THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION Nos.9472, 11098 and 18553 of 2024

COMMON JUDGMENT:

In all these writ petitions the common question which arises for consideration is "*Whether the High Court in exercise of power of the judicial review can issue direction to the Speaker of Legislative Assembly to decide disqualification petitions within a fixed time frame*". Hence, the writ petitions are disposed of by this common judgment.

2. WP.No.9472 of 2024 is filed by Padi Kaushik Reddy, Bharat Rashtra Samithii (BRS) MLA and WP.No.18553 of 2024 is filed by Alleti Maheshwar Reddy, Bharaitya Janata Party (BJP) MLA and Floor Leader of BJP Legislature Party in Telangana State Legislative Assembly, to declare the action of the respondent No.2-Speaker of the Assembly in not adjudicating their petitions dated 18.03.2024 and 01.07.2024 respectively seeking disqualification of respondent No.5-Danam Nagender, MLA, Khairatabad Constituency, as being arbitrary, unconstitutional, against the spirit of democracy and X Schedule of the Constitution of India and for a direction to the Speaker to receive and decide the disqualification petitions within four weeks/three months.

3. WP.No.11098 of 2024 is filed by Kuna Pandu Vivekananda, BRS MLA, to declare the action of the respondent No.2-Speaker in not acknowledging the receipt of disqualification petitions dated 02.04.2024 and 08.04.2024 filed against the respondent No.5 (Venkata Rao Tellam – MLA of Bhadrachalam Constituency) and respondent No.6 (Kadiyam Srihari – MLA of Station Ghanpur Station Constituency) sent by E-mail and registered post and not initiating the process of deciding disqualification petitions as being illegal, arbitrary and violative of X Schedule of the constitution of India and to direct respondent No.2 to decide disqualification petitions within a period of three months.

4. WP.No.9472 of 2024, being the lead case, the facts therein are set out as under:

(a) The petitioner contested as a member of Telangana Legislative Assembly from Huzurabad Assembly Constituency as a candidate set up by Bharat Rashtra Samiti (BRS) and got declared as elected candidate on 03.12.2023 from Huzurabad Assembly Constituency. It is stated that pursuant to the election notification issued by the Election Commission of India, the respondent No.5 filed his nomination as candidate set up by BRS to 60-Khairtabad Assembly Constituency on 06.11.2023. The respondent No.5 submitted B Form issued by the President of BRS and filed an

affidavit in Form No.26 as stipulated under Rule 4A of the Conduct of Election Rules.

(b) The respondent No.5 was declared as elected candidate on 03.12.2023 from Khairtabad Assembly Constituency. On 15.03.2024, the respondent No.5 met the Telangana Pradesh Congress Committee President and Chief Minister, Mr. A. Revanth Reddy; Mr. Deep Daas Munshi, All India Congress Committee (AICC) In charge and Deputy Chief Minister, Mr. Mallu Bhatti Vikramarka, along with the other Indian National Congress (INC) leaders and joined INC by wearing INC party Scarf and the same was circulated in the local news papers along with photographs in the leading newspapers such as, Eenadu, Andhra Jyothi etc. and it is a conclusive proof that the respondent No.5 has voluntarily given up membership of BRS and joined INC.

(c) On 18.03.2024, the petitioner along with other members of legislative Assembly met the respondent No.2 and submitted Disqualification Petition under paragraph 2 (1) of the X Schedule read with Article 191 (2) of the Constitution of India under Rule 6 of Members of legislative Assembly (Disqualification on Ground of Defection) Rules.

(d) On 21.03.2024, the INC and AICC released a press note selecting candidates for the ensuing general elections to the Lok Sabha wherein the respondent No.5 was declared as a contesting

candidate set up by INC Party from Secunderabad constituency. The same was sought to be informed to the respondent No.2 by way of an additional affidavit along with Annexures but the office of the respondent No.2 has not given any appointment to them nor received the additional affidavit. Finally, on 30.03.2024, the petitioner sent the additional affidavit along with annexures through registered post to the respondent No.2. Having received the disqualification petition on 18.03.2024 and additional affidavit, which was sent through registered post on 30.03.2024, the respondent No.2 has not issued any notice to the respondent No.5 nor has adjudicated the disqualification petition filed by the petitioner.

(e) It is submitted that in a parliamentary democracy the office of the Speaker is held in very high esteem and respect. The Speaker is expected to be above parties and politics and he is said to be the embodiment of propriety and impartiality. The Speaker of the Assembly is acting as a Tribunal under the X Schedule of the Constitution of India is bound to decide the Disqualification Petition within a reasonable time. The Speaker acts as a Quasi Judicial Authority while adjudicating disqualification petition. The object underlying the provisions in the X Schedule of the Constitution of India is to curb the evil of political defections motivated by lure of office or other similar considerations which

endanger the foundations of our democracy. The X Schedule of the Constitution of India does not confer any discretion on the Chairman or the Speaker of the house.

(f) That in an identical case viz. ***R. Bhoopathi Reddy v. Chairman, Telangana State Legislative Council, Hyderabad***, a Division Bench of the Telangana High Court in WP.No.2698 of 2019 upheld the decision of the Hon'ble Chairman in disqualifying the candidate in similar circumstances and the writ petition was dismissed. The aforesaid decision was confirmed by the Supreme Court in Special Leave to Appeal (c) No.22178 of 2019 dated 07.01.2020.

(g) It is stated that in the instant case, the respondent No.5 voluntarily and unconditionally joined INC and was declared as candidate for Member of Parliament from Secunderabad Constituency from INC. In **KEISHAM MEGHACHANDRA SINGH v. SPEAKER, MANIPUR LEGISLATIVE ASSEMBLY**[1], the Supreme Court directed the Speaker of the Manipur Legislative Assembly to decide the disqualification petition within a period of four weeks from the date on which the judgment is intimated to him.

5. It is alleged in WP.No.11098 of 2024 that respondents No.5 and 6 were elected as BRS party MLAs; the respondent No.5 met Sri A. Revanth Reddy, Chief Minster and President TPCC on

[1] (2021) 16 SCC 503

03.04.2024; on 06.04.2024 respondent No.5 attended public meeting conducted by TPCC in the name of Telangana Jana Jathara wherein congress manifesto for General Elections (Parliament)2024 was released by Sri Rahul Gandhi along with INC Party leaders; on 07.05.2024 respondent No.5 formally joined INC in the presence of TPCC President, A. Revanth Reddy, and Sri Ponguleti Srinivas Reddy, Cabinet Minister. Further, it is stated that respondent No.6 on 29.03.2024 met Mr. Deep Dash Munshi, AICC and Member-in-Charge of TPCC and other INC leaders and made a request to TPCC President, A. Revanth Reddy and AICC In-charge that his daughter, namely, Kaidyam Kavya, is interested to contest for Parliament from Warangal Constituency on behalf of INC and on 31.03.2024, respondent No.6 along with his daughter joined INC party by wearing INC party scarf, the same was being widely circulated in local news papers such as Eenadu, Andhra Jyothi and Times of India etc. and has also been telecast in Electronic Media viz. TV9, NTV and TV5.

6. In the counter filed by the respondent No.3-Secretary, Telangana Legislative Assembly in WP.No.9472 of 204, it is stated that the writ petition is not maintainable. The petitioner herein has filed the disqualification petition on 18.03.2024 and the writ petition was filed on 10.04.2024, by making false allegations, on presumptions and assumptions, as if the petition submitted by

the petitioner will not be adjudicated by the respondent No.2. The disqualification petition will be adjudicated as per law. The writ petition is premature and liable to be dismissed.

