

(1999) 07 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14093 of 1998

Virender Pal, MLA

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 21-07-1999

Acts Referred:

Citation : (2000) 1 RCR(Civil) 729

Hon'ble Judges : H.S.Brar, J and V.M.Jain, J

Advocate : Mr. Virender Mittal, Advocate, Mr. H.S. Hooda, A.G., Haryana, Mr. Sanjeev Sharma, Advocate, Mr. H. S. Mattewal, Sr. Advocate, Advocates for appearing Parties

Judgement

V. M. Jain, J.—The order dated 26.6.1998 Annexure P11, passed by the Speaker of the Haryana Legislative Assembly is under challenge

in this Court by way of present writ petition. Vide the said order dated 26.6.1998 the Speaker had dismissed the two petitions filed by the

petitioner under paragraph 6 of the 10th Schedule of the Constitution of India read with Rule 6 of the Haryana Legislative Assembly

(Disqualification of Members on Ground of Defection) Rules, 1986 (hereinafter referred to as the Rules) against Charan Dass Shorewala and

Vinod Kumar Mariya respondents Nos. 4 and 5 respectively.

2. In the petition under Rule 6 of the rules read with 10th Schedule of the Constitution of India filed by Virender Pal petitioner, against Charan

Dass Shorewala respondent No. 4, copy Annexure P15, it was alleged that petitioner was member of the Haryana Vidhan Sabha belonging to

Samata Legislative Party and Charan Dass Shorewala respondent was also elected to the Haryana Vidhan Sabha on the Samata Party symbol and

he made declaration to the Speaker informing him that he was a member of the

Samata Legislative Party in the Haryana Vidhan Sabha. It was further alleged that in a meeting of Samata Legislative Party, Shri Om Parkash Chautala was elected as leader of the Party. It was alleged that after some time Charan Dass Shorewala respondent started indulging in antiparty activities and as such he was expelled from Samata Legislative Party and the Speaker was informed about the said expulsion. It was alleged that in the last session of the Vidhan Sabha, the Speaker allotted separate seat to Charan Dass respondent showing him to be an unattached member and did not allot him seat along with Samata Legislative Party.

Legislators inasmuch as Samata Party Legislators were allotted only 22 seats instead of 24 seats which were originally allotted to them. It was alleged that Leader of the Samata Legislative Party wrote a letter to the Speaker in this regard protesting for the allotment of only 22 seats and also clearly mentioned in the said letter that Charan Dass Shorewala and Vinod Kumar Mariya respondents should be deemed to be the members of Samata Legislative Party and their expulsion from the party was its internal affair. It was alleged that expulsion of Charan Dass respondent did not give him freedom to voluntarily relinquish the membership of Samata Legislative Party and did not confer upon him a right to cross over from the Samata Party to the ruling alliance or to accept ministerial berth in the Government as he was bound to sit along with the members of the Samata Party and to vote in line with the party and he cannot join the government as member of the ruling alliance. It was alleged that Charan Dass respondent had been inducted as fullfledged Minister and was administered oath by the Governor of Haryana on 14.1.1997. It was further alleged that Speaker had declared Charan Dass Shorewala respondent as an unattached member in violation of law laid down by Hon''ble Supreme Court in Ravi S. Naik v. Union of India and others, AIR 1994 S.C. 1558 and G. Vishwanathan v. The Hon''ble Speaker, Tamilnadu Legislative Assembly, Madras and others, AIR 1996 S.C. 1060. It was alleged that by leaving the Samata Legislative Party and accepting the ministerial berth, Charan Dass respondent incurred disqualification inasmuch as he shall be deemed to have voluntarily relinquished the membership of Samata Legislative Party. It was further alleged that Charan Dass respondent could not take the cover of being an unattached member and cannot escape

the rigours of law as enshrined in 10th Schedule of the Constitution of India. It was alleged that he violated the provisions contained in the 10th

Schedule and had rendered himself liable to be disqualified from becoming member of Haryana Vidhan Sabha... It was further alleged that Samata

Legislative Party had already protested to the Speaker in this regard. It was accordingly prayed that Charan Dass respondent be declared to be

disqualified from being a member of the Haryana Vidhan Sabha and his seat be declared vacant.

3. Learned counsel appearing for the parties agree that similar petition was filed by Verinder Pal petitioner against Vinod Kumar Mariya

respondent No. 5 as well. It is also not disputed before us that both the said petitions filed by Verinder Pal petitioner were contested by Charan

Dass and Vinod Kumar Mariya respondents by filing separate written statements controverting the allegations contained in the said petitions and

taking up the pleas that Samata Party had merged with Samajwadi Janata Party (Rashtriya) (hereinafter referred to as S.J.P.(R)) on 18.6.1996 with

21 out of 24 M.L.As. of the Samata Party and that these two respondents along with one Azad Mohammad did not accept the merger and had

opted to function as a separate group and that from the date of merger i.e. 18.6.1996, the said group consisting of 3 M.L.As. shall be deemed to

be a separate political party and that from the date of merger there were two separate groups namely S.J.P.(R) and the Samata Party and as such

there was no question of these respondents having voluntarily given up Samata Party and as such paragraph 2 of the 10th Schedule of the

Constitution would have no application to the present case as there was no defection on the part of these respondents by joining the Cabinet. It

was also not disputed before us that petitioner filed rejoinders to these written statements categorically denying the pleas taken by the respondents

about the merger of the Samata Party with S.J.P.(R) and that any statement made by any member of the Samata Legislative Party outside the

Vidhan Sabha would have no relevance to the proceedings under the 10th Schedule. On the pleadings of the parties, the Speaker framed the

following issues :

1. Whether the respondents are disqualified for being members of the Haryana Vidhan Sabha within the meaning of paragraph 2 of the 10th

Schedule of the Constitution of India ? OPP.

