

Code No.:

Group: Miscellaneous Bench

District: Lucknow

IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD

LUCKNOW BENCH, LUCKNOW

WRIT PETITION NO. (M/B) OF 2020

Deepak SinghPetitioner

Versus

Hon'ble Chairman Legislative Council Uttar Pradesh. &
Ors.

.....Respondents

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Lucknow:

Dated: .2020

SETTLED BY:-

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT
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WRIT PETITION NO. (M/B) OF 2020

Deepak Singh

.....Petitioner

Versus

Hon'ble Chairman Legislative Council Uttar Pradesh. &
Ors.

.....Respondents

List of Dates and Events

The present petition is being filed under Article 226 and Article 227 of the Constitution of India for a direction to Respondent No.1 to decide the disqualification petition which was filed under Article 191(2) read with Tenth Schedule of Constitution of India (filed on 9.5.2018) within a period of four weeks and which is pending for a period of more than two years.

It is relevant to mention here that the Respondent No.3 was elected on the symbol of Indian National Congress as Member Legislative Council on 06.03.2016. It is the own case of Respondent No.3 that he had resigned from Indian National Congress and joined Bhartiya Janta Party on 21.04.2018 and informed the Respondent No.1 in writing on 23.04.2018. Disqualification petition was filed

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before Respondent No.1 on 09.05.2018 and which is still pending for last two years. Respondent No.3 had contested Lok Sabha Elections in 2019 on the symbol of Bhartiya Janta Party from 36 Raebareli Parliamentary Constituency. It may also be noted that Respondent No.3 is drawing all the facilities of Member Legislative Council even though it is a clear cut case of disqualification as per Article 191 of the Constitution of India read with Tenth Schedule.

It is submitted that the Hon'ble Supreme Court in the case of Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. in Civil Appeal No. 547 of 2020 decided on 21.1.2020 reported in 2020 (2) Scale 329 had directed that disqualification petition in that matter be decided by Speaker within a period of four weeks. Also outer limit of three months was fixed for deciding disqualification petitions from the date of filing of disqualification petitions.

It is further submitted that the Hon'ble Supreme Court in the case of MA NO. 820 of 2020 in Civil Appeal No. 547 of 2020 Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. had passed an order dated 18.03.2020 which is reproduced below-

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"Having heard learned senior counsel for both the parties, given the extraordinary facts in the present case, we are constrained to use our powers under Article 142 of the Constitution of India. Respondent No. 3 is restrained from entering the Legislative Assembly till further orders of this Court. Needless to add, he will cease to be a Minister of the Cabinet immediately."

11.02.2016 Dinesh Pratap Singh (herein after referred as Respondent No.3) was set up as a candidate of Member Legislative Council in Biennial election from 9, RaeBareli local authority constituency, Raebareli by Indian National Congress and accordingly Form-'BB' dated 11.02.2016 for Biennial election Uttar Pradesh State Legislative Council was issued by Indian National Congress on 11.2.2016.

15.02.2016 Respondent No.3 had filed his nomination for Uttar Pradesh Legislative Council from 9 RaeBareli, Local Authority Constituency on 15.02.2016 on Form D as a candidate set up by Indian National Congress.

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- 6.3.2016 Respondent No.3 was declared elected to the Uttar Pradesh Legislative Council from 9 RaeBareli Local Authority Constituency by the Returning Officer, 9 RaeBareli Local Authority Constituency RaeBareli as a candidate sponsored by Indian National Congress by declaration of result U/s. 66 of Representation of People Act, 1951 dated 6.3.2016 as a candidate sponsored by Indian National Congress.
- 21.04.2018 Respondent No.3 attended rally on 21.04.2018 of Bhartiya Janta Party in presence of it's the then president Mr. Amit Shah and Shri Yogi Adityanath, Chief Minister, Uttar Pradesh of Bhartiya Janta Party and as such was involved in the activities of Bhartiya Janta Party and against the policies of Indian National Congress.
- 21.04.2018 According to the Respondent No.3, he had joined Bhartiya Janta Party Uttar Pradesh

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against receipt No. 56558 dated 21.04.2018.

