging to Bahujan Samaj Party after their leader recommended for the dissolution of the Assembly, the leader of the Samajwadi Party staked his claim before the Governor for forming the Government. 13 members of the Bahujan Samaj Party met the Governor and requested him to invite the leader of the Samajwadi Party to form the Government. It is in this context it was held that the act of giving letter requesting the Governor to call upon the leader of the other side to form the Government itself would amount to act of voluntarily giving up the membership of the party on whose ticket the said members had got elected. The conduct of meeting the Governor accompanied by the General Secretary of the Samajwadi Party, the opposition party, submission of letters, requesting the Governor to invite the leader of that opposition party to form the Government as against the advise of the Chief Minister belonging to their original party to dissolve the assembly and irresistible inference arises that the 13 members have clearly given up their membership of the BSP. No further

evidence or enquiry is needed to find that that their action comes within para 2(1) (a) of the Tenth Schedule. Therefore 13 members stands disqualified with effect from 27.08.2003. 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 party within the meaning of para 2 of the Tenth Schedule.

59. In JAGJIT SINGH's case, the Supreme Court was dealing with a case of a Member of a House belonging to a political party namely. Democratic Dal of Haryana and Republican Party of India. They were the lone Member representing the party in the Assembly. Both of them decided to cast a split bypassing an unanimous resolution and form a new political party. The question was whether the said split is valid and whether the rigorous of paragraph 2(1)(a) is not attracted to them. As in those cases, those two Members leaving the political party is not in dispute, if the stipulation pleaded by them was to be valid it would not amount to defection because of paragraph 3. Therefore, the said judgment rendered in that context is of no assistance in this case. Similarly, four independents were accused of joining the Indian National Congress to enable them to form the Government. That is a case which falls under paragraph 2(2) and, therefore, it also has no application.

60. Therefore, from the aforesaid decisions it is clear that an act of expressing no confidence in one of the leader of the political or in the leader of the legislative party do not amount to his voluntarily giving up his membership of the political party. His act of expressing no confidence in the Government formed by the party with a particular leader as the Chief Minister would also not amount to a voluntary act of giving up the membership of the political party. Deserting the leader, deserting the Government, is not synonyms with deserting the party. If a Minister resigns from the ministry it does not amount to defection. What constitutes defection is deserting the party. Parliament in its wisdom, has consciously used the word "Political Party" in paragraph 2, after clearly defining the meaning of "Political Party". There is no ambiguity. Therefore, there is no scope for interpretation of the word "Political Party" used in the paragraph.

61. In order to attract disqualification under paragraph 2(1)(a), a member of a House belonging to any political party has to voluntarily give up his membership of such political party on his own volition join another political party. It should be a conscious Act. There should be an intention to sever his connection with the political party which set him up as a candidate for election as such member. He should lose his membership of such political party. The giving up of the membership of the political party may happen in several ways. It need not be in writing. It may be oral. Even by conduct and circumstances, the intention could be gathered. But it should be unequivocal and voluntary. One such mode well understood is by way of tendering a resignation letter. But, that is not the only mode recognised. If a member of his own volition joins another political party, he must be taken to have acquired the membership of another political party by

abandoning the political party to which he belonged. Yet another instance is when he forms a new political party and claims to be a leader or member of that party, thereby he abandons the original political party. Being a member of a House belonging to a political party, contests for election as an independent or as a candidate of another political party, he ceases to be a member of the original political party. He joins hands with leader of the other political party and extends his support in writing, in forming the Government under his leadership before the Governor, it amounts to his voluntarily giving up membership of the original political party. These instances are only illustrative and not exhaustive. In order to attract the disqualification under this provision, a member of the House after the election changes his affiliation and leaves the political party which had set him up as a candidate at the election, then it amounts to giving up his membership of the legislature. The said giving up of membership should be established by positive, reliable and unequivocal evidence. The question of fact that a Member has voluntarily given up the membership of his original political party for all intent and purpose though not formal so as to incur disqualification provided in paragraph 2(1)(a) is to be determined on appreciation of the material on record.

