THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT APPEAL Nos.1157, 1158 AND 1160 OF 2024

% Dated 22.11.2024

The Telangana Legislative Assembly,
Rep. by its Secretary,
Telangana Legislature,
Hyderabad.

...Appellant

VERSUS

$ Alleti Maheshwar Reddy
and others.

... Respondents

! Counsel for appellant : Mr. A.Sudarshan Reddy,
Learned Advocate General,
Representing Mr. K.Pradeep Reddy

^ Counsel for respondent No.1 in W.A.No.1157 of 2024:
Mr. J.Prabhakar,
Learned Senior Counsel representing
Mr. R.V.Pavan Maitreya

^ Counsel for respondent No.1 in W.A.Nos.1158 and 1160 of 2024: Mr. G.Mohan Rao,
Learned Senior Counsel representing
Mr. S. Santosh Kumar

^ Counsel for respondent No.2 in all the writ appeals:
Mr. Ravindra Shrivastava,
Learned Senior Counsel representing
Mr.I.V.Siddhivardhana,
Learned Special Government Pleader,
appeared through video conferencing

^ Counsel for respondent No.5 in W.A.No.1157 of 2024:
Mr. Ravishankar Jandhyala,
Learned Senior Counsel representing
Mr. Thoom Srinivas

^ Counsel for respondent No.5 in W.A.No.1160 of 2024:
Mr. P.Sri Raghu Ram,
Learned Senior Counsel representing
Mr. P.Sri Ram

^ Counsel for respondent No.6 in W.A.No.1158 of 2024:
Mr. B.Mayur Reddy,
Learned Senior Counsel representing
Mr. L. Preetham Reddy

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> HEAD NOTE:

? CITATIONS:

1. (2021) 16 SCC 503
2. (2008) 10 SCC 1
3. 1992 Supp (2) SCC 651
4. 2015 SCC OnLine Hyd 418
5. (2021) 16 SCC 528
6. (2005) 2 SCC 673
7. (2011) 4 SCC 450
8. AIR 1990 SC 85
9. (2004) 10 SCC 201
10. 1979 ILR Kar 1401
11. 2024 SCC OnLine HP 1679
12. (2007) 4 SCC 270
13. 2023 SCC OnLine Bom 979
14. 2018 SCC OnLine Mad 2056
15. (2015) 12 SCC 381
16. (2024) 2 SCC 719
17. (1952) 1 SCC 410
18. AIR 1965 SC 745
19. (1990) 1 SCC 613
20. (1986) 1 SCC 581/531
21. (2007) 3 SCC 720
22. (2024) 6 SCC 267

23. 2023 SCC OnLine SC 586
24. (1983) 1 SCC 147
25. (2012) 10 SCC 1
26. AIR 2007 SC (Supp) 1448
27. 2010 AIR SCW 3901
28. (2020) 4 SCC 1
29. 2023 SCC OnLine SC 1140
30. 2024 SCC OnLine SC 2920
31. 2024 SCC OnLine SC 3067
32. 2024 SCC OnLine SC 3127
33. (2020) 2 SCC 595
34. (2016) 8 SCC 1
35. (1987) 1 SCC 213
36. (2003) 2 SCC 111
37. AIR 2004 SC 477
38. (2008) 16 SCC 14
39. (2015) 14 SCC 130
40. AIR 1987 SC 2359

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT APPEAL Nos.1157, 1158 AND 1160 OF 2024

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. A. Sudarshan Reddy, learned Advocate General for the State of Telangana appears for Mr. K.Pradeep Reddy, learned counsel for the appellant.

Mr. J.Prabhakar, learned Senior Counsel appears for Mr. R.V.Pavan Maitreya, learned counsel for respondent No.1 in W.A.No.1157 of 2024.

Mr. G.Mohan Rao, learned Senior Counsel appears for Mr. S. Santosh Kumar, learned counsel for respondent No.1 in W.A.Nos.1158 and 1160 of 2024.

Mr. Ravishankar Jandhyala, learned Senior Counsel appears for Mr. Thoom Srinivas, learned counsel for respondent No.5 in W.A.No.1157 of 2024.

Mr. P.Sri Raghu Ram, learned Senior Counsel appears for Mr. P.Sri Ram, learned counsel for respondent No.5 in W.A.No.1160 of 2024.

Mr. B.Mayur Reddy, learned Senior Counsel appears for Mr. L. Preetham Reddy, learned counsel for respondent No.6 in W.A.No.1158 of 2024.