23.04.2018 According to the own case of the Respondent No.3, he had resigned from Indian National Congress and joined Bhartiya Janta Party on 23.04.2018 and had also informed to the Respondent No.1 on 23.04.2018 itself in writing.

09.05.2018 Since the Respondent No.3 had indulged in activities against the policies of Indian National Congress, and as such a petition for his disqualification under Article 191(2) read with Para 2 (1)(a) of the Tenth Schedule of the Constitution of India was filed before Respondent No.1 on 09.05.2018 by Indian National Congress through the Petitioner herein as Member Uttar Pradesh Legislative Council and Leader of India National Congress.

10.05.2018 After receipt of the aforesaid petition, bulletin No.900/7 S dated 10.05.2018 was issued by the Respondent No.2 for

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circulation to the Members of Legislative Council.

27.08.2018 A Show cause notice No.1125/V.P-07 S/2018 dated 27.08.2018 was issued to Respondent No.3 under the signature of Respondent No.2 herein.

20.04.2019 That in the Nomination Form for Member of Parliament of 17th Lok Sabha 2019 from 36-RaeBareli Parliamentary Constituency before the Returning Officer, the Respondent No.3 had filed his nomination on 15.4.2019 as a candidate set up by 'Bhartiya Janta Party' without tendering his resignation as Member of Uttar Pradesh Legislative Council even though he was declared elected on the ticket of Indian National Congress by the Returning Officer of 9 Raebareli Local Authority Constituency as Member of Legislative Council. It is relevant to mention here that objections for rejection of the candidature of the Respondent No.3 as a candidate of the

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Bhartiya Janta Party were filed by Indian National Congress through its President, District Congress Committee Raebareli. However, nomination Form of Respondent No.3 was declared valid by the Returning Officer, 36- Raebareli Parliamentary Constituency. It is pertinent to mention here that the Respondent No.3 had informed to the Returning Officer, 36, Raebareli Parliamentary Constituency that he had already resigned on 23.04.2018 from Indian National Congress and join Bhartiya Janta Party in reply to the objections of the Indian National Congress and had informed to the Respondent No.1 on 23.04.2018.

20.04.2019 The Respondent No.3 replied to the objections filed by Indian National Congress vide his letter No. 20.04.2019.

20.04.2019 Returning Officer 36, Raebareli Parliemntary Constituency disposed of the objections vide her order dated 20.04.2019.

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- 25.04.2019 The Petitioner herein had filed application before the Respondent No.1 for disposal of the Petition under Tenth Schedule which was/is pending since 9.5.2018 for disposal.
- 30.04.2019 The Respondent No.2 had issued a communication no.525/V.P-7 S/2018 dated 30.04.2019 for fixing herein on 27.05.2019 at 1:00 PM before the Respondent No.1.
- 27.05.2019 The Petitioner herein alongwith his Counsel attended hearing on 27.05.2019 before the Respondent No.1 but the Respondent No.3 did not attend the hearing and as such the Petition was again fixed for hearing on 28.05.2019 at 3:00PM.
- 28.05.2019 The Petitioner herein alongwith his Counsel attended hearing on 28.05.2019 at 3:00PM but neither the Respondent No.3 attended hearing nor his Counsel before the Respondent No.1 and as such matter was heard as ex-parte and judgment was reserved.

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28.05.2019 It is relevant to mention here that though the judgment was reserved after hearing the matter ex-parte but in the late hours, Respondent No.1 had again given four weeks time to the Respondent No.3 for filing his reply at the back of the Petitioner herein.

31.05.2019 It is pertinent to mention here that the Petitioner had objected for giving four weeks time vide his letter dated 31.5.2019 and also requested for disposal of the Petition in compliance of this Hon'ble Court directions for disposal of Tenth Schedule Petition within three months from the date of its filing i.e. 09.05.2018.