62. Dissent is not defection. Tenth Schedule recognizes dissent but prohibits defection. Both these words have definite connotation in law. The distinction between what is constitutionally permissible and what is outside it, is marked by a hazy gray line. There is no single litmus test of constitutionality. All distinctions of law - even constitutional law - are, in the ultimate analysis, "matter of degree". It is only when dissent becomes defection the Tenth Schedule is attracted. At what point of time the dissent becomes defection is also provided in the Tenth Schedule. When dividing line between dissent and defection is very narrow and thin, and Tenth Schedule provides for such variant, keeping in mind the object with which the Tenth Schedule is enacted and other constitutional rights, it is pre-eminently an area where Judges should defer to legislative perception, and give literal meaning to the words used in the Tenth Schedule, without placing liberal interpretation of those provisions. It is to be borne in mind the serious consequences of upholding disqualification. The Member of the House would be disqualified for being a Member of the House for the remaining period. It is penal in nature. It also results in civil consequences. It is also to be noticed that the object of Tenth Schedule is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundation of our democracy. After the Tenth Schedule, the defector cannot hold any office at all, on the contrary he loses his membership of the House. The object with which the Tenth Schedule is enacted is achieved. Therefore, the Tenth Schedule should not be allowed to be misused, to suppress honest dissent, and any interpretation the Courts place on this provision, should not aid such mischief.

63. Therefore, either expressing want of confidence in the Chief Minister, or withdrawing their support which was earlier given to him or demanding change

of leadership of the legislature party or threatening to vote against him on the floor of the House or complaining to the Governor that the Government of the State cannot be carried on in accordance with the provisions of the Constitution or the Governor asking the Chief Minister to prove his majority on the floor of the House, do not amount to unconstitutional act and the person who triggered this action cannot be called a defector. These actions do not constitute an act of defection nor on that account a member of the House can be disqualified under paragraph 2 of the Tenth Schedule. These acts are strictly within the four corners of the Constitution, and cannot constitute disqualification under Paragraph 2 of the Tenth Schedule.

ON FACTS

64. In the instant case, the Petitioners who have been disqualified by the impugned order by the Speaker, were all members of the Bhartiya Janata Party, who were elected as members of the Legislative Assembly of Karnataka in the elections held in 2008. The complaint against them is, they gave a letter to the Governor on 06.10.2010 informing him that a situation has arisen that the Governance of the State cannot be carried on in accordance with the provisions of the Constitution and Sri. B.S. Yeddiyurappa as Chief Minister has forfeited the confidence of the people. In the interest of the State and the people of Karnataka, they expressed lack of confidence in the Government headed by Sri. B.S. Yeddiyurappa. Therefore they withdrew support to the Government headed by Sri. B.S. Yeddiyurappa. The Governor acting on such letter, on the same day addressed a letter to the Chief Minister, calling upon him to prove his majority on the floor of the House by 5 P.M. on 12.10.2010. It is thereafter Sri. B.S. Yeddiyurappa filed a petition under Rule 6 as set out above setting out the facts. His grievance was the support which was given to him earlier to form the Government has been withdrawn by these Petitioners in the absence of any resolution of the Legislature Party and any decision of the party. Therefore, they have clearly violated Tenth Schedule of the Constitution of India. Therefore they are eligible for disqualification of the membership. He referred to few decisions of the Courts where actions have been taken on members. On that basis it was contended that due to statements made by the Petitioners before the Press and Electronic media and as per the gist of the letter sent by the Hon"ble Governor, it proves the violation of Tenth Schedule of the Constitution.

65. Therefore it is clear from the petition that the Chief Minister was not sure which provision of the Tenth Schedule is attracted to the facts of the case. He left it to the decision of the Speaker. When the Speaker sent notice to these Petitioners, according to him, the aforesaid conduct amounts to violation of paragraph 2(1)(a) of the Tenth Schedule of the Constitution In view of the specific provision mentioned in the show cause notice, the Petitioners understood that their case falls under paragraph 2(1)(a) of the Tenth Schedule. After raising several contentions, meeting the ground in paragraph 2(1)(a), they categorically stated in their statement of objections in paragraphs 8 and 10 as under:

I have not at all supported, joined or staked claim to form Government with any other political party. There is no such allegation in the show cause notice either. Therefore, my conduct does not amount to defection and does not attract the provisions of Schedule X of the Constitution of India, which only apply to "defection" which means "floor crossing" or "dal badal", i.e., change of party.