Mr. Ravindra Shrivastava, learned Senior Counsel representing Mr. I.V.Siddhivardhana, learned Special Government Pleader, appears through video conferencing for the respondent No.2 in W.A.No.1157 of 2024.

2. By common order dated 09.09.2024 passed in W.P.Nos.9472, 11098 and 18553 of 2024, the learned Single Judge dealt with the grievance of the writ petitioners about the inaction on the part of the Speaker while dealing with the petitioners seeking disqualification made by them under paragraph 2(1) of the Tenth Schedule to the Constitution of India and disposed of the writ petitions. These writ appeals emanate from the aforesaid common order dated 09.09.2024 and therefore were heard together and are being decided by this common judgment. For the facility of reference, facts from W.A.No.1157 of 2024 are being referred to.

(i) FACTS:

3. The respondent No.5 contested the election from Huzurabad Assembly Constituency for election to the Legislative Assembly of State of Telangana. The respondent No.5 was set up as a candidate from Bharat Rashtra Samithi (hereinafter referred to as 'BRS') and filed his nomination on 06.11.2023 as a candidate of BRS from 60-Khairatabad Assembly Constituency. He was elected on 03.12.2023 as a Member of the Telangana State Legislative Assembly.

4. The respondent No.5, thereafter on 15.03.2024 voluntarily gave up the membership of BRS and joined Indian National Congress (hereinafter referred to as 'INC'). The respondent No.1 along with other Members of the Legislative Assembly, met the Speaker of the Telangana Legislative Assembly and submitted a petition on 01.07.2024 seeking disqualification of respondent No.5 under Paragraph 2 (1) of the Tenth Schedule read with Article 191 (2) of the Constitution of India and under Rule 6 of Members of Legislative Assembly (Disqualification on the ground of Defection) Rules, 1986 (hereinafter referred to as 'the Rules'). However, the aforesaid disqualification petition failed to evoke any response from the Speaker of the House. Thereupon, a writ

petition was filed on 09.07.2024 assailing inaction on the part of the Speaker, Telangana Legislative Assembly in not deciding the petition for disqualification and a writ of mandamus was sought to decide the disqualification petition filed by the respondent No.1, within a period of three months.

5. Learned Single Judge by an order dated 09.09.2024, while placing reliance on a decision rendered by a three-judge Bench of the Supreme Court in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly** [1] directed the Secretary of Telangana Legislative Assembly to forthwith place the petition seeking disqualification before the Speaker, Telangana Legislative Assembly for fixing a schedule of hearing within a period of four weeks. The Secretary, Telangana Legislative Assembly was further directed to communicate the schedule so fixed to the Registrar (Judicial) of this Court. It was also directed that in case no communication is received from the Secretary, Telangana Legislative Assembly, the matter will be re-opened *suo motu* and appropriate orders shall be passed. Accordingly, the writ petitions were disposed of.

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[1] (2021) 16 SCC 503

6. In the aforesaid factual background, these intra court appeals arise for our consideration.

(ii) SUBMISSIONS ON BEHALF OF THE LEARNED ADVOCATE GENERAL FOR THE APPELLANT:

7. Learned Advocate General, at the outset, invited the attention of this Court to the averments made in paragraph 10 of the writ petition No.9472 of 2024 and has submitted that the petition seeking disqualification was filed on 18.03.2024 and thereafter, an additional affidavit was filed on 30.03.2024. It is pointed out that without waiting for a reasonable time to enable the Speaker to take a decision on the petition seeking disqualification the writ petition was filed hurriedly within a period of ten days, i.e., on 10.04.2024. It is contended that in the writ petition, intemperate language has been used against the constitutional functionary, namely the Speaker of the House, and therefore, the writ petition is liable to be dismissed *in limine*.

8. While inviting the attention of this Court to a decision of a three-Judge Bench of the Supreme Court in **Official Liquidator vs. Dayanand**[2], it is submitted that the decision rendered by a