21.01.2020 The Hon'ble Supreme Court in the case of Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. reported in 2020 (2) Scale Page 329 had held that-

"The only relief that can be given in these appeals is that the Speaker of the Manipur

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Legislative Assembly be directed to decide the disqualification petitions pending before him within a period of four weeks from the date of which this judgment is intimated to him. In case no decision is forthcoming even after a period of four weeks, it will be open to any party to the proceedings to apply to this Court for further directions/reliefs in the matter.”

27/28.02.2020 Since the matter was pending for one year or 9 months for disposal by the Respondent No.1, the Petitioner herein had again filed an application on 28.02.2020 enclosing therewith judgment of the Hon’ble Supreme Court dated 21.01.2020 in 2020 (2) Scale 329 for compliance, for disposal of the petition dated 09.05.2018 against the Respondent No.3 under Tenth Schedule of the Constitution of India for its disposal on urgent basis specially because the Hon’ble Supreme Court has given maximum three

||

months from the date of filing of the disqualification Petition .

18.03.2020 MA NO. 820 of 2020 in Civil Appeal No. 547 of 2020 Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. was heard by the Hon'ble Supreme Court and the relevant portion of the order dated 18.03.2020 is reproduced below-

"the disqualification petition was decided by this Court itself in the extraordinary circumstances of that case, we went out of our way to give the Hon'ble Speaker a chance to perform his functions under the Tenth Schedule to the Constitution of India by stating that, given the fact that such a long period had already gone by without any decision, one month should suffice for the Hon'ble Speaker to decide the disqualification petitions before him."

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“Having heard learned senior counsel for both the parties, given the extraordinary facts in the present case, we are constrained to use our powers under Article 142 of the Constitution of India. Respondent No. 3 is restrained from entering the Legislative Assembly till further orders of this Court. Needless to add, he will cease to be a Minister of the Cabinet immediately.”

It is respectfully submitted that in spite of the judgments and orders of the Hon'ble Supreme Court on the issue which were/are in the personal knowledge of the Respondent No.1, the Petition for disqualification under Tenth Schedule of the Constitution of India against the Respondent No.3 is still pending for disposal since 09.05.2018 to till date i.e. more than 2 years. The Petitioner herein has sufficient reason to believe that the Respondent No.1 is not likely to decide the petition in spite of

the facts that the matter was heard ex-parte on 28.05.2019 and judgment was reserved on the same day.

In view of the extraordinary facts and circumstances of the present case, the Petitioner herein is approaching this Hon'ble Court by way of this petition under Article 226 of the Constitution of India because of order dated 21.1.2020 reported in 2020 (2) Scale Page 329 Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. Therefore order dated 18.03.2020 was passed in MA No. 820 of 2020. The operative portion of the order is as under:-

“Having heard learned senior counsel for both the parties, given the extraordinary facts in the present case, we are constrained to use our powers under Article 142 of the Constitution of India. Respondent No. 3 is restrained from entering the Legislative Assembly till further

orders of this Court. Needless to add, he will cease to be a Minister of the Cabinet immediately.”

It is further submitted that since Ld. Tribunal /Respondent No.1 has failed to decide petition under reference for last more than two years, the Respondent No.3 is drawing all facilities of MLC including MLCs Development Fund etc. illegally.

01.06.2020 That a Writ Petition being Diary No. 12007 of 2020 in the matter of Deepak Singh Vs. Hon'ble Chairman Uttar Pradesh Legislative Council & Ors. was filed before the Hon'ble Supreme Court.

08.06.2020 That the Writ Petition Diary No. 12007 of 2020 in the matter of Deepak Singh Vs. Hon'ble Chairman Uttar Pradesh Legislative Council & Ors. was withdrawn with the liberty to approach the High Court.

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09.06.2020 Hence the present Writ Petition is filed.