My letter submitted to H.E. Governor of Karnataka of withdrawing the support from the Government headed by Shri B.S. Yeddiyurappa as Chief Minister of the State is an act of an honest worker of the BJP Party and a member of the Legislative Assembly to salvage the image and reputation of the BJP which set me up as a candidate for election for which I am grateful. Nowhere in the letter I have stated that I was not to continue as member of the Legislative party of the BJP or the BJP as such. In fact my letter is aimed at cleansing the image of the party by getting rid of Shri B.S. Yeddiyurappa as Chief Minister of the State who has been acting as a corrupt despot in violation of the Constitution of India and contrary to the interests of the people of the State. If allowed to continue, he will completely destroy the credibility of the BJP not only in the State of Karnataka but in the entire nation. My act of withdrawal of support is from the present Council of Ministers headed by Shri B.S. Yeddiyurappa as Chief Minister of the State. I continue to support BJP and will continue to be part of the BJP or any government formed by BJP which is headed by any leader other than Shri B.S. Yeddiyurappa as Chief Minister of the State. As such, my act, by no stretch of imagination can be taken to be covered by the provisions contained in Schedule X to the Constitution of India which apply only to a conduct called defection which in common parlance means "crossing the floor" or "dal badal", i.e., change of party.I make it very clear and my letter addressed to H.E. Governor of Karnataka, which Shri B.S. Yeddiyurappa as Chief Minister of the State, has made the basis for seeking my disqualification, nowhere states that I am leaving the party; on the contrary the said letter only withdraws support from the Government headed by Shri B.S. Yeddiyurappa as Chief Minister of the State and I make it clear and reiterate that I am always a disciplined soldier of the BJP and will continue to support any Government headed by a clean and efficient person who can govern the people of Karnataka according to the Constitution of India and provide good governance to the people of Karnataka there is no dearth of such leaders in BJP. It is only to save the party and the Government and to ensure that the people of Karnataka get rid of a thoroughly corrupt Chief Minister of the State namely Shri B.S. Yeddiyurappa that I have submitted the letter to H.E. Governor of Karnataka.

Therefore the question for consideration before the Speaker was whether their tendering a letter to the Governor and stating that a situation has arisen that the Governance of the State cannot be carried on in accordance with the provisions of the Constitution and Sri. B.S. Yeddiyurappa as Chief Minister has forfeited the confidence of people and their expression of lack of confidence in the Government headed by Sri. B.S. Yeddiyurappa and their act of withdrawing their support to the Government headed by Sri. B.S. Yeddiyurappa constitutes these

members voluntarily giving up their membership of the Bharathiya Janata Party.

66. In fact, in the petition filed, there is no plea that these Petitioners have voluntarily given up the membership of the Bharathiya Janata Party. In fact, Rule 6 (5) of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules 1986, clearly provides that every petition shall contain a concise statement of the material facts on which the Petitioner relies and it shall be accompanied by the copies of the documentary evidence if any, on which the Petitioner relies. If the petition does not comply with the requirement of Rule 6, the Speaker shall dismiss the petition and intimate the Petitioner accordingly as contemplated under Rule 7(2). When the petition did not even aver that the Petitioners have voluntarily given up the membership of the Bharatiya Janata Party, the petition could not have been entertained by the Speaker. In the complaint, or the other material placed before the Speaker, it is not the case of the applicant that these Petitioners have joined any other political party in the State. It is not his case that they have accepted any leader of such other political party as their leader nor is it his case that by such joining hands with any other political party or leader of such other political party, they are attempting to form an alternate Government. There is no plea of floor crossing. Therefore, it is clear that in the absence of material facts constituting a case of defection under paragraph 2(1)(a) of the Tenth Schedule, the Speaker ought not to have entertained the petition at all.

67. When the Petitioners understood the averments in the complaint or the application as a request for disqualification on the ground stipulated in paragraph 2(1)(a) of the Tenth Schedule, they have filed their statement of objections in respect of the said ground. As set out above, the Petitioners have asserted in their statement of objections that no where in the letter given by them to the Governor they have stated that they do not want to continue as members of the Legislative Party of the Bharatiya Janata Party as such. They continue to support Bharatiya Janata Party and will continue to be part of the Bharatiya Janata Party or any Government formed by Bharatiya Janata Party which is headed by any leader other than Sri. B.S. Yeddiyurappa as the Chief Minister of the State. In the said letter no where they have stated that they are leaving the party. They have made it clear that they are disciplined soldiers of the Bharatiya Janata Party and will continue to support any Government headed by clean, efficient person who can govern the people of Karnataka according to the Constitution of India and provide good governance to the people of Karnataka. There is no dearth for such leaders in Bharatiya Janata Party. It is only to save the party and the Government and to ensure that the people of Karnataka get rid of a thoroughly corrupt Chief Minister of the State, they have submitted the letter to the Governor. They have asserted that they have not at all supported, joined or stake claim to form Government with any other political party.