2. Whether mere acceptance of the office of a Minister in a coalition Government can constitute a defection under para 2(1)(a) of the 10th

Schedule of the Constitution of India particularly when a member occupying the office was a member of the separate group within the meaning of

para 4(1)(b) of the 10th Schedule of the Constitution of India ? OPP.

3. Whether Samata Party has merged with Samajwadi JanataParty (Rashtriya) ? If so, the respondents did not accept the merger and opted to

function as a separate group with Shri Azad Mohammad ? OPD.

4. In case the issue No. 3 is held in affirmative and the provisions of paragraph 4 of the 10th Schedule of the Constitution of India is applicable

whether the present petition will be maintainable ? OPP.

5. When admittedly the Samata Party led by Shri Om Parkash Chautala of which 21 members out of 24 members of Legislative Assembly have

merged with Samajwadi JanataParty (Rashtriya) on 18.6.1996 and when admittedly S/Shri Charan Dass Shorewala and Vinod Kumar Mariya,

members of the Legislative Assembly elected on Samata Party ticket did not accept the merger, whether Mr. Om Parkash Chautala could have

passed an expulsion order against these members on 25.10.1996 ? OPP

6. Whether Shri Om Parkash Chautala, MLA is not the Secretary General of Samajwadi JanataParty (Rashtriya) in view of statement issued by

him and reported in the press about his election ? OPP

7. Does 10th Schedule of the Constitution of India contemplate a situation where the original political party may merge with another political party

and yet its Legislature Party can remain a separate entity not influenced by the merger of the original political party ? OPP.

8. Whether a whip would operate upon these two expelled members ? OPP

9. Whether the present petition filed by member of the Samajwadi JanataParty (Rashtriya) is maintainable ? OPP

10. Whether the respondents MLAs have incurred disqualification under the 10th Schedule of the Constitution of India and under the Haryana

Vidhan Sabha Defection Rules, 1986 ? OPP

11. Relief.

Both sides led documentary evidence in the form of affidavits/counter affidavits

besides producing various documents as per the directions given by Hon"ble Supreme Court in its order dated 4.5.1998 copy Annexure P8. Under issue No. 3 it was held that Samata Party led by Shri O.P. Chautala in the State of Haryana had merged with S.J.P.(R) on 18.6.1996 and the merger had the support of 21 members of the Haryana Vidhan Sabha while the two respondents namely Charan Dass Shorewala and Vinod Kumar Mariya besides Azad Mohammad having not accepted the merger constituted a separate group within the meaning of para4 of the 10th Schedule, and in this manner the merger had the support of more than 2/3rd of the strength of the Legislative members of the Samata Party and consequently para2 of the 10th Schedule would have no application. Accordingly this issue was decided in favour of respondents. Under issue No. 4, it was held that in view of the finding on issue No. 3 petition under rule 6 of the Rules was not maintainable and accordingly this issue was decided against the petitioner. Issue No. 7 was decided against the petitioner and it was held that 10th Schedule of the Constitution did not contemplate a situation where the original political party may merge with another political party and yet its Legislative Party can remain a separate entity. It was further held that if an original political party merges with another political party, the Legislature Party of the original political party has to decide whether it supports the merger or opposes it. If 2/3rd members of the Legislature Party support the merger, the merger is complete and takes effect as contemplated by para4 of the 10th Schedule. Issue No. 2 was also decided against the petitioner and it was held that the two respondents were members of the group which did not accept the merger and as such, the question of these respondents voluntarily giving up the membership of Samata Party did not arise. Issue No. 5 was also decided against the petitioner and it was held that the two respondents having not accepted the merger of the Samata Party with S.J.P.(R) on 18.6.1996, no order of expulsion could be passed against them on 25.10.1996. Under issue No. 6 it was held that Shri O.P. Chautala being Secretary General of the S.J.P.(R) had ceased to be member of the Samata Party not only by himself but also along with 21 out of 24 members of the Haryana Vidhan Sabha including the petitioner. Issue No. 8 was also decided against the petitioner and it was held that the question of violation

of whip did not arise from the pleadings of the parties. Under issue No. 9 it was held that he was deciding the petition under orders of Hon"ble

Supreme Court. Under issues Nos. 1 and 10 it was held that the two respondents were not disqualified under para2 of the 10th Schedule of the

Constitution of India read with Rule 6 of the Rules. In the result, the Speaker dismissed the two petitions filed by the petitioner holding that he was

not entitled to any relief against the two respondents. It is this order of the Speaker which is under challenge in the present writ petition.

5. We have heard the learned counsel for the parties and have gone through the records carefully.

6. In the present case, it is not disputed before us that the two respondents namely Charan Dass Shorewala and Vinod Kumar Mariya joined the

Ministry headed by Ch. Bansi Lal on 14.1.1997 and are still Ministers in the said Cabinet. It is also not disputed before us that these two

respondents were elected to the Haryana Vidhan Sabha on Samata Party tickets along with 22 other members and there were 24 members of the

Samata Legislative Party at the time when Haryana Vidhan Sabha was constituted in May, 1996. The stand of the petitioner is that by joining the

Cabinet these two respondents had voluntarily given up their membership of Samata Legislative Party as such both of them were liable to be

disqualified for being members of the Haryana Vidhan Sabha under para2(1)(a) of the 10th Schedule. On the other hand the case of the

respondents is that there was a merger of Samata Party with the S.J.P.(R) on 18.6.1996 to which merger 21 members of the Haryana Legislative

Assembly belonging to Samata Party also agreed and as such respondents No. 4 and 5 were not disqualified under paragraph 2(1) of the 10th

Schedule as they along with a third member had not accepted the said merger and had opted to function as a separate group as required under

para4 of the 10th Schedule.

7. Paragraph 4 of the 10th Schedule reads as under :

4. Disqualification on ground of defection not to apply in case of merger : (1) A member of a House shall not be disqualified under subparagraph

(1) of paragraph 2, where his original political party merges with another political party and he claims that he and any other members of his original

political party

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

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new

political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of subparagraph (1) of

paragraph and to be his original political party for the purposes of this subparagraph.