7. It is stated that within one month of filing the disqualification petition and without even waiting for the initiation of the process, the petitioner approached this Court. The allegation that the respondent No.2 did not give appointment to the petitioner is false and incorrect. The additional affidavit filed by the petitioner, was received by the respondent No.2 on 27.04.2024. The respondent No.2 shall discharge his duties as per the X Schedule of the Constitution of India and the procedure under the Disqualification Rules 1986. Many disqualification petitions were filed during the tenure of the BRS party Government before the then Speaker and they were kept pending till 2018 till dissolution of the Legislative Assembly without adjudicating the same. The approach of the petitioner is erroneous, premature and the writ petition is liable to be dismissed in limine. The writ petition is in the nature of pre-emptive action without any infraction of right or cause and is filed in abuse of process of Court. The writ petition is filed in a post-haste manner without even waiting for the initiation of the process. The intemperate language used against the office of the Speaker is improper and the writ petition is liable to be dismissed.

8. In the counter affidavit filed by the respondent No.5, it is stated that the writ petition is filed with malafide intention solely to impair the political career of the respondent No.5. A Writ of Mandamus cannot be issued against the respondent No.2, in view of the decision of the Supreme Court in **KIHOTO HOLLOHAN v. ZACHILLHU**[2].

9. Heard Mr. C. Aryama Sundaram, Mr. Gandra Mohan Rao and Mr. J. Ramchander Rao, learned senior counsel, appearing for Mr. S. Santosh Kumar, learned counsel for the petitioners in WP.Nos.9472 and 11098 of 2024 and Mr. Gummala Bhaskar Reddy, learned counsel for the petitioner in WP.No.18553 of 2024 and learned Advocate General, Mr. P. Sri Raghuram, learned senior counsel appearing for Mr. P. Sriram, learned counsel for respondent No.5 in WP.No.9472 of 2024, Mr. Ravi Shankar Jandhyala, learned senior counsel appearing for Mr. Thoom Srinivas for respondent No.5 in WP.No.18553 of 2024; Mr. B. Mayur Reddy, learned senior counsel, appearing for Mr. Lokirev Preetham Reddy, learned counsel for respondent No.6 in WP.No.11098 of 2024, Mr. A. Ravinder Reddy, learned senior counsel appearing for Mr. Ch. Venkateswara Reddy, learned counsel for respondent No.5 in WP.No.11098 of 2024; Mr. K. Pradeep Reddy, learned counsel for respondent No.3 in WP.Nos.9472, 11098 and 18553 of 2024 and Mr. Mohd. Omer

[2] 1992 Supp (2) SCC 651

Farooq, learned counsel for respondent No.4 in WP.No.9472 and 11098 of 2024.

Submissions of Mr. C. Aryama Sundaram, learned senior counsel, appearing for Mr. S. Santosh Kumar, learned counsel for the petitioner in WP.Nos.9472 and 11098 of 2024:

10. The respondent No.5-BRS MLA filed nomination for Lok Sabha as INC party candidate. The disqualification petition was duly filed in terms of Rules 6 and 7 of the Members of the Telangana Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986. The petition filed on 18.03.2024 was not disposed of till end of June 2024. It is settled law that judicial review is permissible in matters arising out of the X Schedule of the Constitution of India. The contention of the respondents is that the petitioner approached this Court in a post-haste manner within one month from the date of filing of the disqualification petition. However, even till July 2024, the respondent No.2 has not chosen to initiate process of disqualification. The action of the respondent No.2 is a fraud on the mandate of the people. The respondent No.2 is doing nothing about the matter and this Court has jurisdiction under Article 226 of the Constitution of India to exercise power of judicial review and direct the respondent No.2 to pass orders within a time frame.

11. Learned senior counsel submitted that similar issue fell for consideration before the Manipur High Court, wherein the decision of the High Court was confirmed by the Supreme Court in SLP.No.18659 of 2019 and the Supreme Court fixed three months outer limit for deciding the disqualification petition. It is the constitutional duty of the Speaker to act in accordance with law and this Court, being another constitutional authority, is empowered to direct the Speaker to perform its constitutional duty and nothing else. The respondents do not have any defence to contest the disqualification petition on the principle of *res ipsa loquitur* and it is apparent from the face of the record that the respondent No.2 is unduly delaying the process in the disqualification petition. It is necessary for this Court to pass orders immediately as the BRS party apprehends some more defections would take place at the instance of the respondent No.5. The Speaker is a tribunal, as held in a catena of decisions and this Court has jurisdiction to direct the Speaker to pass orders.

Submissions of Mr. Gandra Mohan Rao, learned senior counsel, appearing for Mr. S. Santosh Kumar, learned counsel for the petitioner in WP.No.9472 of 2024:

12. The apprehension of the petitioners is that the Speaker failed to exercise his jurisdiction in deciding the disqualification petition. The petitions have not been received by the Secretary, Telangana State Legislative Assembly and the petitioners had to rush to the

Court seeking for an interim direction. Disqualification petitions were filed against two MLA's on 03.04.2024. The Speaker did not receive the petitions even by 08.04.2024. Thus, on 10.04.2024, the petitions were sent by registered post and there being no alternative, the writ petitions were filed on 23.04.2024.

13. The refusal of Speaker/Secretary of Legislative Assembly in receiving the petitions is an abdication of duty and violation of Constitutional mandate. The petitioners have been able to explain the necessity to approach this Court within short time of submitting disqualification petitions. Danam Nagender, BRS Party elected MLA, was issued B-Form by INC Party to contest as their MP candidate from Secunderabad Constituency, such a thing is unprecedented and it cannot be said that the petitioners have rushed to this Court without there being any cause of action.

14. The respondents filed counter on 25.06.2024 i.e. two months after writ petitions were filed. The Speaker is a Tribunal and this Court has power to direct the Speaker to decide the disqualification petitions within time frame. **KIHOTO HOLLOHAN**'s case (2 supra) does not deal with disqualification and the law laid down in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) is binding on this Court under Article 141 of the Constitution of India. Even in **SUBASH DESAI v. PRINCIPAL SECRETARY, GOVERNOR OF**

MAHARASHTRA[3], the Supreme Court has given directions to the Speaker by subsequent orders dated 17.10.2023 and 30.10.2023 and the ratio laid down in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) was not interfered with. If Danam Nagender is allowed to continue as MLA, it will be a mockery of democracy and X Schedule of the Constitution of India.

Submissions of Mr. J. Ramchander Rao, learned senior counsel, appearing for Mr. S. Santosh Kumar, learned counsel for the petitioner in WP.No.11098 of 2024:

15. The judgment in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) case dealing with disqualification petition is holding the field and is applicable to the facts of the present case. In subsequent decisions of the Supreme Court, the law laid down in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) case was not overruled. There is no judgment cited by the respondents, which diluted the ratio in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) case. The decision in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) case was followed by the High Court of Bombay (Goa Bench) and the High Court of Manipur. The BRS MLAs being elected on BRS Manifesto and B-Form in December 2023 campaigned for INC Party MP candidates in the General Elections held in May 2024. Thus, they have voluntarily ceased to be Members of BRS Party and incurred disqualification.

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[3] (2024) 2 SCC 719

16. The delay on the part of the Speaker in adjudicating the disqualification petitions is contrary to the Constitutional mandate and X Schedule of the Constitution of India. The manner in which petitions are not even received and acknowledged speaks volumes of the conduct of the Speaker. All the decisions cited by the learned Advocate General and other learned senior counsel deal with Split, Merger, Resignation, which are not applicable to the facts of the case.