Lucknow:

Dated: 09.06.2020

SETTLED BY:-

K.C. KAUSHIK

FORMER ADDITIONAL SOLICITOR

GENERAL OF INDIA

(RAHUL KAUSHIK)

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD

LUCKNOW BENCH, LUCKNOW

WRIT PETITION NO. (M/B)OF 2020

Deepak SinghPetitioner

Versus

Hon'ble Chairman Legislative Council Uttar Pradesh. &
Ors.

.....Respondents

APPLICATION FOR INTERIM RELIEF

TO,

HON'BLE THE CHIEF JUSTICE OF INDIA

AND HIS OTHER COMPANION JUDGES

OF HON'BLE HIGH COURT

THE HUMBLE PETITION OF THE
ABOVENAMED PETITIONER

MOST RESPECTFULLY SHEWETH:

1. That the Petitioner have filed the Writ Petition and facts stated therein may be treated part and parcel of this application also.
2. That since the disqualification petition is pending for a period of more than 2 years and the Respondent No.1 is not deciding the disqualification petition for such long period of time.
3. That the Hon'ble Supreme Court in Miscellaneous Application No. 820 of 2020 in Civil Appeal No. 547 of

2020 in Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. decided on 18.03.2020 had directed that Respondent be restrained from entering Legislative Assembly as the Hon'ble Speaker had not decided the disqualification petition for a long period of time

PRAYER

- (i) issue an interim order restraining Respondent No.3 for attending Legislative Council and also availing any facility which is available to any member of the Legislative Council during the pendency of Writ Petition .
- (ii) Pass such other and further Order(s) as this Hon'ble Court may deem fit in the facts and circumstances of this case.

Lucknow:

Dated: .2020

SETTLED BY:-

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FORMER ADDITIONAL SOLICITOR

GENERAL OF INDIA

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IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD

LUCKNOW BENCH, LUCKNOW

WRIT PETITION NO. (M/B)OF 2020

Deepak Singh

Member Legislative Council and Leader,

Indian National Congress, Lucknow

.....Petitioner

Versus

1. The Hon'ble Chairman
Uttar Pradesh Legislative Council,
Vidhan Prishad Lucknow- 226001 (U.P.)
2. The Principal Secretary
Uttar Pradesh Legislative Council,
Vidhan Prishad Lucknow- 226001 (U.P.)
3. Dinesh Pratap Singh
Member Legislative Council,

.....Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

To,

The Hon'ble Chief Justice and his other Hon'ble
Companion Judge of this Hon'ble Court.

The humble petition of the above named petitioners most respectfully showeth as under:-

1. That the Petitioner have filed the Writ Petition and facts stated therein may be treated part and parcel of this application also.
2. That since the disqualification petition is pending for a period of more than 2 years and the Respondent No.1 is not deciding the disqualification petition for such long period of time.
3. The facts relevant for present writ petition are set out as under:-
 - i. That Dinesh Pratap Singh (herein after referred as Respondent No.3) was set up as a candidate of Member Legislative Council in Biennial election from 9, RaeBareli local authority constituency, Raebareli by Indian National Congress and accordingly Form-'BB' dated 11.02.2016 for Biennial election Uttar Pradesh State Legislative Council was issued by Indian National Congress on 11.2.2016. A true photocopy of Form-'BB' dated 11.02.2016 issued by the President, Uttar Pradesh Congress Committee Lucknow is annexed herewith and marked as **ANNEXURE NO.1.**
 - ii. That Respondent No.3 had filed his nomination for Uttar Pradesh Legislative Council from 9 RaeBareli,

Local Authority Constituency on 15.02.2016 on Form D as a candidate set up by Indian National Congress.