(2) For the purposes of subparagraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to

have taken place if, and only if, not less than twothirds of the members of the Legislature Party concerned have agreed to such merger"".

8. From a perusal of the above, it would be clear that the merger of the original political party shall be deemed to have taken place if and only if

not less than twothirds members of the Legislature party concerned had agreed to such merger. In the present case, the respondents were basing

their claim on the merger of Samata Party with S.J.P.(R) on 18.6.1996. For proving the merger as contemplated in paragraph 4 of the 10th

Schedule, the respondents were required to prove not only that Samata Party which was the original political party had merged with another

political party i.e. S.J.P.(R) but the respondents were also required to prove that not less than twothirds of the members of the Samata Legislature

Party had agreed to such merger.

9. Learned counsel appearing for the writ petitioner submitted before us that till 19.1.1998, Shri Om Parkash Chautala was recorded as leader of

the Samata Legislature Party in the records of the Speaker and 22 M.L.As. were shown as members of the Samata Party while the remaining two

members of the party were shown as unattached. It was further submitted that even in the application dated 13.11.1996 Annexure P13, Vinod

Kumar Mariya respondent had informed the Speaker that he had been expelled from the Samata Party and he may be allowed to sit separately. It

was further submitted that there was nothing on the file to show that not less than 2/3rd members of the Samata Legislature Party had agreed to the

alleged merger of this party with S.J.P.(R) outside the House on 18.6.1996 and as such the provisions of paragraph 4 of the 10th Schedule would

have no application to the present case. It was further submitted that plea regarding merger of the Samata Party with S.J.P.(R) was taken by the respondents only when the petitioner filed a petition before the Speaker seeking disqualification of the respondents. It was submitted that there was nothing on record to show that not less than 2/3rd members of the Samata Legislature Party had accepted the merger. It was further submitted that the Speaker while dismissing the petitions had committed illegality by holding that there was merger of the Samata Party with the S.J.P.(R) to which 21 M.L.As. of the Samata Party agreed. It was submitted that in fact this finding was not based on facts proved on record and as such the order passed by the Speaker was liable to be quashed by this Court exercising the powers under Articles 226/227 of the Constitution of India. It was further submitted that present case was a fit case for exercising these powers by this Court as the order passed by the Speaker was contrary to the rules of natural justice and was perverse and was subject to judicial review as held by Hon"ble Supreme Court in the case reported as *Kihota Hollohon v. Zachilhu and others*, AIR 1993 S.C. 412.

10. On the other hand, learned counsel appearing for the respondents submitted before us that the Speaker while passing the impugned order had exercised jurisdiction vested in him and the order passed by him was based on facts proved on record and was not subject to any judicial review by this Court. It was submitted that the Speaker had given valid reasons for holding that Samata Party had merged with S.J.P.(R) on 18.6.1996 and 21 out of 24 M.L.As. had agreed to the said merger and as such there would be no question of any disqualification of the respondents because they had not agreed to the said merger.

11. In the present case there is no direct evidence proving the merger of Samata Party with S.J.P.(R) on 18.6.1996 or that not less than 2/3rd members of the Samata Legislature Party had agreed to the said merger. On the other hand, the Speaker had given these findings on the basis of certain presumptions and the learned counsel appearing for the respondents have adopted the same reasoning in their arguments before us.

12. The first document relied upon by the Speaker is the news item appearing in the ""Punjab Kesari"" dated 19.6.1996. A true translation of the said news item is Annexure R4, annexed with the affidavit of Vinod Kumar Mariya

respondent which was Annexure R3 with the joint written statement filed by respondents Nos. 4 and 5 namely Charan Dass Shorewala and Vinod Kumar Mariya respectively. As per the said news item a meeting was held on 18.6.1996 under the chairmanship of the leader of the Party Shri Om Parkash Chautala and that 24 M.L.As. who had won election of the Haryana Vidhan Sabha on the election symbol of Samata Party had decided to revive the Samajwadi JanataParty. It was also reported in the said news item which was issued by the office Secretary Shri Dharmvir singh that the State unit of the Samajwadi JanataParty had been dissolved and that Shri Dhir Pal Singh State President had been entrusted with the duty to form the party afresh. The second circumstance relied upon by the Speaker is the letter dated 11.6.1997 written by Shri Satya Parkash Malviya, National Electoral Officer of the Samajwadi Janata Party. A copy of the said letter is Annexure R13 annexed with Annexure R3 with the written statement of respondents 4 and 5. As per the said letter dated 11.6.1997, the Election Commission of India was informed that as per the schedule for election of the President and Secretary General of S.J.P.(R), they had completed the organisational elections at every level of the party organisations within the stipulated period and that Shri Chander Shekhar was declared as the National President of the Party and Shri O.P. Chautala as Secretary General of the party unopposed. A list of the newly elected State units Presidents of the S.J.P.(R) along with list of Central Officebearers and list of National Executive members were also attached along with the letter dated 11.6.1997.

13. Another piece of evidence relied upon by the Speaker is the resignation letter dated 6.10.1997 which is annexed as R9 with Annexure R3 filed along with written statement of respondents 4 and 5. Said Annexure R9 is the resignation letter signed by various officebearers of the S.J.P.(R) from Haryana Pradesh. The said letter is addressed to Shri Chander Shekhar, President of S.J.P.(R). It is not disputed before us that said resignation letter includes resignation by 11 M.L.As. belonging to the Samata Party. As per this letter the officebearers including those M.L.As. had resigned from the S.J.P.(R). The said letter is dated 6.10.1997. and it was accepted by Shri Chander Shekhar on 8.10.1997. This document has been described as the clinching evidence by the Speaker to prove that the

Samata Party had merged with S.J.P.(R) on 18.6.1996.