[2] (2008) 10 SCC 1

Constitution Bench of the Supreme Court in **Kihoto Hollohan vs. Zachillhu**[3] as well as the decision of a Division Bench of Andhra Pradesh High Court in **Errabelli Dayakar Rao vs. Talasani Srinivas Yadav**[4] and order in **S.A.Sampath Kumar vs. Kale Yadaiah**[5] passed by the Supreme Court were binding on the learned Single Judge and are binding on this Court as well. It is contended that the only course open to the learned Single Judge was to refer the matter either to the Division Bench or the Full Bench of this Court. In this connection, reference has been made to decisions of the Supreme Court in **Central Board of Dawoodi Bohra Community vs. State of Maharashtra**[6] and **Mineral Area Development Authority vs. Steel Authority of India**[7]. It is further submitted that the learned Single Judge ought to have appreciated that the issue involved in writ petitions was referred by a two-Judge Bench of the Supreme Court in **S.A.Sampath Kumar** (supra) to a Constitution Bench. It is contended that the powers of judicial review under Article 226 of the Constitution of India is available only after a decision is taken by the Speaker and no direction can be issued to the

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[3] 1992 Supp (2) SCC 651
[4] 2015 SCC OnLine Hyd 418
[5] (2021) 16 SCC 528
[6] (2005) 2 SCC 673
[7] (2011) 4 SCC 450

Speaker to decide a petition for disqualification in a time bound manner. It is submitted that the decision in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[8] has been rendered in exercise of powers under Article 142 of the Constitution of India.

9. It is pointed out that the decision in **India Cement Limited vs. State of Tamil Nadu**[9] was rendered by a Bench of seven-Judges. However, the ratio of the aforesaid decision was interpreted by a five-Judge Bench of the Supreme Court in **State of West Bengal vs. Kesoram Industries Limited**[10]. It is further pointed out that the correctness of the view taken by a five-Judge Bench of the Supreme Court in **Kesoram Industries Limited** (supra) was doubted by the Supreme Court vide order dated 30.03.2011 in Civil Appeal No.4056-4064 of 1999. It is also pointed out that a nine-Judge Bench of the Supreme Court in **Mineral Area Development Authority** (supra) has not approved the view taken by a five-Judge Bench of the Supreme Court in **Kesoram Industries Limited** (supra), insofar as it deals with interpretation of the decision rendered by a seven-

[8] (2021) 16 SCC 503
[9] AIR 1990 SC 85
[10] (2004) 10 SCC 201

Judge Bench of the Supreme Court in **India Cement Limited** (supra). It is argued that the ratio of decision rendered by a Constitution Bench cannot be diluted by a Bench of smaller strength.

10. It is contended that in case of a conflict between the two decisions of the Supreme Court, the decision of larger Bench has to be followed. In this connection, reliance has been placed on a five-Judge Bench decision of the Karnataka High Court in **Govindanaik G. Kalaghatigi vs. West Patent Press Company Limited**[11]. In support of the submission that no direction can be issued to the Speaker of the Assembly, reliance is placed on a decision of a Division Bench of Himachal Pradesh High Court in **Hoshyar Singh Chambyal vs. Hon'ble Speaker, Himachal Pradesh Legislative Assembly**[12].

(iii) SUBMISSIONS ON BEHALF OF THE RESPNDENT No.5 IN WRIT APPEAL No.1157 of 2024:

11. Learned Senior Counsel for respondent No.5 in W.A.No.1157 of 2024 has invited the attention of this Court to

[11] 1979 ILR Kar 1401
[12] 2024 SCC OnLine HP 1679

Article 208 of the Constitution of India as well as the Rules framed under the Tenth Schedule to the Constitution of India. It is submitted that the Rules contained in the Tenth Schedule are directory in nature and therefore, no writ of mandamus can be issued for failure to comply with a directory provision. It is contended that the learned Single Judge grossly erred in issuing a direction to the Secretary of the Speaker to place the petition for disqualification before him, which amounts to infringement of powers of the Speaker. In support of his submission, reliance has been placed on the decisions of the Supreme Court in **Rajendra Singh Rana vs. Swami Prasad Maurya** [13], **Girish Chodanar vs. Speaker, Goa State Legislative Assembly** [14], **P.Vetrivel vs. P.Dhanabal** [15], **Jayant Patil vs. Speaker, Maharashtra State Legislative Assembly** (W.P. (Civil) No.1077 of 2023, dated 17.01.2023), **Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi**[16] and a Division Bench of the erstwhile Andhra Pradesh High Court in **Errabelli Dayakar Rao vs. Talasani Srinivas Yadav**[17].