68. The said assertion disclose that it is purely an internal fight in the party fought publicly. The dissent within the party has come out in the open. It is not a

case of unprincipled and unethical political defection. Expression of no confidence in the leader of the Legislature Party outside the House, would not bring down the Government. It is only when the said expression is given effect to inside the House at the time of voting it will lead to serious consequences. Therefore, the Parliament advisedly incorporated Clause (1)(b) of paragraph 2 of Tenth Schedule, to meet such a contingency. Expression of no confidence would not constitute disqualification under Clause (1)(a) of paragraph 2, as it exclusively deals with an altogether different situation. Expression of no confidence in the leader of the Legislature Party would not constitute an act of a member voluntarily giving up membership of political party. Therefore paragraph 2(1)(a) is not attracted to the facts of this case. Unfortunately, in the entire order of the Speaker, there is no reference to these assertions nor as he given any reasons for not accepting their stand, when it is not denied by the complainant by filing any reply.

69. The act of disqualification complained of is to be anterior to the date of the petition complaining of such disqualification. Then only it can be said that a cause of action arises to approach the Speaker to seek disqualification. Therefore, in order to succeed in such a claim, the person who is approaching the Speaker has to justify that as on the date he presented the petition before the Speaker, this act of disqualification had occurred. It is in this contest it is useful to refer the judgment of the Constitution Bench of the Apex Court in the case of *Rajendra Singh Rana And Ors. v. Swami Prasad Maurya and Ors.* (Supra).

34. As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntarily giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision *ex post facto*. The fact that in terms of para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law. Such an

interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (sic it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the Learned Chief Justice has called the snowballing effect, will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the legislature party is alleged to have been voluntarily given up.

70. Therefore the snow balling effect after the alleged disqualification will have to be ignored and the question will have to be decided with reference to the date on which the membership of the Legislature party is alleged to have been voluntarily given up, i.e., in this case, on 06.10.2010. Except relying on the letter written by the Petitioners to the Hon''ble Governor, absolutely no material is placed before the Speaker in support of the contention that these Petitioners have voluntarily given up the membership of the House. All the material that is produced are for the period subsequent to 06.10.2010.

71. In the impugned order in coming to the conclusion that the Petitioners have by their conduct voluntarily given up their membership of the party, the Speaker has taken into consideration the following facts as is clear from his observations in the impugned order-

The applicant has stated that after submitting the said letter to the Governor the Respondents have gone from Karnataka to Goa and other places and have declared that they are a separate group and that there are together and that they have withdrawn their support to the Government. The applicant has produced press releases and the statements issued to electronic media and the same is not disputed by the Respondents.

Personally I have also observed that the Respondents have been issuing such statements. The Respondents have not denied arguments of the applicant that the Respondents have negotiated with another party of the State JD(S), its members and leader Sri H.D. Kumar a Swamy regarding formation of another Government and that thereafter they have stated that there is no question of withdrawing the letter of withdrawal. In support of this, the reports of media are also observed. In the affidavit filed by the State President of Bharatiya Janata Party, it is stated that the Respondents have gone to Chennai, Goa and other places in group, were seen along with Sri H.D. Kumar a Swamy, the State President of JD(S), Karnataka and that they have stated that they would vote against the Government in the confidence vote. In the affidavit it is made clear that the Respondents have appeared along with the leader of JD(S) Sri Jameer Ahmed Khan and that they have moved from place to place. The Respondents have not denied the same. In the affidavit filed by the State President of Bharatiya Janata Party, it is stated that the Respondents have voluntarily given up the membership of the party and that therefore they are disqualified under Schedule 10 of the Constitution.

In this situation, it is noticed from the statement of these two Respondents that the other Respondents decided to support the Government that may be formed by Sri H.D. Kumara Swamy who is the leader of JD(S) and they have acted against the Government and the party from which they are elected. This further buttresses that the Respondents left the party by conduct. In view of all the reasons and factual background, I am convinced that the Respondents 2 to 11 and 13 are disqualified from their respective posts of MLA under para 2(a) of Tenth Schedule of the Constitution and therefore my answer to this issue is in the affirmative.