14. Another circumstance relied upon by the Speaker is the letter dated 20.5.1997 written by Shri R.S. Chaudhary, Election Officer of the S.J.P.

(R) Haryana to the Permanent Secretary of S.J.P.(R) New Delhi intimating him about the organisational elections of all the Haryana units of the

National Council of S.J.P.(R), having been completed. It includes list of members of the Haryana Vidhan Sabha allegedly signed by Shri O.P.

Chautala leader of the Legislative party giving the names of 22 persons. Another circumstance relied upon by the Speaker is the Haryana Govt.

Gazette Notification dated 25.9.1996, showing that one Smt. Shakuntala had contested the election for Jhajjar constituency of the Haryana

Legislative Assembly on S.J.P.(R) ticket in September/October 1996. Another circumstance relied upon by the Speaker is the news item

published in ""Punjab Kesari"" on 23.8.1996, according to which Shri O.P. Chautala had stated that they would contest the Jhajjar byelection on

the election symbol of S.J.P.(R) and this statement had been made after discussing the matter with the District Presidents and other officebearers of

S.J.P.(R).

15. Another circumstance relied upon by learned counsel for the respondents to prove the merger is the news item published in ""Punjab Kesari

dated 31.7.1996. It is annexed as Annexure R1 with Annexure R3 which was filed along with the written statement of respondent Nos. 4 and 5.

As per the said news item Azad Mohammad M.L.A. had also rebelled against Shri O.P. Chautala, like other two M.L.As. namely Charan Dass

Shorewala and Vinod Kumar Mariya.

16. Besides placing reliance on the above mentioned circumstances, the Speaker in his order dated 26.6.1998 had also placed reliance on the

affidavit of Vinod Kumar Mariya respondent Annexure R3 annexed with the written statement of respondents 4 and 5 in which he had posed as

many as 11 questions which were to be answered by Verinder Pal petitioner. It was held by the Speaker that all these questions were specific in

nature and pertained to the fact of the merger and also to the events relating thereto and if answered would have conclusively established whether

Shri O.P. Chautala, his M.L.As. and other party leaders had disbanded the Samata Party and merged itself alongwith its members and supporters

with S.J.P.(R). It was found by the Speaker that since no specific reply was given by the petitioner to those questions, the allegations made in the said questions would be deemed to have been admitted by the petitioner. The Speaker in his impugned order also took into consideration the pleadings of the parties and came to the conclusion that there was no specific denial to the various allegations made by the respondents with regard to the plea of merger.

17. As referred to above, under Paragraph 4 of the 10th Schedule of the Constitution of India, in order to take benefit of paragraph 4 the respondents were required to prove that Samata Party had merged with S.J.P.(R) on 18.6.1996 and that not less than 2/3rd of the members of the Samata Legislature Party had agreed to such merger. It is in the light of this requirement of paragraph 4 of the 10th Schedule that we have to examine the evidence led by the parties on the question of merger.

18. So far as the news item dated 19.6.1996 referred to above is concerned, it only shows that one Dharmvir Singh Office Secretary of the Samajwadi Janata Party of the Haryana State Unit has supplied information to the press that a meeting was held of the 24 M.L.As. who had won on the election symbol of the Samata Party, under the chairmanship of their Leader Shri Om Parkash Chautala and it was decided in the said meeting to revive the Samajwadi Janata Party and that as a result thereof the State Unit of the Samajwadi Janata party had been dissolved and that Shri Chautala had stated that Shri Dharmpal Singh State President had been entrusted with the duty to form the party afresh. In our opinion this news items published in a news paper would not show that Samata Party which was the original political party had merged with S.J.P.(R) on 18.6.1996 or that 2/3rds of the members of the Samata Legislature Party had agreed to such merger. The said news paper report would not bind all the 24 M.L.As. belonging to the Samata Party nor could it be said that not less than 2/3rds members of the Samata Legislature Party had agreed to any such merger.

19. Similarly, the letter dated 11.6.1997 written by Shri Satya Parkash Malviya, National Electoral Officer of S.J.P.(R) about holding of party elections would be of no consequence and would at the most show that Shri O.P. Chautala was elected as Secretary General of S.J.P.(R) and that

Shri Dhir Pal Singh, MLA, was the newly elected President of the State Unit of S.J.P.(R). Similarly the resignation letter dated 6.10.1997 referred

to above would be of no consequence. As referred to above, as per letter dated 6.10.1997, 9 M.L.As. belonging to the Samata Legislature Party

and who were officebearers of S.J.P.(R) had resigned from the said party on 6.10.1997 besides two other M.L.As., who were incharge of the

Youth Cell and Harijan Cell of the S.J.P.(R). Thus, the total number of the M.L.As. who belonged to Samata Legislature Party and had resigned

as officebearers of the S.J.P.(R) vide letter dated 6.10.1997 would come to 11. From this letter at the most, it could be said that 11 M.L.As. who

were previously belonging to Samata Party had at some point of time joined S.J.P. (R) and later on they had resigned from the said party on

6.10.1997. This circumstance in our opinion also would not show that not less than 2/3rds of the members of the Samata Legislature Party had

agreed to the alleged merger of Samata Party with S.J.P.(R), considering that there were 24 M.L.As. who were elected on the Samata Party

symbol. As referred to above the Speaker in his impugned order had described this piece of evidence as the clinching evidence to prove that

Samata Party had merged with S.J.P.(R) on 18.6.1996. In our opinion, the resignation letter would not stand the test of paragraph 4 of the 10th

Schedule of the Constitution to prove the merger.