- iii. That Respondent No.3 was declared elected to the Uttar Pradesh Legislative Council from 9 RaeBareli Local Authority Constituency by the Returning Officer, 9 RaeBareli Local Authority Constituency RaeBareli as a candidate sponsored by Indian National Congress by declaration of result U/s. 66 of Representation of People Act, 1951 dated 6.3.2016. A true photocopy of the result issued on Form No.23 by the Returning Officer, 9 Raebareli local authority dated 6.3.2016 is annexed herewith and marked as **ANNEXURE NO.2.**
- iv. That Respondent No.3 attended rally on 21.04.2018 of Bhartiya Janta Party in presence of it's the then president Mr. Amit Shah and Shri Yogi Adityanath, Chief Minister, Uttar Pradesh of Bhartiya Janta Party.
- v. According to the Respondent No.3, he had joined Bhartiya Janta Party Uttar Pradesh against receipt No. 56558 dated 21.04.2018. A true photocopy of receipt No.56558 dated 21.04.2018 issued by Bhartiya Janta Party Uttar Pradesh is annexed herewith and marked as **ANNEXURE NO.3.**

- vi. According to the own case of the Respondent No.3, he had resigned from Indian National Congress and joined Bhartiya Janta Party and had also informed to the Respondent No.1 vide his communication No.032359 dated 23.04.2018 itself in writing. A true photocopy of communication No.032359 dated 23.04.2018 is annexed herewith and marked as **ANNEXURE NO.4.**
- vii. That since the Respondent No.3 had indulged in activities against the policies of Indian National Congress, and as such a petition for his disqualification under Article 191(2) read with Para 2 (1)(a) of the Tenth Schedule of the Constitution of India was filed before Respondent No.1 on 09.05.2018 by Indian National Congress through the Petitioner herein as Member Uttar Pradesh Legislative Council and Leader of India National Congress. A true photocopy of petition for disqualification of the Respondent No.3 dated 07.05.2018 is annexed herewith and marked as **ANNEXURE NO.5.**

- viii. That on the basis of the aforesaid petition, bulletin No.900/7 S dated 10.05.2018 was issued by the Respondent No.2.
- xi. That a Show cause notice No.1125/V.P-07 S/2018 dated 27.08.2018 was issued to Respondent No.3 under the signature of Respondent No.2 herein for filing reply to the Petition under Tenth Schedule within Seven days. A true photocopy of Show Cause Notice No. No.1125/V.P-07 S/2018 dated 27.08.2018 was issued by Respondent No.2 to Respondent No.3 is annexed herewith and marked as **ANNEXURE NO.6.**
- x. That in the Nomination Form for Member of Parliament of 17th Lok Sabha 2019 from 36- RaeBareli Parliamentary Constituency before the Returning Officer, the Respondent No.3 had filed his nomination on 15.4.2019 as a candidate set up by 'Bhartiya Janta Party' without tendering his resignation as Member of Uttar Pradesh Legislative Council even though he was declared elected on the ticket of Indian National Congress by the Returning Officer of 9 Raebareli Local Authority Constituency as Member Legislative Council. It is relevant to mention here that objections for

rejection of the candidature of the Respondent No.3 as a candidate of the Bhartiya Janta Party were filed by Indian National Congress through its President, District Congress Committee Raebareli. However, nomination Form of Respondent No.3 was declared valid by the Returning Officer, 36- Raebareli Parliamentary Constituency. A true photocopy of the objections dated 20.04.2019 filed before Returning Officer are annexed herewith and marked as **ANNEXURE NO.7.**

- xi. That the Respondent No.3 replied to the objections filed by Indian National Congress vide his letter No. 20.04.2019 to the returning Officer, 36 Raebareli Parliamentary Constituency. A true photocopy of the objections dated 20.04.2019 of the Respondent No.3 before the Returning officer is annexed herewith and marked as **ANNEXURE NO.8.**
- xii. That the Returning Officer 36, Raebareli Parliemntary Constituency disposed of the objections vide her order dated 20.04.2019. A true photocopy of the order dated 20.04.2019 of the Returning Officer, 36