Submissions of learned Advocate General:

17. The writ petitions are not maintainable. The conduct of the parties is necessary to be looked into. The way the writ petitions are filed and the uncalled for and intemperate allegations made against the Speaker, does not warrant any indulgence of this Court. The action of the petitioners is malafide. Within one month of filing the disqualification petition, WP.No.9427 of 2024 is filed. This Court can interfere only when the Speaker passes suspension order or disqualification order.

18. Learned Advocate General vehemently contended that the disqualification petitions are not maintainable in view of the law laid down by the Supreme Court in **KIHOTO HOLLOHAN**'s case (2 supra). It is submitted that the constitutional validity of Schedule X of the Constitution of India came up for consideration before the

Supreme Court wherein it was held that interference can be made by the Constitutional Courts only when the Speaker renders a decision. In **KIHOTO HOLLOHAN**'s case (2 supra) the majority opinion (three Judges) held that the Schedule X is constitutionally valid, however, a direction cannot be issued to the Speaker to decide disqualification petition within a time frame. The minority opinion (two Judges) held that Schedule X is unconstitutional.

19. In **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) the three Judges Bench of the Supreme Court directed the Speaker of the Manipur Legislative Assembly to decide the disqualification petition within three months. The said judgment is contrary to the law laid by the Supreme Court in **KIHOTO HOLLOHAN**'s case (2 supra). The learned three Judge Bench in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) relied on a Five Judge Bench judgment in **RAJENDRA SINGH RANA v. SWAMI PRASAD MAURYA**[4]. Though the judgment in **RAJENDRA SINGH RANA**'s case (3 supra) was rendered by Five Judges, the ratio laid down in **KIHOTO HOLLOHAN**'s case (2 supra) was not diluted nor could have been diluted. In fact, a Division Bench of the Supreme Court dealing with a similar issue declined to pass any relief in **S.A. SAMPATH KUMAR V. KALE YADAIAH**[5]**.**

[4] (2007) 4 SCC 270
[5] (2021) 16 SCC 528

Submissions of Mr. P. Sri Raghu Ram, learned senior counsel appearing for respondent No.5 in WP.No.9472 of 2024:

20. A writ Court cannot issue Mandamus against the Speaker of Legislative Assembly. So far no Court has issued Mandamus directing the Speaker of a Legislative Assembly to decide the disqualification petition within a time frame. The decision in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) has to be considered as an order passed under Article 142 of the Constitution of India and no ratio is laid down in the said decision.

21. The instant writ petition is premature. Writ can be filed only when a decision is taken by the Speaker and not at the pre-decisional stage. Innocuous direction cannot be issued by this Court and it would undermine the dignity of office of the Speaker and the same had been the consistent view and such judicial discipline had been followed by various Constitutional Courts.

22. In **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) it was a Writ of Quo Warranto and no Mandamus was issued by the Supreme Court. When there is conflict between two judgments of coordinate Benches, the ratio has to be seen. The relief sought for in the writ petition is a '*Quia Timet*' action which is not amenable to judicial review. **RAJENDRA SINGH RANA**'s case (4 supra) is not a ratio in *'Quia Timet'* action. The instant case before this Court is for issue of Mandamus, which was not the case in **KEISHAM**

MEGHACHANDRA SINGH's case (1 supra). The petitioner approached this Court only for political reasons and it is a malafide action.

23. The petitioners do not have any legal right and there is no cause of action for filing this writ petition. Even if the matter is being heard in June/July, the date of filing of writ petition is relevant to be seen for granting relief and merely because in due course of time, the matter came up for hearing in June/July, that would not be a ground to grant relief to the petitioners.

Submissions of Mr. B. Mayur Reddy, learned senior counsel appearing for Mr. Lokirev Preetham Reddy, learned counsel for the respondent No.5 in WP.No.11098 of 2024:

24. Prior to the decision of Speaker, no judicial review is permissible. It is permissible only after decision is taken by the Speaker. In some circumstances, ongoing action is justiciable. There is no pleading by the petitioner that he would suffer irreversible or irreparable injury, which is a condition precedent for granting relief in the writ petition.

25. The facts in **RAJENDRA SINGH RANA**'s case (4 supra) are entirely different. The decision of Speaker was tested in **RAJENDRA SINGH RANA**'s case (4 supra) and it is not a case of inaction of the Speaker prior to decision.

26. The law declared by the Supreme Court in **KIHOTO HOLLOHAN**'s case (2 supra) and followed by a Division Bench of our High Court in **ERRABELLI DAYAKAR RAO v. TALASANI SRINIVAS YADAV**[6] is binding on this Court. There is no ratio laid down in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra). The Supreme Court merely exercised power under Article 142 of the Constitution of India. The judgment in **ERRABELLI DAYAKAR RAO**'s case (6 supra) holds the field so far as this Court is concerned and time limit cannot be fixed. The Full Bench of the Supreme Court in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) could not have interpreted the Larger Bench decisions in **KIHOTO HOLLOHAN**'s case (2 supra) and **RAJENDRA SINGH RANA**'s case (4 supra).

Submissions of Mr. Ravi Shankar Jandhyala, learned senior counsel appearing for Mr. Thoom Srinivas, learned counsel for the respondent No.5 in WP.No.18553 of 2024:

27. It had been the consistent view of the Supreme Court and various High Courts not to interfere in pre-decisional matters arising under X Schedule of the Constitution of India. The Speaker exercises three powers, namely, (i) Presiding Officer of the House; (ii) Judicial powers and (iii) Administrative powers. The proceedings under X Schedule of the Constitution of India are being conducted in accordance with the rules of the Assembly and they cannot be

[6] 2015 SCC OnLine Hyd 418

interfered with under Article 226 of the Constitution of India. **RAJENDRA SINGH RANA**'s case (4 supra) (dealing with split of a Legislature Party); **GIRISH CHODANAR v. SPEAKER, GOA STATE LEGISLATIVE ASSEMBLY**[7] (dealing with Merger); **P. VETRIVEL v. P. DHANABAL**[8] and **JAYANT PATIL v. THE SPEAKER MAHARASHTRA STATE LEGISLATIVE ASSEMBLY** [WP(Civil).No.1077/2023 dated 17.1.2023] (dealing with Party Symbol) and **SPEAKER, HARYANA VIDHAN SABHA V. KULDEEP BISHNOI**[9] (dealing with Merger) are not applicable to the facts of the instant case. In **ERRABELLI DAYAKAR RAO**'s case (6 supra), this Court in categorical terms held that directions cannot be given to a Speaker at a pre-decisional stage.

28. Judicial propriety and discipline has to be maintained by this Court by following decision in **KIHOTO HOLLOHAN**'s case (2 supra). Even in the recent decision of the Supreme Court in **SUBASH DESAI**'s case (3 supra), at the first instance, the Supreme Court did not issue any direction to the Speaker to decide disqualification petition. Thus, the law laid down in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) is not a binding precedent and it was rendered in peculiar circumstances.

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[7] 2023 SCC OnLine Bom 979
[8] 2018 SCC OnLine Mad 2056
[9] (2015) 12 SCC 381

Reply Submissions of Mr. C. Aryama Sundaram, learned senior counsel:

29. The Speaker wears two hats viz. one as Master of the House presiding over the proceedings of the Assembly and another exercising power as a Tribunal. The power exercised by the Speaker as Master of the House cannot be interfered with. However, the power exercised as tribunal is subject to judicial review. It is not the case of the petitioner that ratio laid down in **KIHOTO HOLLOHAN**'s case (2 supra) case has been diluted in **RAJENDRA SINGH RANA**'s case (4 supra). In **KIHOTO HOLLOHAN**'s case (2 supra), a Larger Bench of the Supreme Court has given illustrations as to when Court can interfere with the decision of a Speaker. It has been held in **KIHOTO HOLLOHAN**'s case (2 supra) case that failure to exercise Constitutional mandate by the Speaker is subject to judicial review.