20. Similarly the letter dated 20.5.1997 written by Shri R.S. Chaudhary, Election Officer of S.J.P.(R) Haryana, intimating about the organisational

elections of various Haryana units would be of no consequence. As per the said letter dated 20.5.1997, it was intimated that organisational

elections for all the Haryana units of the S.J.P.(R) had been completed. Various lists were attached with the said letter and it included the list of the

members of the Haryana Legislative Assembly signed by Shri O.P. Chautala, leader of the said party. The said list shows 22 M.L.As. As per the

said list, at the most, it could be said that Shri O.P. Chautala leader of the Samata Legislature Party was claiming that 22 M.L.As. belonging to his

party were now M.L.As. of S.J.P.(R). However, neither this inference can be drawn from the said list of the M.L.As. bearing the signatures of Shri

O.P. Chautala only nor the members of the Samata Legislature Party were bound by any such list signed by their leader. The requirement of

paragraph 4(2) of the 10th Schedule of the Constitution is that merger of the original political party shall be deemed to have taken place if and only

not less than 2/3rds of the members of the Legislature party concerned had agreed to such merger. In the present case, there is nothing on record

to show that at least 2/3rd of the 24 M.L.As. belonging to Samata Party had at any time, agreed to the merger of the Samata Party with the S.J.P.

(R). If their leader Shri O.P. Chautala had started claiming himself to be the leader of S.J.P.(R) or had supplied the names of 22 M.L.As. as

belonging to his new party, it would not bind the various members belonging to the Samata Legislature Party unless it could be shown that those

M.L.As. had in fact agreed to the merger of the Samata Legislature Party with S.J.P.(R).

21. The remaining circumstances/pieces of evidence relied upon by the Speaker would also be of no consequence to prove that not less than

2/3rds of the members of the Samata Legislature Party had agreed to the merger of Samata Party with S.J.P.(R). The Haryana Govt. Notification

dated 25.9.1996 showing that Smt. Shakuntala had contested the bye-election for Jhajjar constituency on S.J.P.(R) ticket is neither here nor there.

Similar is the position with regard to the news item dated 23.8.1996 according to which Shri O.P. Chautala had stated that they would contest the

bye-election on the election symbol of S.J.P.(R). Similarly the news item dated 31.7.1996 showing that another M.L.A. namely Shri Azad

Mohammad had also rebelled against Shri O.P. Chautala like two other M.L.As. namely Charan Dass Shorewala and Vinod Kumar Mariya

would be of no consequence.

22. As referred to above, the Speaker in his order dated 26.6.1998 has also placed reliance on the affidavit Annexure R3 sworn by Vinod Kumar

Mariya respondent in which as many as 11 questions were posed which were to be answered by the present petitioner. It was found by the

Speaker that since no specific reply was given by the petitioner to those specific questions, the allegations made in the said questions would be

deemed to have been admitted by the petitioner. A perusal of various questions posed by Shri Vinod Kumar Mariya respondent in his affidavit

Annexure R3 would show that even if those questions are taken to have been admitted by the petitioner, they would not show that not less than

2/3rds members of the Samata Legislature Party had agreed to the merger of Samata Legislature Party with S.J.P.(R).

23. The first question pertained to the news item dated 9.6.1997 having photographs of Shri Chander Shekhar and Shri O.P. Chautala amongst

others and whether those photographs were taken during the National Convention of S.J.P.(R) which was held on 8.6.1998 at New Delhi. The

newspaper reports Annexures R15 and R16 were annexed to the said affidavit in this regard and a perusal thereof would show that Annexure R15

contains photographs of five persons while the newspaper report Annexure R16 contains photographs of two persons. Thus this question would

be of no help.

24. The second question posed was based on the news paper report dated 19.6.1996 about the merger of Samata Party into S.J.P.(R) on

18.6.1996. In the said question, the petitioner was asked to reply as to whether he was not present at the time of the said meeting and whether he

was not aware of the stand of Vinod Kumar Mariya, Charan Dass Shorewala respondents and Azad Mohammad on the question of merger. The

news paper report Annexure R4 was referred in this regard. This news item had already been referred to above and would be of no help in the

present case.

25. The third question posed was with regard to the news item dated 23.2.1997 in which it was mentioned that Shri O.P. Chautala conducted a

rally on behalf of S.J.P.(R). The petitioner was asked to reply whether he recognized Shri O.P. Chautala in the photograph alongwith officebearers

of S.J.P.(R). The news item report was attached as Annexure R10 with the said affidavit. The said question in our opinion, even if is taken as

correct, would be of no help for deciding the present case.

26. The fourth question posed was regarding the news item dated 15.7.1997 showing a procession of S.J.P.(R). The question posed was as to

whether the petitioner recognized his own photograph and the photographs of Dhir Pal Singh and Balwan Singh Maina in the said procession. The

said news paper report was annexed as Annexure R17. Again this news paper report even if accepted, would be of no help. In the second portion

of question No. 4, the petitioner was asked to explain whether he along with other M.L.As. of S.J.P.(R) had described themselves as M.L.As. of

the said party and had submitted a memorandum to the Deputy Commissioner on 12.7.1997 and the petitioner had also signed the same as

M.L.A. of Berri. The memorandum Annexure R18 was attached in support of the said question. Again in our opinion, even if this part of the

question was accepted, it would not show that not less than 2/3rds members of the Samata Legislature Party had agreed to the merger of Samata

Party with S.J.P.(R).

27. The fifth question posed in the aforesaid affidavit was that the address of Samata Party and the address of S.J.P.(R) was the same i.e. Flat No.

24, Sector 3, Chandigarh. Photograph Annexure R6 was annexed in support of this question. Again, in our opinion, even if it is accepted, this

would be of no consequence.

28. The sixth question posed was about the letter dated 25.4.1997 written by Shri Dhir Pal Singh State President of the S.J.P. for appointing Shri

R.S. Chaudhary as State Presiding Officer for conducting the organisational relations (elections ?). A copy of the said letter was annexed as

Annexure R19. Again if this question is admitted, the same would be of no consequence.