72. In view of the aforesaid judgment, the Speaker ought not to have looked into that material. That could not have been made the basis for an order of disqualification. Therefore it is a case of the impugned order being based on subsequent event, subsequent to the alleged act of disqualification and subsequent to the date of filing of the petition before the Speaker. If that material is ignored, there is no material on record to substantiate the plea. Therefore, it is obvious that, all the factors which are taken note of by the Speaker in coming to the conclusion that the Petitioners have voluntarily given up their membership of the political party to which they belong is based on evidence which ought not to have been taken note of by the Speaker as held by the Apex Court in the aforesaid judgment.

73. Even otherwise, a careful reading of the aforesaid material do not disclose the said facts as set out by the Speaker. The said facts are not proved. They are not put to the Petitioners. The Speaker has not taken into consideration the specific stand of the Petitioners in the statement of objections. In the entire order there is no reference to the same, thus there is total lack of application of mind in so far as the defence of the Petitioners are concerned.

74. It is not disputed by either of the parties the course of proceedings before the Speaker. On 6.10.2010 the Petitioners gave a letter to the Governor withdrawing their support. On the same day, the Governor addressed a letter to the Chief Minister calling upon him to prove his majority on the floor of the House on or before 5 PM on 12.10.2010. The Chief Minister expressed his desire to have the test on the floor on 11.10.2010. After that is conceded, instead of gathering support of the Petitioners by persuasion, discussion, trying to redress their grievances, which are the democratic path well recognized in such a situation by a duly elected leader in a democratic process, he chose the path of confrontation, and to stifle the voice of dissent. He chose the path of getting them disqualified from the membership of the House. He had the option of getting a whip issued to them to vote in his favour on the floor of the House, which is the constitutionally recognized mode. However, he chose to file a petition under Rule 6 of the Rules before the Speaker for disqualification of the Petitioners. Notice was ordered to the Petitioners fixing their date for appearance on 9.10.2010 at 5 PM. On 10.10.2010 the said hearing was preponed to 3 PM. Petitioners filed their interim reply, sought for time, time was refused. Arguments

were heard, and it was submitted that it was concluded around 7 PM. The impugned order is passed on the same day i.e., within five hours from the conclusion of the hearing. It appears that the said order was published at 5 AM on 11.10.2010. The house had been convened at 10 AM on 11.10.2010 to consider the motion of confidence. The impugned order runs to 20 pages. It is typed both in Kannada and English. It refers to the following judgments of the Apex Court: (1) The Bengal Immunity Company Limited Vs. The State of Bihar and Others, ; (2) Nepc Micon Limited And Ors. v. Magma Leasing Limited 1999 SCC 524; (3) Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, ; (4) Jagjitsingh v. State Of Haryana AIR 2007 SCW 158. It also refers to the passage of Lord Denning, L J, quoted with approval in the case of International Ore And Fertilizers (India) Limited v. ESI Corporation. From a perusal of the impugned order, it is difficult to believe that the impugned order was prepared within 5 hours of the conclusion of the arguments.

75. Be that as it may, the underlining premise in declaring an act as defection as forbidden is that lure of office or money. In the instant case 19 persons, i.e, 11 Petitioners and 5 independents gave representation to the Governor withdrawing the support. Of them 7 were members of the Cabinet of Sri. B.S. Yeddiyurappa. The effect of such representation and withdrawal of the support if it had been carried through, they would have lost their Ministership. Four amongst 11 Petitioners in this case are the Ministers. If they had taken that extreme step which would have cost them their Ministerial berth in the Cabinet, can it be said that, lure of office or money is the object behind such withdrawal of support. Secondly, when they have no intention of joining the opposite party, the question of anybody luring them with office or money also do not arise. In fact, that was the position prior to the Tenth Schedule. After the enactment of Tenth Schedule to the Constitution, the question of any person who is elected on a party ticket joining another party would not arise. If he joins such a party, then he incurs disqualification and loses the membership of the House and such a person cannot become the Minister in the Ministry to be formed by the opposite party. Therefore the said act of withdrawing the support cannot be construed as an act of defection.