30. If the contention of the respondent-State and learned Advocate General is accepted then it will lead to a dangerous trend, as the authority, which acts against the spirit and mandate of the Constitution of India, can never take a decision and take shelter by virtue of observations of **KIHOTO HOLLOHAN**'s case (2 supra) regarding *Quia Timet* action. The decision of the house is not in question before this Court. It is the indecision and inaction of the Speaker that is in question. The disqualification of an MLA is an

action independent of the House and thus, there is no transgression by this Court and violation of theory of separation of powers. The speaker does not enjoy the immunity from judicial review in the realm of disqualification merely because he is a *persona designata*. It is settled law that under X Schedule the Speaker is acting as a Tribunal.

31. Para 110 of **KIHOTO HOLLOHAN**'s case (2 supra) cannot be read to contend in no circumstances, the indecision of the Speaker can be subjected to legal action. It is the Constitutional mandate that the Speaker should take a decision within a reasonable time. The grievance of the petitioner, being that the Speaker has not even initiated the process of disqualification, is subject to judicial review. This Court need not strain itself by interpreting the judgments of the Supreme Court in **KIHOTO HOLLOHAN**'s case (2 supra) and **RAJENDRA SINGH RANA**'s case (4 supra), as in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra), the three Judges of the Supreme Court, considered the above two judgments and held that the Speaker can be directed to decide disqualification petition within a time frame and the issue is no more *res integra*. The judgments in **RAJENDRA SINGH RANA**'s case (4 supra) and **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) is not under Article 142 of the Constitution of India and it is law laid down by the Supreme Court under Article 141 of the Constitution of India and

binding on this Court. The subsequent Five Judges Bench judgment of the Supreme Court in **SUBASH DESAI**'s case (3 supra) also approved the view taken by the Three Judges Bench in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra). There is no conflict between **KIHOTO HOLLOHAN**'s case (2 supra) on one side and **RAJENDRA SINGH RANA**'s case (4 supra) and **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra), on the other side, as canvassed by the respondents. Assuming there is conflict, the decision in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) will hold the field and would be the law of the land, as earlier two decisions have been thoroughly discussed and analysed.

32. Learned senior counsel submitted that it would be absurd on the part of the respondents to ask this Court to dismiss the writ petition on the ground of it being premature. The writ petition was filed in April and even in August not even an inch has moved in the disqualification petition and this Court, exercising jurisdiction under Article 226 of the Constitution of India, which is a special power, has to take into account the subsequent facts and events in order to avoid multiplicity of proceedings. It is necessary for this Court to direct the Speaker to decide the disqualification petition within a fixed time period so as to curb horse trading, as otherwise it would perpetuate fraud on the electorate. The inaction of the Speaker runs contrary to the Rule of Law and if this Court does not interfere,

it will lead to an authoritarian rule and undermine the democratic process.

33. Learned Advocate General and other learned senior counsel relied upon the following decisions in support of his contentions:

KEISHAM MEGHACHANDRA SINGH's case (1 supra); **KIHOTO HOLLOHAN**'s case (2 supra); **S.A. SAMPATH KUMAR**'s case (5 supra), **ERRABELLI DAYAKAR RAO**'s case (6 supra); **GOVINDANAIK G. KALAGHATIGI v. WEST PATENT PRESS CO. LTD.**[10]; **CENTRAL BOARD OF DAWOODI BOHRA COMMUNITY v. STATE OF MAHARASHTRA**[11]; **OFFICIAL LIQUIDATOR v. DAYANAND**[12]; **MINERAL AREA DEVELOPMENT AUTHORITY v. STEEL AUTHORITY OF INDIA**[13]; **STATE OF PUNJAB v. RAFIQ MASIH**[14]; **HOSHYAR SINGH CHAMBYAL v. HON'BLE SPEAKER, HP LEGISLATIVE ASSEMBLY**[15] and **HOSHYAR SINGH CHAMBYAL v. HON'BLE SPEAKER, HP LEGISLATIVE ASSEMBLY**[16].

34. In **KIHOTO HOLLOHAN**'s case (2 supra), the Supreme Court held as under:

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[10] 1979 SCC OnLine KAR 56
[11] (2005) 2 SCC 673
[12] (2008) 10 SCC 1
[13] (2011) 4 SCC 450
[14] (2014) 8 SCC 883
[15] 2024 SCC OnLine HP 1679 (DB)
[16] 2024 SCC OnLine HP 2479

"**109**. 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, 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, non-compliance with rules of natural justice and perversity.

110. In view of the limited scope of judicial review that is available on account of the finality clause in paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a *quia timet* action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence.

111. In the result, we hold on contentions (E) and (F):

...

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairman. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no *quia timet* actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which

may have grave, immediate and irreversible repercussions and consequence."

In **ERRABELLI DAYAKAR RAO**'s case (6 supra), the erstwhile High Court of Hyderabad held as under:

"**1**. The question of law that falls for our consideration is whether the High Court, in exercise of its powers under Article 226 of the Constitution of India, can issue mandatory direction to the Speaker of a State Legislative Assembly to dispose of a disqualification petition within a time frame?.

...

8. On the other hand, Sri. K. Rama Krishna Reddy, learned Advocate General for the State of Telangana, as an Amicus Curiae, invited our attention to the judgment of the Constitution Bench of the Supreme Court in *Kihoto Hollohan* (supra) and submitted that the writ petitions are not maintainable and are liable to be dismissed in the light of the law laid down by the Supreme Court in the said judgment. He submitted that in this judgment the Supreme Court held that the judicial review is available only against the orders passed by a Speaker and not prior to the making of a decision by the Speaker. He also invited our attention to Article 212 of the Constitution and submitted that validity of any proceedings in the Legislature of a State cannot be called in question on the ground of any alleged procedural irregularity, based on Defection Rules or otherwise. He submitted that about 10 disqualification petitions have been filed and are pending before the Speaker and that recently he has granted time to the respondent-members of the Legislative Assembly, against whom the disqualification petitions are filed, for filing their counters. He, therefore, submitted that it is not correct to state that the Speaker is not taking any steps to consider and decide the disqualification petitions. He submitted that scope of a

judicial review is very limited in terms of the judgment in *Kihoto Hollohan* (supra) by the Constitution Bench …

…

19. From the observations made by M.N. Venkatachaliah, J, as he then was, speaking for himself, K. Jayachandra Reddy and S.C. Agarwal, J.J, the judicial review should not cover any stage prior to making of a decision by the Speaker/Chairman. The Speaker while exercising powers and discharging functions under the Tenth Schedule acts as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review. Thus, having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia-timet actions are permissible at any stage prior to the making of a decision by the Speaker. It is also pertinent to note that in any case, scope of judicial review under Articles 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, non-compliance of rules of natural justice and perversity.

…

21. … In any case, the Defection Rules cannot be regarded as constitutional mandate and any violation of the Disqualification Rules would not afford a ground for judicial review."

In **S.A. SAMPATH KUMAR**'s case (5 supra), the Supreme Court held as under:

"**1.** The present petition raises a question of great constitutional importance, namely, whether a Speaker of a Legislative Assembly, acting under powers granted to him

under the Tenth Schedule of the Constitution of India (as a quasi-judicial authority) can be ordered by a High Court, exercising its writ jurisdiction under Article 226 of the Constitution of India, to decide a particular disqualification petition pending before him within a certain time.