Raebareli Parliamentary Constituency is annexed herewith and marked as **ANNEXURE NO.9.**

- xiii. That the Petitioner herein had filed application on 25.4.2019 before the Respondent No.1 for disposal of the Petition under Tenth Schedule which was/is pending since 9.5.2018 for disposal.
- xiv. That the Respondent No.2 had issued a communication no.525/V.P-7 S/2018 dated 30.04.2019 for fixing herein on 27.05.2019 at 1:00 PM before the Respondent No.1.
- xv. That the Petitioner herein alongwith his Counsel attended hearing on 27.05.2019 before the Respondent No.1 but the Respondent No.3 did not attend the hearing and as such the Petition was again fixed for hearing on 28.05.2019 at 3:00PM.
- xvi. That the Petitioner herein alongwith his Counsel attended hearing on 27.05.2019 at 3:00PM but neither the Respondent No.3 attended hearing nor his Counsel before the Respondent No.1 and as such matter was heard as ex-parte and judgment was reserved.

xvii. That it is relevant to mention here that though the judgment was reserved after hearing the matter ex-parte but in the late hours, Respondent No.1 had again given four weeks time to the Respondent No.3 for filing his reply without any communication to the Petitioner herein.

xviii. That it is pertinent to mention here that the Petitioner had objected for giving four weeks time vide his letter dated 31.5.2019 and also requested for disposal of the petition in compliance of this Hon'ble Court directions for disposal of Tenth Schedule petitions within three months from the date of its filing.

xix. That the Hon'ble Supreme Court in the case of Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. reported in 2020 (2) Scale Page 329 had held that-

"The only relief that can be given in these appeals is that the Speaker of the Manipur Legislative Assembly be directed to decide the disqualification petitions pending before him within a period of four weeks from the date of which this judgment is intimated to him. In case no decision is forthcoming even after a period

of four weeks, it will be open to any party to the proceedings to apply to this Court for further directions/ reliefs in the matter." A true copy of the Judgment of the Hon'ble Supreme Court dated 21.1.2020 in Civil Appeal No. 547 of 2020 is annexed herewith and marked as **ANNEXURE NO.10.**

- xx. That since the matter was pending for one year or 9 months for disposal by the Respondent No.1, the Petitioner herein had again filed an application on 28.02.2020 enclosing therewith judgment of the Hon'ble Supreme Court dated 21.01.2020 in 2020 (2) Scale 329 for compliance, disposal of the petition dated 10.05.2018 against the Respondent No.3 under Tenth Schedule of the Constitution of India on urgent basis specially because the Hon'ble Supreme Court had given maximum three months from the date of filing of the disqualification Petition . A true photocopy of application dated 27/28.02.2020 filed before the Respondent No.1 is annexed herewith and marked as **ANNEXURE NO.11.**

- xxi. That MA NO. 820 of 2020 in Civil Appeal No. 547 of 2020 Keisham Meghachandra Singh Vs. The Hon'ble

Speaker Manipur Legislative Assembly & Ors. was heard by the Hon'ble Supreme Court and the relevant portion of the order dated 18.03.2020 is reproduced below-

"the disqualification petition was decided by this Court itself in the extraordinary circumstances of that case, we went out of our way to give the Hon'ble Speaker a chance to perform his functions under the Tenth Schedule to the Constitution of India by stating that, given the fact that such a long period had already gone by without any decision, one month should suffice for the Hon'ble Speaker to decide the disqualification petitions before him."