76. Further, in the statement of objections which is filed they have clearly set out the reasons for such extreme action on their part. The reason given is, a very high constitutional functionary like the Karnataka Lokayukta who is a former Supreme Court Judge, submitted his resignation on 2nd July 2010 in disgust by openly observing dis-satisfaction on account of not only the Government not assisting the Lokayukta in preventing corruption in the State but was shielding the corrupt and was promoting corruption. It is only on persuasion of the top leaders of the party at the Centre, he withdrew his resignation. The said act shocked the conscious of the people of the entire State who felt a sense of outrage. It brought shame to the BJP which had come to power on promise of providing clean administration.

77. Secondly, a series of land de-notification scams in and around Karnataka have surfaced involving Sri. B.S. Yeddiyurappa and his family members which have again sullied and shamed the image of BJP which had made it extremely difficult for them to face the people of Karnataka. News paper reports and articles based on cogent documentary evidence were published in the print media and the electronic media showcasing the documentary records of the Government how fraudulently Sri. B.S. Yeddiyurappa has acted illegally and defied all norms of constitutional governance to bestow benefits on his own family and on others for consideration which are nothing but extraneous in nature. Newspaper and media reports were also enclosed to substantiate the said contention. It is in these circumstances when after the expiry of the period of the House they have to face the public again, they have to answer the public about their conduct being part of the Ministry headed by Sri. B.S. Yeddiyurappa or having extended their support in the formation of the Government, it is in that context as promised in their manifesto to give a clean, corrupt free administration in the State, they have Med in their effort to dislodge the Chief Minister in the party forum, they have resorted to this constitutional mode. It is in those circumstances, can it be said that by such act of withdrawing the support they have incurred disqualification under paragraph 2(1)(a) as held by the Speaker. Does the Tenth Schedule gives immunity to such acts? Is it the object of enacting Tenth Schedule? Is it not a case of abuse of Tenth Schedule? Can the Tenth Schedule be used to stifle the voice and fight against corruption, which is yet another social evil which is eating into the fabric of democracy in the country? These are the questions which arose for consideration before the Speaker. None of these things were adverted to in the impugned order by the Speaker. There is no application of mind in respect of these material facts which constitutes the defence of the Petitioners. His approach is one sided.

78. The Chief Minister gave the complaint against 13 members. It is stated in the impugned order that Sri M.P. Renukacharya and Sri Narasimha Nayak stated that they are aware that a letter dated 6.10.2010 consisting of their signatures is submitted to the Governor. However, they stated that they do not have the intention of withdrawing support given by them to the Government. They have full confidence in the Government headed by the applicant. When they were in Chennai and Goa, other Respondents have taken a decision that they would support any Government that may be formed as per the order of Sri H.D. Kumara Swamy of JD(S) stating that we will work in consortium and bring down the Government. They opposed the same. Later they have come out of the same and given a statement and expressed their support to the Government and prayed for withdrawal of any proposed action against them. Accepting the said contention of those two persons, the Speaker held they are not disqualified in the Tenth Schedule of the Constitution. His reasoning reads as under: -

All the Respondents have stated before the Governor that they would withdraw the support, but in later days the 1st Respondent Sri M.P. Renukacharya and the 12th Respondent Sri Narasimha Nayak (Raju Gowda) have not done any act with

an intention to withdraw the support. On the contrary, they have stated that such a letter is given due to pressure from others and have expressed their support to the party and the Government and have declared that they would be faithful to the leader. The same is confirmed by the President of the party Sri K.S. Eswarappa in his letter. In view of the said reason, in my opinion, they are not disqualified in Tenth Schedule of the Constitution. Further, today they have appeared through their advocates and reiterated their support to the party and Government. Therefore, I am of the view that they are not disqualified.

79. From the aforesaid facts it is clear those two persons also have signed the representation given to the Government. If the said representation according to the Speaker constitute an act of a Member voluntarily giving up the membership of a political party and the case falls under Paragraph 2(1)(a) the disqualification is automatic. Membership becomes void. The question of those members retracing their steps and reaffirming the confidence in the Chief Minister and the Party President confirming the same on a subsequent date is of no consequence. As is clear from the scheme of paragraph 2, there is no scope for condoning such an act as in the case of a disqualification arising under paragraph 2(1)(b) of the Tenth Schedule. Therefore, it shows the same yardstick is not applied.