2. Mr Mukul Rohatgi, learned Attorney General for India, has submitted before us that the answer to this question has clearly been laid down in para 110 of the Constitution Bench judgment in *Kihoto Hollohan* v. *Zachillhu* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651]. According to him, this judgment concludes the case before us, as has been held by the judgment in appeal in the present case. On the other hand, the learned counsel appearing on behalf of the appellant has submitted before us that the focus in the decision in *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] was somewhat different. He submitted that the constitutional validity of the Tenth Schedule of the Constitution of India as a whole was what was before the Court, and the Court, therefore, was not faced with the particular question that arises in this case. He also sought to argue that a *quia timet* action is an action in the nature of stay of proceedings before the Speaker, and the direction that the Speaker should decide a particular dispute within a certain time does not fall within such an action …

…

5. We, therefore, place the papers before the Hon'ble Chief Justice of India to constitute an appropriate Bench to decide this question as early as possible."

In **HOSHYAR SINGH CHAMBYAL**'s case (15 supra), the High Court of Himachal Pradesh held as under:

> "**51.** In the instant case, the elections to the Legislative Assembly had been held in November, 2022 and results were declared in December,2022. The term of the Assembly is till November,2027. So the situation in the instant case is not the same as in *Rajinder Singh Rana* (1 Supra).
>
> ...
>
> **53.** Unlike in the above cases, in the instant case, as of now, the Speaker had not taken any decision on the resignations submitted on 22.3.2024 by the petitioners."

In **HOSHYAR SINGH CHAMBYAL**'s case (16 supra), the High Court of Himachal Pradesh held as under:

> "**57.** Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court is persuaded to agree with view taken by the Hon'ble Chief Justice that no timeframe can be fixed by the Constitutional Court for the Speaker to decide the issue of resignation tendered by members of the Legislative Assembly/Vidhan Sabha, if any, brought before him. Reference is answered accordingly."

35. The observations of the Supreme Court in **KIHOTO HOLLOHAN**'s case (2 supra), more particularly, in para 109, on the scope of judicial review under Articles 136 and 226/227 of the Constitution of India in a matter of disqualification has been considered in **RAJENDRA SINGH RANA**'s case (4 supra).

36. In **RAJENDRA SINGH RANA**'s case (4 supra), a Legislator of BSP Legislative Party filed a petition before the Speaker in terms of Article 191 read with X Schedule of the Constitution of India,

to disqualify 13 BSP MLA's, who proclaimed support to Mulayam Singh Yadav, before Governor, in terms of Para 2 of the X Schedule of the Constitution of India, on the basis of that they have voluntarily given membership of BSP, the original party. A request was made by 37 MLA's on behalf of 40 MLA's requested the Speaker to recognize the split in the BSP that they constitute 1/3rd strength of BSP Legislature Party consisting of 109 legislators. The Speaker took up the application of split on the same day and overruled objection of BSP Legislators and accepted split to BSP. However, the Speaker did not decide the disqualification petition. The order of the Speaker dated 06.09.2003 accepting that the split in BSP comprises 1/3rd the members of the legislature party and that they have merged with Samajwadi Party, was challenged before the High Court in WP.No.5085 of 2003. During the pendency of the writ petition, the Speaker passed order rejecting the disqualification petition.

37. Taking note of the above background facts, the Supreme Court held that the Speaker failed to exercise jurisdiction conferred on him by Para 6 of X Schedule of the Constitution of India and as such, failure to exercise jurisdiction cannot be held to be covered by shield of Para 6 of X Schedule of the Constitution of India. It was further held that the Speaker specifically refrained from deciding the petition seeking disqualification of 13 MLA's and clearly there

was error which attracted the jurisdiction of the High Court to exercise power of judicial review. However, taking note of the fact that the term of the Assembly was coming to an end, the Supreme Court held that remand of proceeding to the Speaker would mean the proceeding itself may become infructuous. The writ petition filed before the High Court was allowed by the Supreme Court with declaration that the 13 MLAs, who met the Governor on 27.08.2003, stand disqualified from the Uttar Pradesh Legislative Assembly.

38. The decision in **RAJENDRA SINGH RANA**'s case (4 supra) was relied upon by the Supreme Court in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) wherein direction was given to the Speaker of Manipur Legislative Assembly to decide the disqualification petition pending before him within a period of four weeks from the date of intimation of the judgment. In **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra), the issue before the Supreme Court was regarding inaction on the thirteen applications for disqualification of respondent No.3 therein filed before the Speaker of Manipur Assembly between April and July 2017. Writ Petition was filed before the Manipur High Court to direct the Speaker to decide the disqualification petitions within reasonable time. The High Court of Manipur declined to pass orders on the premise that the issue *Whether High Court can direct a Speaker to*

decide disqualification petition within a time frame is pending before a Bench of Five Judges of the Supreme Court. The High Court of Manipur directed the matter to be listed so as to await the outcome of cases pending before the Supreme Court.

39. In **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra), the Supreme Court held as under:

> "**10.** … it is clear from a reading of para 110 of *Kihoto Hollohan* v. *Zachillhu* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] , that all that was interdicted by that judgment was the grant of interlocutory stays which would prevent a Speaker from making a decision and not the other way around. For this purpose, he read to us *Black's Law Dictionary* on the meaning of a *quia timet* action, and argued that the judgment read as a whole would make it clear that if the constitutional objective of checking defections is to be achieved, judicial review in aid of such goal can obviously not be said to be interdicted. He also strongly relied upon the observations of this Court in *Rajendra Singh Rana* v. *Swami Prasad Maurya* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] and exhorted us to uphold the reasoning contained in the impugned judgment [*Mohd. Fajur Rahim* v. *Speaker, Manipur Legislative Assembly*, 2019 SCC OnLine Mani 127] and then issue a writ of *quo warranto* against Respondent 3.
>
> …
>
> **13.** We would have acceded to Mrs Madhavi Divan's plea that in view [*S.A. Sampath Kumar* v. *Kale Yadaiah*, (2021) 16 SCC 528] of this order of a Division Bench of this Court, the hearing of this case ought to be deferred until the pronouncement by a five-Judge Bench of this Court on the issues raised in the present petition. However, we find that

this very issue was addressed by a five-Judge Bench judgment in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] and has already been answered. Unfortunately, the decision contained in the aforesaid judgment was not brought to the notice of the Division Bench which referred [*S.A. Sampath Kumar* v. *Kale Yadaiah*, (2021) 16 SCC 528] the matter to five Hon'ble Judges of this Court, though *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] was sought to be distinguished in *Kuldeep Bishnoi* [*Speaker, Haryana Vidhan Sabha* v. *Kuldeep Bishnoi*, (2015) 12 SCC 381] , which was brought to the notice of the Division Bench of this Court.

...

24. It is clear from a reading of the judgment in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] and, in particular, the underlined portions [italicised herein] of paras 40 and 41 that the very question referred by the two-Judge Bench in *S.A. Sampath Kumar* [*S.A. Sampath Kumar* v. *Kale Yadaiah*, (2021) 16 SCC 528] has clearly been answered stating that a failure to exercise jurisdiction vested in a Speaker cannot be covered by the shield contained in Para 6 of the Tenth Schedule, and that when a Speaker refrains from deciding a petition within a reasonable time, there was clearly an error which attracted jurisdiction of the High Court in exercise of the power of judicial review.

...