29. The seventh question posed was regarding the letter dated 28.4.1997 vide which Dhir Pal Singh was informed by Shri Satya Parkash Malviya

that Shri R.S. Chaudhary had been appointed as State Election Presiding Officer of the S.J.P., for conducting the organisational elections. A copy

of the said letter was annexed as Annexure R20. In the second part of the said letter, it was put to the petitioner that Shri R.S. Chaudhary

conducted the organisational elections and submitted a list of the elected persons along with a list of the M.L.As. belonging to S.J.P.(R), signed by

Shri O.P. Chautala as the leader and the said list of M.L.As. included the same of the petitioner. The said list of M.L.As. signed by Shri O.P.

Chautala has already been discussed above. In our opinion, this question, if accepted as correct would also not help in deciding the present

controversy.

30. The eighth question posed was as to whether Smt. Shakuntala was a candidate of the S.J.P.(R) under the leadership of Shri O.P. Chautala and

there was no candidate on behalf of Samata Party with regard to the bye-election to the Jhajjar Assembly constituency. A copy of the notification

issued by the Election Commission was attached in this regard. This notification has already been referred to above and would be of no help.

31. The ninth question posed was with regard to the news item dated 19.5.1997 vide which Dhir Pal Singh was shown to have been elected as

President of the State Unit of the S.J.P.(R) in the State of Haryana, in the meeting of the State Executive of the said party which was attended by

11 M.L.As. including Shri O.P. Chautala. Copy of this news paper cutting was attached as Annexure R22 with the said affidavit. A perusal of the

said news item would show that in the party meeting of the S.J.P. held at Gohana, Dhir Pal Singh was elected as President of the Haryana State

unit and Shri Ashok Arora was elected as General Secretary and the said meeting was attended by 11 M.L.As. including Shri O.P. Chautala

Secretary General of S.J.P. This news item even if accepted as correct would only show that 11 M.L.As. who were named in the said news item

had participated in the meeting of S.J.P. along with their leader Shri O.P. Chautala. However, this news item would not prove that not less than

2/3rd members of the Samata Legislature Party which consisted of 24 members had agreed to the merger of Samata Party with S.J.P.(R) as

required under paragraph 4 of the 10th Schedule. Thus even if this question is accepted as correct, it would be of no help in deciding the present

case about merger.

32. The tenth question posed in the said affidavit Annexure R3 was with regard to the news item dated 8.8.1996, copy of which was annexed as

R12 with the said affidavit. It was put to the petitioner in the said question as to whether a meeting of 20 M.L.As. belonging to S.J.P.(R) had not

taken place including the petitioner himself. A perusal of the news item Annexure R12 would show that after three M.L.As. of the Samata Party

had rebelled against the leadership, Shri O.P. Chautala called a meeting of the M.L.As. of the Samata Party which was attended by 20 M.L.As.

belonging to Samata Party. It was mentioned in the said report that after the elections, the leadership was taking interest in reviving Samajwadi

Janata Party and that some of the Legislators belonging to the Samata Party were elected as officebearers of Samajwadi Janata Party, the other

Legislators of the Samata Party objected to the same and three M.L.As. namely Charan Dass Shorewala, Vinod Kumar Mariya and later on Azad

Mohammad rebelled against Shri O.P. Chautala. It was specifically mentioned in the said news paper report that Shri Chautala had issued a press

statement on that day as leader of the Samata Legislature Party. In our opinion, this news item would be of no help in holding that not less than

2/3rds members of the Samata Legislature Party had agreed to the merger of Samata Party with S.J.P.(R).

33. The eleventh and the last question posed in the affidavit of Vinod Kumar Mariya Annexure R3 is with regard to the letter dated 6.10.1997

which contained resignation of various officebearers of the Samajwadi Janata Party including various M.L.As. In the said question the petitioner

was asked to identify his signatures and the signatures of other leaders and M.L.As. including Shri O.P. Chautala. It was also put to the petitioner

whether the resignations were not accepted by Shri Chander Shekhar on 8.10.1997. A copy of the resignation letter was annexed as Annexure R9

with the said affidavit. The resignation letter dated 6.10.1997 has already been discussed above and it only shows that 11 M.L.As. who belonged

to the earlier Samata Legislature Party had resigned from the officebearership of S.J.P.(R) on 6.10.1997. As referred to above the resignation of

11 M.L.As. from S.J.P.(R) would not show that not less than 2/3rds members of the Samata Legislature Party had agreed to the merger of

Samata Party with S.J.P.(R).

34. As referred to above the Speaker had laid great emphasis in his order dated 26.6.1998 with regard to the above said 11 questions posed by

Vinod Kumar Mariya respondent in his affidavit Annexure R3 by holding that the petitioner in his reply had not specifically denied the allegations

contained in those questions and the same would be deemed to have been accepted.

35. As discussed above, these 11 questions even if taken as accepted by the petitioner, would not prove the merger as required under para 4 of

10th Schedule of the Constitution. Under these circumstances, in our opinion, the Speaker could not have accepted the plea of merger on the basis

of these questions or the material contained in these questions, nor the Speaker could have accepted the plea of merger on the basis of the other

material placed on record.

36. The Speaker in this order dated 26.6.1998 also considered the pleadings of

both the sides and came to the conclusion that the present petitioner nowhere had denied the plea of the merger of Samata Party with S.J.P. (R). In this regard reference may also be made to para 7 of the order dated 26.6.1998 passed by the Speaker. While discussing the pleadings, it was mentioned by the Speaker that after the written statements were filed by the respondents, opportunity was given to the petitioner to file replies to those written statements and thereupon he had filed rejoinders to these written statements on 12.8.1997 and in para 2 of these rejoinders the petitioner had categorically denied the plea taken by the respondents about the merger of Samata Party with S.J.P.(R). In the light of this plea taken by the petitioner in his rejoinder which is part of the pleadings, in our opinion, it could not be said that there is no denial on the part of the petitioner in the pleadings about the merger of Samata Party with S.J.P.(R). Even in the affidavit dated 1.6.1998 Annexure P18, filed by the petitioner in support of his case before the Speaker it was specifically alleged in para 13 that the alleged merger of the political party outside the House had no concern with the merger of the Legislative Party because the activity of the political party is outside the House while the activity of the Legislature Party is inside the House. It is also made clear in para 16 of the said affidavit that till 23.1.1998 when members of the Samata Legislature Party merged in Haryana Lok Dal (R) Legislative Party, there was only one Samata Legislature Party. In any case the question before the Speaker was not as to whether Samata Party had merged with S.J.P.(R) on 18.6.1996 or not. On the other hand the question before the Speaker was as to whether not less than 2/3rds members of the Samata Legislature Party had agreed to the merger of Samata Party with S.J.P. (R). It was only and only then that Charan Dass Shorewala and Vinod Kumar Mariya respondents could have taken the benefit of para 4 of the 10th Schedule of the Constitution of India.