80. A statutory power or a constitutional power whether it be administrative or quasi-judicial, although conferred in wide terms has certain implied limitations. The person on whom power is conferred must exercise it in good faith for furtherance of the object of the statute; he must not proceed upon a misconstruction of the statute; he should take into account the matter relevant for the exercise of power; he must not be influenced by irrelevant matters and he must not act perversely. A statutory authority cannot travel beyond the power conferred and any action without power has no legal validity which is ab initio void.

POSITION OF THE SPEAKER

81. It is now well settled by the Constitution Bench judgment of the Apex Court in Kihoto Hollohan's case, the Speaker while exercising powers and discharging functions under the Tenth Schedule act as a Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review. Having regard to the constitutional intentment and the status of the repository of the adjudicatory power, no quia timet actions are permissible. 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. Once a person is elected Speaker, he is expected to be above parties, above politics. In other words, he belongs to all the members or belongs to none. He hold the

scales of justice evenly irrespective of party or person, though no one expects that he will do absolute justice in all matters; because, as a human being he has his human drawbacks and shortcomings. However, everybody knows that he will intentionally do no injustice or show partiality. Such a person is naturally held in respect by all. The Speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's freedom and liberty. Therefore, it is right that that should be an honoured position, a free position and should be occupied always by men of outstanding ability and impartiality. Within the walls of the House his authority is supreme. This authority is based on the Speaker's absolute and unvarying impartiality—the main feature of his office, the law of its life. This obligation of impartiality appears in the constitutional provision which ordains that the Speaker is entitled to vote only in the case of equality of votes. Moreover, his impartiality within the House is secured by the fact that he remains above all considerations of party or political career, and to that effect he may also resign from the party to which he belonged. It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. The robes of the Speaker do change and elevate the man inside. The Speaker holds 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.

82. These are the observations taken note of, approved and made by the Hon'ble Supreme Court in the aforesaid case which was presided over by Justice M.N. Venkatachaliah, as he then was, in negating the argument that the investiture of the power of resolving such disputes in the Speaker does not answer the test of an independent, impartial quality of adjudicatory machinery, and the decision of the Speaker is not free from the tugs and pulls of political polarizations, he cannot be impartial, and at all events his functioning will not be free from reasonable likelihood of bias. However, just one decade thereafter, one of the recommendations made by the National Commission to review the working of the Constitution of which, Hon'ble Chief Justice, M N Venkatachalaiah was the Chairman, recommended that the power to decide on the question as to disqualification on grounds of defection should vest in the Election Commission instead of the Speaker of the House concerned. What a disillusionment in short span of 10 years. Similar is to the effect the views of number of other experts, committees, commissioner 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 Articles 103 and 194(2) of the Constitution. Taking note of the steep fall in standards, the Apex Court in Jagjit Singh's case held that,

whether to vest such power in the Speaker or Election Commission or any other institution is not for us to decide. It is only for Parliament to decide. We have noted this aspect so that Parliament, if deemed appropriate, may examine it, bestow its wise consideration to the aforesaid views expressed also having regard to the experience of last number of years and thereafter take such recourse as it may deem necessary under the circumstances. Alas! what a steep fall in the standards within a short span of a decade.

83. It is in this background it is necessary to notice the minority view in Kihoto Hollohan's case about the role of the Speaker which is contained in paragraphs 180, 181 and 182.

180. The Speaker's office is undoubtedly high and has considerable aura with the attribute of impartiality. This aura of the office was even greater when the Constitution was framed and yet the framers of the Constitution did not choose to vest the authority of adjudicating disputes as to disqualification of Members to the Speaker; and provision was made in Articles 103 and 192 for decision of such disputes by the President/Governor in accordance with the opinion of the Election Commission. The reason is not far to seek.

181. The Speaker being an authority within the House and his tenure being dependent on the will of the majority therein, likelihood of suspicion of bias could not be ruled out. The question as to disqualification of a Member has adjudicatory disposition and, therefore, requires the decision to be rendered in consonance with the scheme for adjudication of disputes. Rule of law has in it firmly entrenched, natural justice, of which, rule against bias is a necessary concomitant; and basic postulates of rule against bias are: *nemo iudex in causa sua* - "A Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased"; and "it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

This appears to be the underlying principle adopted by the framers of the Constitution in not designating the Speaker as the authority to decide election disputes and questions as to disqualification of members under Articles 103, 192 and 329 and opting for an independent authority outside the House. The framers of the Constitution had in this manner kept the office of the Speaker away from this controversy. There is nothing unusual in this scheme if we bear in mind that the final authority for removal of a Judge of the Supreme Court and High Court is outside the judiciary in the Parliament under Article 124(4). On the same principle the authority to decide the question of disqualification of a Member of Legislature is outside the House as envisaged by Articles 103 and 192.