33. ... In the present case, the life of the Legislative Assembly comes to an end only in March 2022 unlike in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] where, but for this Court deciding the disqualification petition in effect, no relief could have been given to the petitioner in that case as the life of

> the Legislative Assembly was about to come to an end. 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 on which this judgment is intimated to him …"

40. In Para 30 of **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) the Supreme Court by referring to Paras 110 and 111 of **KIHOTO HOLLOHAN**'s case (2 supra), observed that "…*What is reasonable period will depend on facts of each case, but absent exceptional circumstances for which there is a good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided if the constitutional objective of disqualifying persons who have infracted the X Schedule of the Constitution is to be adhered to*…"

41. **SUBHASH DESAI**'s case (3 supra) arose out of a writ petition filed before the Supreme Court under Article 32 of the Constitution of India challenging the notice of disqualification issued by the Speaker of Maharashtra Legislative Assembly and the communication issued by the Governor to the Chief Minister. In the original order passed by the Supreme Court, it was held that ordinarily the Court cannot adjudicate petition for disqualification under the X Schedule of the Constitution of India, in the first

instance and there are no extraordinary circumstances that warrant exercise of jurisdiction to decide disqualification petition and the Speaker must decide the disqualification petition within a reasonable time. Subsequently, by order dated 17.10.2023, the Supreme Court granted opportunity to the Speaker of the Maharashtra Assembly to prescribe a time schedule for disposal of disqualification application in view of the assurance given to the Court by the Solicitor General of India. Later, order dated 30.10.2023 was passed by the Supreme Court taking note of the fact that the Speaker was given several opportunities as a Tribunal to conclude the proceedings under the X Schedule of the Constitution of India expeditiously and ultimately, directions were given to conclude the disqualification proceedings and dispose of Group-A petitions on or before 31.12.2023 and Group-B petitions on or before 31.01.2024.

Binding Precedent – Articles 141 and 142 of the Constitution of India – Law of the Land:

42. It is the contention of the learned Advocate General and other learned senior counsel for the respondents that the judgments in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) and **RAJENDRA SINGH RANA**'s case (4 supra) are rendered under peculiar circumstances. Learned Advocate General vehemently submitted that the judgment in **KEISHAM**

MEGHACHANDRA SINGH's case (1 supra) has to be treated as one passed by the Supreme Court invoking power under Article 142 of the Constitution of India. Learned Advocate General further submitted that the judgment in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) was rendered by a Bench of Three Judges and is contrary to the law laid down by the Supreme Court in **KIHOTO HOLLOHAN**'s case (2 supra). In **RAJENDRA SINGH RANA**'s case (4 supra), which was decided on peculiar facts, the Five Judges Bench of the Supreme Court did not differ with the law laid down earlier by a Coordinate bench in **KIHOTO HOLLOHAN**'s case (2 supra) on the subject of *'Quia Timet'* action. In **RAJENDRA SINGH RANA**'s case (4 supra), the law laid down in **KIHOTO HOLLOHAN**'s case (2 supra) could not have been diluted. The observations made in **RAJENDRA SINGH RANA**'s case (4 supra) are read out of context by the three Judges Bench in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) and ruled that direction can be issued to the Speaker to decide disqualification petition within a time frame.

43. Learned Advocate General submitted that in the light of the Five Judges Bench judgment in **KIHOTO HOLLOHAN**'s case (2 supra), the judgment in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) is not a good law and not binding on this Court. It is also argued that **KIHOTO HOLLOHAN**'s case (2 supra) and

RAJENDRA SINGH RANA's case (4 supra) have been followed by a Division Bench of this Court in **ERRABELLI DAYAKAR RAO**'s case (6 supra) and also in **HOSHYAR SINGH CHAMBYAL**'s case (16 supra) wherein it was held that direction cannot be issued to Speaker to decide the disqualification petition in a time bound manner.

44. Mr. Ravi Shankar Jandhyala, learned senior counsel, relied on the judgments of the Supreme court in **MAYAWATI v. MARKANDEYA CHAND**[17] and **BALCHANDRA L. JARKIHOLI v. B.S. YEDDYURAPPA**[18] and judgment of a learned Single Judge of this Court in **M.S. PRABHAKARA RAO v. K.R. AMOS**[19]. Learned senior counsel submitted that as laid down in the aforesaid cases, the power of judicial review can be exercised only when a decision is taken by the Speaker. In **M.S. PRABHAKARA RAO**'s case (19 supra), this Court clearly held that judicial review at a pre-decisional stage is not permissible as held in **KIHOTO HOLLOHAN**'s case (2 supra). He also relied on the observations made in Para 28 of the decision of the Supreme Court in **NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI**[20] and submitted that the decision in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) is *per incuriam* being

[17] (1998) 7 SCC 517
[18] (2011) 7 SCC 1
[19] 2015 (2) ALT 510
[20] (2017) 16 SCC 680

contrary to the law laid down by the Supreme Court in **KIHOTO HOLLOHAN**'s case (2 supra).

45. Mr. C. Aryama Sundaram, learned senior counsel, submitted that the argument of the learned Advocate General and other learned senior counsel appearing for the respondents does not hold water. It is not for this Court to interpret the judgment of the Supreme Court and read something from each judgment, which is not available in text and context. Assuming that the judgment in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) is not a correct law, still this Court is bound by the ratio laid down in the said case.

46. Learned senior counsel appearing for both the parties have painstakingly referred to several observations made in **KIHOTO HOLLOHAN**'s case (2 supra), **RAJENDRA SINGH RANA**'s case (3 supra) and **SUBHASH DESAI**'s case (9 supra) in support of their respective case. It is interesting to note that Paras 109 and 110 of **KIHOTO HOLLOHAN**'s case (2 supra) are relied upon by both the learned Advocate General and Mr. C. Aryama Sundaram by arguing that the same supports their case. While it is the contention of the learned Advocate General that judicial review is not permissible in *'Quia Timet'* action and at pre-decisional stage, as per Paras 109 and 110 of **KIHOTO HOLLOHAN**'s case (2 supra); Mr. Aryama

Sundaram submitted that the said paragraphs, in fact, support the case of the petitioners; the Supreme Court has given illustration as to when the Court can interfere with the decisions of the Speaker, such observations of the Supreme Court cannot be read to contend that indecision and inaction of the Speaker has to be treated as *'Quia Timet'* at all given times; the Supreme Court clearly lays down that the writ petition is maintainable when the Speaker acts against Constitutional mandate.

47. It is necessary to point out that the judgment cannot read as a Statute. The Courts interpret statutes but not judgments. The ratio of a judgment has to be understood by reading it as a whole and not by dissecting it into bits and pieces. It is not that every paragraph and observation becomes a ratio and binding precedent. In **NATURAL RESOURCES ALLOCATION, IN RE, SPECIAL REFERENCE No.1 of 2021**[21] case, it was held as under:

> "**69.** Article 141 of the Constitution lays down that the "law declared" by the Supreme Court is binding upon all the courts within the territory of India. The "law declared" has to be construed as a principle of law that emanates from a judgment, or an interpretation of a law or judgment by the Supreme Court, upon which, the case is decided. (See *Fida Hussain* v. *Moradabad Development Authority* [(2011) 12 SCC 615 : (2012) 2 SCC (Civ) 762] .) Hence, it flows from the above that the "law declared" is the principle culled out on the reading of a judgment as a whole in light of the

[21] (2012) 10 SCC 1

questions raised, upon which the case is decided. [Also see *Ambica Quarry Works* v. *State of Gujarat* [(1987) 1 SCC 213] and *CIT* v. *Sun Engg. Works (P) Ltd.* [(1992) 4 SCC 363]] In other words, the "law declared" in a judgment, which is binding upon courts, is the ratio decidendi of the judgment. It is the essence of a decision and the principle upon which the case is decided which has to be ascertained in relation to the subject-matter of the decision.

70. Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it the ratio decidendi …

71. … A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment."