37. Furthermore, the question as to whether 2/3rds of the members of the Samata Legislature Party had agreed to the merger of Samata Party with S.J.P.(R) was not to be decided merely on the pleadings of the parties. If Charan Dass Shorewala and Vinod Kumar Mariya respondents had taken this plea in the written statement they were required to prove that not less than 2/3rds members of the Samata Legislature Party had agreed

to the said merger. It was therefore, after satisfying himself in this regard that Speaker could come to a conclusion as to whether not less than

2/3rds of the members of the Samata Legislature Party had agreed to the alleged merger of Samata Party with S.J.P.(R). This is so because the

real dispute was not between the petitioner and respondents 4 and 5. On the other hand, the real dispute was as to whether not less than 2/3rds

members of the Samata Legislature Party had agreed to the said merger and whether the provisions of para 4 of the 10th Schedule would apply to

the present case or not.

38. There is another aspect of the matter. Annexure P13 is the letter dated 13.11.1996 written by Vinod Kumar Mariya to the Speaker stating

therein that he had been expelled from the Samata Party and information in this regard has already been sent to him by Shri O.P. Chautala on

25.10.1996. It is further mentioned therein that in view of the said action of the leader of the Samata Party, he may be allowed to sit separately

during the Session of Haryana Vidhan Sabha. A perusal of the said letter dated 13.11.1996 would clearly show that at the time when Vinod

Kumar Mariya respondent was expelled by Shri O.P. Chautala from Samata Party, this respondent had not taken the plea that in fact Shri O.P.

Chautala had nothing to do with Samata Party as it has already merged with S.J.P.(R). On the other hand, accepting the said decision of Shri O.P.

Chautala expelling him from the Samata Party, Vinod Kumar Mariya respondent had requested the Speaker for a separate seat. A copy of the

letter dated 25.10.1996 written by Shri O.P. Chautala to Charan Dass Shorewala respondent while expelling him from the membership of the

Samata Legislature Party is available on record, having been annexed as Annexure R5 with the affidavit Annexure R3 which was annexed by

respondents 4 and 5 with their written statement. A perusal thereof clearly shows that Shri O.P. Chautala has expelled Charan Dass Shorewala

from the said party. Annexure P1 is the copy of the order dated 7.11.1996 passed by the Speaker vide which Charan Dass Shorewala and Vinod

Kumar Mariya were declared as unattached. In G. Vishwanathan's case (supra), it was held by Hon'ble Supreme Court that where a person

belonging to a political party gets elected to the House and thereafter joins another political party for whatever reasons either because of his

expulsion from the original party or otherwise he voluntarily gives up his membership of the original political party and incurs disqualification. It was further held in the said authority that mere fact that he was treated as ""unattached"" is a matter of mere convenience outside the 10th Schedule and such arrangement has no legal bearing so far as 10th Schedule is concerned. Thus even if Charan Dass Shorewala and Vinod Kumar Mariya respondents were declared as unattached after they were expelled from the Samata Party, they would continue to be members of the Samata Legislature Party and if they would leave the said party, they would incur disqualification.

39. Shri O.P. Chautala leader of the Samata Legislature Party had raised objection by way of letter dated 15.11.1996 Annexure P2, when respondents No. 4 and 5 were declared as unattached. The fact that the Speaker was treating 22 M.L.As. as belonging to Samata Party as on 1.12.1996, would be clear from the letter dated 3.12.1996 Annexure P14, written by Secretary of the Haryana Vidhan Sabha to the Chief Electoral Officer, Haryana, vide which information regarding the party position in Haryana Vidhan Sabha as it stood on 1.12.1996 was sent on the prescribed proforma showing 22 members of the Legislative Assembly belonging to Samata Party while two members were unattached. Being still members of the Samata Legislature Party, Charan Dass Shorewala and Vinod Kumar Mariya respondents were sworn in as Minister and Minister of State respectively in the State of Haryana vide notification dated 14.1.1997, Annexure P3. The petitioner filed petition under rule 6 of the Rules before the Speaker on 25.1.1997 as would be clear from a copy of the petition Annexure P15 filed by him against Charan Dass Shorewala respondent.

40. Civil Writ 962 of 1997 titled as Dr. S.S. Bhargava and another v. State of Haryana and another was filed in this Court challenging the appointment of Charan Dass Shorewala and Vinod Kumar Mariya respondents as Minister and Minister of State. In the said writ petition these respondents had filed written statements both dated 4.4.1997 copies Annexures P10 and P9 respectively. In the written statement Annexure P9, Vinod Kumar Mariya respondent had taken the plea that he along with Charan Dass Shorewala had been expelled from Samata Party and that

after the expulsion he had not joined any other political party. However, it was admitted that he had been inducted as a Minister in the Cabinet

headed by Ch. Bansi Lal. It was also alleged that after his expulsion, the Speaker was asked to allocate them separate seats. It was denied that

even after their expulsion they were bound to sit with the members of the Samata Legislature Party. It was further alleged that they were not

disqualified for being members of the Assembly as they had not voluntarily given up their membership and have not joined any other political party.