"Having heard learned senior counsel for both the parties, given the extraordinary facts in the present case, we are constrained to use our powers under Article 142 of the Constitution of India. Respondent No. 3 is restrained from entering the Legislative Assembly till further orders of this Court. Needless to add, he will cease to be a Minister of the Cabinet immediately." A true copy of the order dated 18.03.2020 passed by the Hon'ble Supreme Court on

MA NO. 820 of 2020 in Civil Appeal No.547 of 2020 is annexed herewith and marked as **ANNEXURE NO.12.**

xxii. That it is respectfully submitted that in spite of the judgments and orders of the Hon'ble Supreme Court on the issue which are in the knowledge of the Respondent No.1, the Petition for disqualification under Tenth Schedule of the Constitution of India against the Respondent No.3 is pending for disposal since 09.05.2018 to till date i.e. more than 2 years. The Petitioner herein has sufficient reason to believe that the Respondent No.1 is not likely to decide the petition in spite of the facts that the matter was heard ex-parte on 28.05.2019 and judgment was reserved on the same day.

xxiii. That in view of the peculiar facts and circumstances, the Petitioner herein is approaching this Hon'ble Court by way of this petition under Article 226 of the Constitution of India for implementation of its judgments specially dated 21.1.2020 reported in 2020 (2) Scale Page 329 Keisham Meghachandra Singh Vs.

The Hon'ble Speaker Manipur Legislative Assembly &
Ors.

xxiv. That a Writ Petition being Diary No. 12007 of 2020 in the matter of Deepak Singh Vs. Hon'ble Chairman Uttar Pradesh Legislative Council & Ors. was filed before the Hon'ble Supreme Court. A true copy of Writ Petition Diary No. 12007 of 2020 in the matter of Deepak Singh Vs. Hon'ble Chairman Uttar Pradesh Legislative Council & Ors. filed before the Hon'ble Supreme Court is annexed herewith and marked as

ANNEXURE NO.13.

xxv. That the Writ Petition Diary No. 12007 of 2020 in the matter of Deepak Singh Vs. Hon'ble Chairman Uttar Pradesh Legislative Council & Ors. was withdrawn with the liberty to approach the High Court. A true copy of order dated 08.06.2020 passed by the Hon'ble Supreme Court is annexed herewith and marked as **ANNEXURE NO.14.**

4. That the Petitioners have got no other alternate remedy except to approach this Hon'ble Court under Article-226 of the Constitution of India, on the following grounds amongst other:-

GROUNDS

That the Petitioner is filing the present Writ Petition on following amongst other grounds which are taken in addition and without prejudice to each other:-

- A. Because the Hon'ble Supreme Court in the case of Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. in Civil Appeal No. 547 of 2020 decided on 21.1.2020 reported in 2020 (2) Scale 329 had held at para 31 that-

"The only relief that can be given in these appeals is that the Speaker of the Manipur Legislative Assembly be directed to decide the disqualification petitions pending before him within a period of four weeks from the date of which this judgment is intimated to him. In case no decision is forthcoming even after a period of four weeks, it will be open to any party to the proceedings to apply to this Court for further directions/ reliefs in the matter."

- B. Because the Hon'ble Supreme Court in Miscellaneous Application No. 820 of 2020 in Civil Appeal No. 547 of 2020 in Keisham Meghachandra Singh Vs. The

Hon'ble Speaker Manipur Legislative Assembly & Ors.
decided on 18.03.2020 had held that-

"This being so, by our judgment dated January 21, 2020, we had pointed out that despite the fact that in *Rajendra Singh Rana v. Swami Prasad Maurya* (2007) 4 SCC 270, the disqualification petition was decided by this Court itself in the extraordinary circumstances of that case, we went out of our way to give the Hon'ble Speaker a chance to perform his functions under the Tenth Schedule to the Constitution of India by stating that, given the fact that such a long period had already gone by without any decision, one month should suffice for the Hon'ble Speaker to decide the disqualification petitions before him. The judgment had reserved liberty to the appellants to approach this Court, in case the applications were not decided within one month."

"Having heard learned senior counsel for both the parties, given the extraordinary facts in the present case, we are constrained to use our powers under Article 142 of the Constitution of India. Respondent No. 3 is restrained from entering the

Legislative Assembly till further orders of this Court. Needless to add, he will cease to be a Minister of the Cabinet immediately.”