72. Recently, in *Union of India* v. *Amrit Lal Manchanda* [(2004) 3 SCC 75 : 2004 SCC (Cri) 662] this Court has observed as follows: (SCC p. 83, para 15)

"*15*. … Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

> **73.** It is also important to read a judgment as a whole keeping in mind that it is not an abstract academic discourse with universal applicability, but heavily grounded in the facts and circumstances of the case. Every part of a judgment is intricately linked to others constituting a larger whole and thus, must be read keeping the logical thread intact. In this regard, in *Islamic Academy of Education* v. *State of Karnataka* [(2003) 6 SCC 697] , this Court made the following observations: (SCC p. 719, para 2)
>
> "*2*. … The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment."

48. On the binding nature of subsequent decision of the Supreme Court, at paras 16 and 17 of the judgment in **GREGORY PATRAO v. MANGALORE REFINERY AND PETROCHEMICALS**[22], it was held as under:

> "**16.** This Court thereafter had considered the decisions in *U.P. Awas Evam Vikas Parishad* [*U.P. Awas Evam Vikas Parishad* v. *Gyan Devi*, (1995) 2 SCC 326] and *Himalayan Tiles & Marble* [*Himalayan Tiles & Marble (P) Ltd.* v. *Francis Victor Coutinho*, (1980) 3 SCC 223] and has distinguished the same and has observed and held that the decisions in *U.P. Awas Evam Vikas Parishad* [*U.P. Awas Evam Vikas*

[22] (2022) 10 SCC 461

Parishad v. *Gyan Devi*, (1995) 2 SCC 326] and *Himalayan Tiles & Marble* [*Himalayan Tiles & Marble (P) Ltd.* v. *Francis Victor Coutinho*, (1980) 3 SCC 223] shall not be appliable with respect to the acquisition under the KIAD Act, 1966. Once, this Court in the subsequent decision in *Peerappa Hanmantha Harijan* [*Peerappa Hanmantha Harijan* v. *State of Karnataka*, (2015) 10 SCC 469 : (2016) 1 SCC (Civ) 155] dealt with and considered the earlier decisions in *U.P. Awas EvamVikas Parishad* [*U.P. Awas Evam Vikas Parishad* v. *Gyan Devi*, (1995) 2 SCC 326] and *Himalayan Tiles & Marble* [*Himalayan Tiles & Marble (P) Ltd.* v. *Francis Victor Coutinho*, (1980) 3 SCC 223] and distinguished the same and observed and held with respect to the acquisition under the KIAD Act, 1966 that the allottee company can neither be said to be a "person interested" nor entitled for hearing before determination of compensation, the said ratio was binding upon the High Court. Thus, it was not open for the High Court to not follow the binding decision of this Court in *Peerappa Hanmantha Harijan* [*Peerappa Hanmantha Harijan* v. *State of Karnataka*, (2015) 10 SCC 469 : (2016) 1 SCC (Civ) 155] by observing that in the subsequent decision in *Peerappa Hanmantha Harijan* [*Peerappa Hanmantha Harijan* v. *State of Karnataka*, (2015) 10 SCC 469 : (2016) 1 SCC (Civ) 155] , the earlier decisions in *U.P. Awas Evam Vikas Parishad* [*U.P. Awas Evam Vikas Parishad* v. *Gyan Devi*, (1995) 2 SCC 326] and *Himalayan Tiles & Marble* [*Himalayan Tiles & Marble (P) Ltd.* v. *Francis Victor Coutinho*, (1980) 3 SCC 223] have not been considered. The High Court has not noted that as such while deciding the case of *Peerappa Hanmantha Harijan* [*Peerappa Hanmantha Harijan* v. *State of Karnataka*, (2015) 10 SCC 469 : (2016) 1 SCC (Civ) 155], this Court did consider the earlier decisions in *U.P. Awas Evam Vikas Parishad* [*U.P. Awas Evam Vikas*

> *Parishad* v. *Gyan Devi*, (1995) 2 SCC 326] and *Himalayan Tiles & Marble* [*Himalayan Tiles & Marble (P) Ltd.* v. *Francis Victor Coutinho*, (1980) 3 SCC 223] and had clearly distinguished the same. Not following the binding precedents of this Court by the High Court is contrary to Article 141 of the Constitution of India. Being a subsequent decision, in which the earlier decisions were considered and distinguished by this Court, the subsequent decision of this Court was binding upon the High Court and not the earlier decisions, which were distinguished by this Court.
>
> **17.** Under the circumstances, the High Court has committed a grave/serious error in passing the impugned judgment and order by relying upon the judgments of this Court in *U.P. Awas Evam Vikas Parishad* [*U.P. Awas Evam Vikas Parishad* v. *Gyan Devi*, (1995) 2 SCC 326] and *Himalayan Tiles & Marble* [*Himalayan Tiles & Marble (P) Ltd.* v. *Francis Victor Coutinho*, (1980) 3 SCC 223] and by not following the subsequent decision of this Court in *Peerappa Hanmantha Harijan* [*Peerappa Hanmantha Harijan* v. *State of Karnataka*, (2015) 10 SCC 469 : (2016) 1 SCC (Civ) 155]."

49. The decision in **KIHOTO HOLLOHAN**'s case (2 supra) was considered by a three Judge Bench in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) and it was clearly held that the law laid with regard to indecision/inaction of the Speaker is subject to judicial review and direction can be issued to decide disqualification petition within a time frame. The decision in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) was subsequent in point of time after decision of a Division Bench of this Court in **ERRABELLI DAYAKAR RAO**'s case (6 supra).

In **HOSHYAR SINGH CHAMBYAL**'s case (15 and 16 supra), the issue was not regarding disqualification of MLA. The relief sought in the said case was to direct the Speaker to take a decision regarding letter submitted by the petitioners therein in a time bound manner. Due to difference of opinion between the Chief Justice and another learned Judge, the matter was referred to a third Judge, who concurred with the view of the Chief Justice. It was held that there was no relief sought by the petitioners to direct the Speaker to decide the resignations in a time bound manner. Hence, the principle of law laid down in **ERRABELLI DAYAKAR RAO**'s case (6 supra) and **HOSHYAR SINGH CHAMBYAL**'s case (16 supra) are of no help to the respondents.

50. Learned Advocate General heavily relied on a Full Bench decision of the Karnataka High Court in **GOVINDANAIK G. KALAGHATIGI**'s case (10 supra) and submitted that when there is a conflict between two decisions of the Supreme Court, the decision of a Larger Bench has to be followed. By referring to Para 10 of the **CENTRAL BOARD OF DAWOODI BOHRA COMMUNITY**'s case (11 supra) and Paras 90, 91 and 92 in **OFFICIAL LIQUIDATOR**'s (12 supra), learned Advocate General submitted that judicial discipline is a *sine qua non* for effective and efficient functioning of the judicial system. Whenever a Court has a doubt regarding applicability of a ratio involved in a Division Bench or Larger Bench

decision of the Supreme Court, judicial discipline **inheres** a Single Judge or Bench with lesser coram to refer the matter to a Full Bench or Larger Bench as the case may be. Learned Advocate General also placed reliance on **RAFIQ MASIH**'s case (14 supra) and contended that the decision of the Supreme Court in **RAJENDRA SINGH RANA**'s case (4 supra) was passed in exercise of power under Article 142 of the Constitution of India and there was no direction issued to decide the disqualification petition. As such, there is no ratio laid down in **RAJENDRA SINGH RANA**'s case (4 supra). Despite the same, the Full Bench in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) held that Five Judges Bench in **RAJENDRA SINGH RANA**'s case (4 supra) already addressed the issue regarding indecision of the Speaker, which is factually incorrect, thus, the decision in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) is not a binding precedent.

51. Several judgments, cited in the course of hearing and after hearing, have not been referred to by this Court as it would unnecessarily burden this judgment.