182. In the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such dispute with no provision for any appeal or revision against the Speaker's decision to any independent outside authority. This departure in the Tenth Schedule is a reverse trend and violates a basic feature of the Constitution

since the Speaker cannot be treated as an authority contemplated for being entrusted with this function by the basic postulates of the Constitution, notwithstanding the great dignity attaching to that office with the attribute of impartiality.

The view expressed by the minority judgment became PROPHETIC.

84. Right to dissent is the essence of democracy. For success of democracy and democratic institutions honest dissent is to be respected by persons in authority. Power and position should not be abused to muzzle such dissent. If it is done that is the end of democracy. It would be unconstitutional. If the internal democracy in a political party is stifled, then, the persons who acquire power through democratic process would become despots. The intention of enacting Tenth Schedule in the Constitution is not to create such a situation. When the Courts are called upon to interpret the organic Constitution and working of the political institutions created therein, though the reference to the past is helpful in understanding the constitutional principle behind such legislation, while interpreting the same, the Courts have to keep in mind the present and the future. Certainly they have to take note of the way these constitutional provisions has worked in the past and the undesired results emanating from such provisions and has to place such reasonable interpretation which would be in the interest of democracy, rule of law as well as the constitutional principles enshrined in the Constitution. Seen from that angle, this abuse of the Tenth Schedule by the persons in power to stifle the honest dissent cannot be countenanced. These Petitioners knowingly or unknowingly have touched the right chord and they could be the whistle blowers in the present context, in fight against unethical, unprincipled behaviour of politicians wielding power.

85. The Apex Court in the case of Indirect Tax Practitioners Association Vs. R.K. Jain, dealing with the accused in a Criminal Contempt of Courts Act, bringing to light the malfunctioning of institutions established for dealing with the cases involving revenue of the State appreciated their action as whistle-blowers and found no reason to silence such person by invoking the provisions of Contempt of Courts Act. In that context, it was held that if a speech or article, editorial, etc., contains something which appears to be contemptuous and the Supreme Court or the High Court is called upon to initiate proceedings under the Act and Articles 129 and 215 of the Constitution, the truth should ordinarily be allowed as a defence unless the Court finds that it is only a camouflage to escape the consequences of deliberate or malicious attempt to scandalise the Court or is an interference with the administration of justice. It was further held that when the Petitioner has not even suggested that what has been mentioned in the editorial is incorrect or that the Respondent has presented a distorted version of the facts, there is no warrant for discarding the Respondent's assertion that whatever he has written is based on true facts and the sole object of writing the editorial was to enable the concerned authorities to take corrective/remedial measures. It would be opposite to notice the growing acceptance of the phenomenon of

whistle-blower. A whistle-blower is a person who raises a concern about wrongdoing occurring in an organisation or body of people. Usually this person would be from that same organisation. The revealed misconduct may be classified in many ways; for example, a violation of law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption. Whistle-blowers may make their allegations internally or externally. Most whistle-blowers are internal whistle-blower, who report misconduct on a fellow employee or superior within their company. A person like the Respondent can appropriately be described as a whistle-blower for the system who has tried to highlight the malfunctioning of an important institution established for dealing with cases involving revenue of the State and there is no reason to silence such person by invoking Article 129 or 215 of the Constitution or the provisions of the Act.

86. Seen in that background three among 11 Petitioners before us were Ministers in the Cabinet. They are insiders. After their efforts to fight against corruption, nepotism and other evils, in the party forum did not yield results, they have approached the Governor withdrawing their support to the Government, expressing no confidence in their leader who is heading the Government. From what they have stated in the letter, they want to fight against the social evil and want a clean administration. Can their voice be stifled by pressing into operation the provisions contained in the Tenth Schedule of the Constitution, which was enacted to curb the evil of political defection motivated by lure of office or other similar conditions. Is it the purpose of the Tenth Schedule?

87. From the aforesaid discussion it is clear that, the impugned order passed by the Speaker is in violation of constitutional mandate, as well suffer from perversity and therefore, it cannot be sustained. Accordingly, the impugned order is hereby set aside.