- C. Because the Hon'ble Supreme Court in the case of Rajendra Singh Rana V. Swami Prasad Maurya (2007) 4 SCC 270 had held at para 40 and 41-

“40. Coming to the case on hand, it is clear that the Speaker, in the original order, left the question of disqualification undecided. Thereby he has failed to exercise the jurisdiction conferred on him by para 6 of the Tenth be held to be covered by the shield of para 6 of the Schedule.

“41. In view of our conclusions as above, nothing turns on the arguments urged

on what were described as significant facts and on the alleged belatedness of the amendment to the writ petition. It is indisputable that in the order that was originally subjected to challenge in the writ petition, the Speaker specifically refrained from deciding the petition seeking disqualification of the 13 MLAs. On our reasoning as above, clearly, there was an error which attracted the jurisdiction of the High Court in exercise of its power of judicial review.”

- E. Because the Hon’ble Supreme Court in case of Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council & Ors. in Writ Petition (C) No. 322 of 2004 and Shiva Nandan Prasad Singh Vs. Chairman, Bihar Legislative Council &

Ors. in Writ Petition No. 370 of 2004 reported in (2004) 8 SCC 747 had held that-

“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 political parties. Paragraph 6 says that where any question arises as to whether a member of the House has become subject to disqualification under the Schedule, the same shall be referred for the decision of the Chairman or, as the case may be, the Speaker of the House and his decision shall be final. Therefore, the final authority to take a decision on the question of disqualification of a member of the House vests

with the Chairman or the Speaker of the House. It is to noted that the Tenth Schedule does not confer any discretion on the Chairman or Speaker of the House. Their role is only in the domain of ascertaining the relevant facts. Once the facts gathered or placed show that a member of the House has done any such act which comes within the purview of subparagraph (1), (2) or (3) of Paragraph 2 of the Tenth Schedule, the disqualification will apply and the Chairman or the Speaker of the House will have to make a decision to that effect."

- F. Because as per Article 191 (2) of the Constitution of India read with Tenth Schedule, the Respondent No.3 stands disqualified for being member of the Legislative Council.

Article 191 (2) of the Constitution of India is reproduced below-

“(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.”

Tenth Schedule is reproduced below-

“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 given up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or

authority 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 purposes 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 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."

- G. Because the disqualification petition is pending for a period of more than two years from 9.5.2018 before Respondent No.1.
- H. Because the Hon'ble Supreme Court in the case of Keisham Meghachandra Singh Vs. The Hon'ble Speaker Manipur Legislative Assembly & Ors. in Civil Appeal No. 547 of 2020 decided on 21.1.2020 reported in 2020 (2) Scale 329, had directed that an outer limit of three months be fixed for deciding the disqualification petitions from the date of filing of disqualification petitions.
- I. Because the Respondent No.3 has been drawing all the perks and facilities as Member of Legislative Council even though he had joined BJP on 23.4.2018 and stands disqualified as per Article 191 (2) read Tenth Schedule of the Constitution of India.

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J. Because according to the case of Respondent No.3, he had informed to the Respondent No.1 regarding his joining Bhartiya Janta Party on 23.04.2018 in writing. It is respectfully submitted that the Respondent No.1 has failed to discharge his duties as tribunal for the purpose of deciding petitions under Tenth Schedule of the Constitution of India for more than 2 years in spite of the fact the Hon'ble Supreme Court has given 3 months time to decide disqualification petition from the date on which the petition is filed.

PRAYER

Therefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to issue:-

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- (i) appropriate order, writ or direction, directing the Respondent No.1 to decide the disqualification petition within a period of four weeks.

- (ii) Pass such other and further Order(s) as this Hon'ble Court may deem fit in the facts and circumstances of this case.

Lucknow:

Dated: .2020

SETTLED BY:-
K.C. KAUSHIK
FORMER ADDITIONAL SOLICITOR
GENERAL OF INDIA

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