It was reiterated that he was expelled from Samata Party by its leader. Almost similar pleas were taken by Charan Dass Shorewala respondent in

his reply Annexure R10 and it was alleged that he had been expelled by the leader of the Samata Party and mere expulsion could not be treated as

a case of voluntary relinquishment of membership of the party. It was further alleged that after expulsion a member of the party no longer remains

under control of the party concerned. It was, however, admitted that he was inducted as Minister in the ruling Government. It was also alleged by

him that he had only been expelled from the Samata Party but he has not joined any other political party.

41. These written statements filed by the respondents would clearly show that upto 4.4.1997, when they had filed the written Statements, they had

not taken the plea about the merger of the Samata Party with S.J.P.(R) on 18.6.1996 nor they had taken the plea that not less than 2/3rd members

of the Samata Legislature Party had agreed to the said merger. On the other hand, the case of the respondents was that they had not joined any

other political party.

42. From the various documents/circumstances referred to above and relied upon by the petitioner, it would be clear that even after Charan Dass

Shorewala and Vinod Kumar Mariya respondents joined the Cabinet on 14.1.1997, their case throughout was that they had been expelled from

Samata Party and that they were declared as unattached and that they have not joined any other political party. During this period, it was not the

case of these respondents that in fact Samata Party had merged with S.J.P.(R) and not less than 2/3rds of the members of the Samata Legislative

Party had also agreed to the said merger and respondents No. 4 and 5 along with Shri Azad Maohammad having not agreed to the said merger,

formed a separate group, the plea which these respondents subsequently took before the Speaker and the plea which these respondents have also

taken before us in the present writ petition.

43. Having found that various circumstances/pieces of evidence which were relied upon by the Speaker while passing the order dated 26.6.1998

and while holding that Samata Party had merged with S.J.P.(R) and that said merger had the support of 21 members of the Haryana Vidhan

Sabha, did not pass the test laid down in para 4(2) of the 10th Schedule of the Constitution of India, the question that comes up for consideration

is as to whether this Court has jurisdiction to quash the order dated 26.6.1998 passed by the Speaker.

44. It was held by the Constitutional Bench of the Hon"ble Supreme Court in Kihota Hollohon"s case (supra) as under :

In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under paragraph 6, the scope

of judicial review under Articles 136 and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under paragraph

6 would be confined to jurisdictional errors only viz. infirmities based on violation of Constitutional mandate, mala fides, noncompliance with rules

of natural justice and perversity"".

xx xx xx xx

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and

obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review

45. From the perusal of the above, it would be clear that Speaker while discharging the functions under 10th Schedule acts as Tribunal

adjudicating the rights and obligations under 10th Schedule and his decision in that capacity is amenable to judicial review. It is also clear from the

above that scope of judicial review under Articles 226 and 227 of the Constitution in respect of an order passed by the Speaker under para 6 of

the 10th Schedule would be confined to jurisdictional errors only viz. infirmities based on violation of Constitutional mandate, malafides,

noncompliance with rules of natural justice and perversity. In our opinion the fact that Speaker while passing the order dated 26.6.1998 had held

that Samata Party had merged with S.J.P.(R) on 18.6.1996 and the merger had the support of 21 members of the Haryana Vidhan Sabha without there being absolutely no evidence to support this finding, it would be clear that the Speaker has passed a perverse order which amounted to jurisdictional error and this Court certainly had jurisdiction under Articles 226/227 of the Constitution of India to interfere with the order passed by the Speaker. In fact the order passed by him also violates the Constitutional mandate inasmuch as the plea of merger of a political party with another political party for the purpose of paragraph 4 of the 10th Schedule is to be considered only if not less than 2/3rds of the members of the Legislative party concerned had agreed to such merger. In the present case there is absolutely nothing on record to show that not less than 2/3rds of the members of the Samata Legislature Party had agreed to the alleged merger of Samata Party with the S.J.P.(R). Under these circumstances, the Speaker had no jurisdiction to hold that the present case was covered under the provisions of paragraph 4 of the 10th Schedule.

46. In the present case respondents No. 4 and 5 namely Charan Dass Shorewala and Vinod Kumar Mariya were elected to the Haryana Vidhan Sabha on Samata Party tickets. They were expelled from Samata Party by their leader vide letter dated 25.10.1996. Thereafter, vide order dated 7.11.1996 they were declared as unattached. Even if they were expelled from Samata Party and were declared unattached, these respondents were still belonging to Samata Legislature Party as held by the Apex Court in G. Vishwanathan's case (supra). By joining the Ministry headed by Ch. Bansi Lal on 14.1.1997, these respondents had voluntarily given up their membership of the Samata Legislature Party inasmuch as members of Samata Legislature Party were in opposition and admittedly their leader Shri O.P. Chautala was leader of the opposition in the Haryana Assembly. That being so, these two respondents being members of the Samata Legislature Party, could not have joined the Cabinet. The fact that these respondents joined the Cabinet would itself show that they had voluntarily left the Samata Legislative Party.

47. Once it is found that respondents No. 4 and 5 namely Charan Dass Shorewala and Vinod Kumar Mariya had voluntarily given up their membership of the Samata Legislative Party, their case would be squarely covered by paragraph 2(1)(a) of the 10th Schedule and both of them

shall stand disqualified for being members of the Haryana Legislative Assembly. The finding of the Speaker in his order dated 26.6.1998 that the

provisions of paragraph 2(1)(a) of the 10th Schedule do not apply in this case has to be set aside.

48. For the reasons recorded above, we accept the present writ petition, quash the order dated 26.6.1998 passed by the Speaker and hold that

respondents No. 4 and 5 namely Charan Dass Shorewala and Vinod Kumar Mariya stand disqualified for being members of the Haryana

Legislative Assembly, as provided under paragraph 2(1)(a) of the 10th Schedule of the Constitution of India. However, there shall be no order as

to costs.