52. It is necessary to point out that the facts in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) are identical to the facts in the instant case. In the aforesaid decision, the issue

whether direction can be issued to the Speaker for deciding a disqualification petition was considered and it was held that inaction of the Speaker to decide the petitions within a reasonable time will be subject to judicial review.

53. If the contention of the learned Advocate General and other learned senior counsel appearing for the respondents that this Court can never give directions to the Speaker to decide disqualification within a time frame, is to be accepted, then the question that would arise is "*how long the inaction or indecision of the Speaker to be tolerated by this Court*".

54. In the course of discussion, this Court posed the aforesaid question to the learned Advocate General and it was submitted by the learned Advocate General that it would be difficult to answer such hypothetical question and the Court should never venture into hypothetical situation. Learned Advocate General submitted that the disqualification petition will be decided within a reasonable time and the petitioners, who have rushed to this Court within ten days of fling of disqualification petition, need not have any apprehension about that.

55. The complaint of the petitioners is that Danam Nagender, who was elected as MLA on BRS Party ticket, without resigning, contested as MP on Congress Party ticket. It is openly proclaimed

by him that 2/3rd of the elected BRS MLA's would follow his suit. Any delay in disposal of disqualification petition would be a fraud on democracy. It may be noted that several judgments relied on by the learned Advocate General and other learned senior counsel, do not deal with a situation where MLA of one party contested as an MP on another party ticket.

56. According to the Mr. Gandra Mohan Rao, learned senior counsel, every single day is a premium for respondent No.5, who, being elected as a BRS party candidate, now is speaking in Assembly as an associate of the Congress Legislature Party and acting against the interest of BRS Legislature party. By taking cue from Para 45 of **RAJENDRA SINGH RANA**'s case (4 supra), Mr. Gandra Mohan Rao, learned senior counsel, submitted that continuance of Mr. Danam Nagender even for a single day would be a blot on the democracy. If this Court does not interfere in this matter, it will send a wrong message to the Society. People, who have voted for a particular candidate nominated by a recognized political party, will lose faith in democracy. A sitting MLA of one party contesting as MP of another party can never be countenanced. If such things are permitted, then it would amount to recognizing Horse Trading and opposed to all canons of justice and democratic principles and ultimately, the will of people/voters.

57. Every case is peculiar to its facts. Learned Advocate General and learned senior counsel appearing for the respondents contended that the judgments relied upon by the learned senior counsel for the petitioners are rendered in peculiar circumstances and cannot be treated as a binding precedent. It is also contended that in **RAJENDRA SINGH RANA**'s case (3 supra), the term of Assembly was coming to an end and in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra), the disqualification petitions were not considered for about two years. In the opinion of this Court, it is not the left over term, which is relevant, to find out special or peculiar circumstances. Indulgence of the Court would depend upon the nature of grievance and not by the remainder of the term of the Legislative Assembly. The Court should always endeavour to understand the seriousness of the issue and special circumstances from the view point of the aggrieved party.

58. Learned Advocate General contended that judicial discipline warrants that decision of a Larger Bench in **KIHOTO HOLLOHAN**'s case (2 supra) has to be followed as against the judgment in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra), which is rendered by a three Judge bench.

59. The disqualification petition was directly in issue in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) and it has been held that directions can be issued to the Speaker to decide the

disqualification petition within a time frame. This Court cannot differ with the law laid down in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra), as law of Supreme Court is binding on this Court under Article 141 of the Constitution of India.

Can subsequent events/developments be taken into consideration:

60. Another point raised by the learned Advocate General that the relief that can be granted to the petitioners should be with reference to the date of filing of writ petition and cause of action and merely because time has passed, in due course, the same cannot be a circumstance to grant relief. In Para 17 of **RAM CHANDRA PRASAD SINGH v. SHARAD YADAV**[23], it was held as under:

> "**17.** In a writ petition under Article 226 subsequent events can be taken note of for varied purposes. We are reminded of the weighty observation of V.R. Krishna Iyer, J. in *Pasupuleti Venkateswarlu* v. *Motor & General Traders* [*Pasupuleti Venkateswarlu* v. *Motor & General Traders*, (1975) 1 SCC 770] , where following was observed : (SCC pp. 772-73, para 4)
>
> "*4*. … It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the *lis* has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events

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> which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

61. Be it noted that Writ jurisdiction under Article 226 of the Constitution of India is very wide. It would not be in the interest of justice to dismiss the writ petition on the ground of hasty action and on technical grounds, even when the situation otherwise warrants interference of this Court. Every Constitutional authority is bound by the principles of Democracy, Constitutional ethics and philosophy. To contend that indecision/inaction is not subject to judicial review, one has to ask for how long. It cannot be said that the Speaker can wait for five years, until the completion of the term of the house and still Court should lay off its hands. Such approach would be against Constitutional Mandate and antithetical to

democratic principles. If the judgment in **KIHOTO HOLLOHAN**'s case (2 supra) is construed in the manner canvassed by the learned Advocate General and other learned senior counsel, then there may arise a situation where the party would not have any remedy if the Speaker declines to take any decision in the disqualification petition.

62. Much emphasis is laid by the learned Advocate General on order of the Supreme Court in **S.A. SAMPATH KUMAR**'s case (5 supra), which arises out of a Division Bench judgment of this Court in ***S.A. SAMPATH KUMAR v. KALE YADAIAH*** [WA.No.158 of 2015 and WP.No.7217 and 7679 of 2015 dated 28.09.2015]. It is contended that Division Bench of the Supreme Court in **S.A. SAMPATH KUMAR**'s case (5 supra) decided to refer the matter to Larger Bench of Five Judges and thus, the three Judges Bench in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) case could not have passed orders without awaiting for decision of Larger Bench.

63. It is contended by the learned Advocate General that several disqualification petitions moved during the TRS Regime were not disposed of by then Speaker and they relied on **KIHOTO HOLLOHAN**'s case (2 supra) case based on which Division Bench of this Court held in **ERRABELLI DAYAKAR RAO**'s case (6 supra)

that writ is not maintainable at pre-decisional case. Mr. P. Sri Raghuram, learned senior counsel, contended that High Court in its writ jurisdiction cannot issue a Mandamus to the Speaker. Both these contentions do not hold force in the light of authoritative pronouncement of the Supreme Court in **KEISHAM MEGHACHANDRA SINGH**'s case (1 supra) case.

64. WP.Nos.9472 and 11098 of 2024 were filed in the month of April and WP.No.18553 of 2024 was filed in the month of July, the matter was heard at length and arguments were concluded on 10.08.2024. However, till now there is no information as to the status of disqualification petitions. In the above backdrop, this Court opines that the petitioners have made out special circumstances and are entitled for relief in these writ petitions.

65. Having due regard to the Constitutional status and dignity of the Office of the Speaker, this Court finds it appropriate to direct the respondent No.3-Secretary, Telangana Legislative Assembly, to forthwith place the disqualification petitions before the respondent No.2-Speaker, Telangana Legislative Assembly for fixing a schedule of hearing (filing of pleadings, documents, personal hearing etc.) within a period of four (4) weeks from today. The schedule, so fixed, shall be communicated to the Registrar (Judicial), High Court for the State of Telangana. If nothing is heard

within four (4) weeks, it is made clear that the matter will be reopened *suo motu* and appropriate orders will be passed.

The writ petitions are disposed of accordingly. Miscellaneous petition pending, if any, shall stand closed. There shall be no order as to costs.

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B. VIJAYSEN REDDY, J

September 9, 2024
Note:
1. Issue CC today
2. LR Copy to be marked
(**B/o**) DSK