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[13] (2007) 4 SCC 270
[14] 2023 SCC OnLine Bom 979
[15] 2018 SCC OnLine Mad 2056
[16] (2015) 12 SCC 381
[17] 2015 SCC OnLine Hyd 418

(iv) SUBMISSIONS ON BEHALF OF THE RESPONDNET No.2 IN WRIT APPEAL No.1157 OF 2024:

12. Learned Senior Counsel for the Law & Legislative Department, while inviting the attention of this Court to the operative portion of the impugned order, has submitted that the learned Single Judge has directed the Secretary, Telangana Legislative Assembly to place the petitions seeking disqualification before the Speaker for fixing a schedule of hearing, within four weeks. It is further submitted that the schedule so fixed is directed to be communicated to the Registrar (Judicial). It is pointed out that a further direction has been issued that in case nothing is heard within four weeks, the matters will be re-opened *suo motu* and appropriate orders shall be passed. It is contended that the High Court cannot exercise, the supervisory jurisdiction over the Speaker and the directions issued by the learned Single Judge amounts to continuous monitoring of the proceeding before the Speaker. It is contended that the aforesaid directions are not contemplated even in the judgment of **Keisham Meghachandra Singh vs. Speaker,**

Manipur Legislative Assembly[18] on which reliance has been placed by the learned Single Judge and the same are outside the scope of judicial review.

13. It is argued that the Speaker has exclusive jurisdiction to decide the issue of disqualification of a Member and has power to regulate proceeding by framing the Rules under Tenth Schedule to the Constitution of India. It is submitted that the Constitution envisages autonomy to the Speaker and no judicial review is permissible at the stage prior to the decision which may be taken by the Speaker. It is pointed out that the view expressed in paragraph 110 of its decision in **Kihoto Hollohan vs. Zachillhu**[19] has been reiterated by another Constitution Bench of the Supreme Court in **Subhash Desai vs. Principal Secretary, Government of Maharashtra**[20] .

14. It is contended that the issue involved in these appeals is no longer *res integra,* in view of Constitution Bench decision of the Supreme Court in **Subhash Desai** (supra) and the decision of a three-Judge Bench in **Keisham Meghachandra Singh** (supra) cannot be regarded as law under Article 141 of the

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[18] (2021) 16 SCC 503

[19] 1992 Supp (2) SCC 651

[20] (2024) 2 SCC 719

Constitution of India, as it was rendered in peculiar facts of the case. It is urged that in **Subhash Desai** (supra), the Supreme Court has also explained the judgment in **Rajendra Singh Rana vs. Swami Prasad Maurya**[21] and has held that the judgment in **Rajendra Singh Rana** (supra) was rendered in the peculiar facts and circumstances of the case and therefore, is not a binding precedent.

15. It is pointed that the Constitution Bench in **Subhash Desai** (supra) did not issue any direction to the Deputy Speaker to adjudicate the question of disqualification. It is urged that in view of the subsequent Constitution Bench decision of the Supreme Court in **Subhash Desai** (supra) the limited scope of judicial review permitted by the Constitution Bench of the Supreme Court in paragraph 110 of the decision in **Kihoto Hollohan vs. Zachillhu**[22] alone is the law declared under Article 141 of the Constitution of India and is binding on all courts. In view of the aforesaid enunciation of law by the Supreme Court, the High Court is denuded of its powers under Article 226 of the Constitution of India to issue any direction, procedural or

[21] (2007) 4 SCC 270
[22] 1992 Supp (2) SCC 651

otherwise, much less to control the desk of the Speaker in a particular manner and within a particular timeframe.

16. It is further submitted that the moot question involved in these appeals whether the High Court in exercise of powers of judicial review can issue a direction to the Speaker is pending consideration before a Larger Bench of five Judges before the Supreme Court. It is also submitted that the Supreme Court while exercising powers under Article 136 of the Constitution of India grants relief in exercise of powers under Article 142 of the Constitution of India which cannot be treated as a precedent under Article 141 of the Constitution of India. Reference has been made to decisions of the Supreme Court in **State of Madras vs. V.G.Row[23], Powers, Privileges and Immunities of State Legislatures, In re[24]** and **Charan Lal Sahu vs. Union of India[25]**.

17. It is contended that what is binding in terms of Article 141 of the Constitution of India is the ratio of the judgment. It is argued that *ratio decidendi* is the reason assigned in support of the conclusion and it is the *ratio decidendi* of the judgment and

[23] (1952) 1 SCC 410
[24] AIR 1965 SC 745
[25] (1990) 1 SCC 613

not the final order in the judgment which forms the precedent. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Prakash Amichand Shah vs. State of Gujarat**[26], **State of West Bengal vs. Kesoram Industries**[27] and **Sanjay Singh vs. Uttar Pradesh Public Service Commission**[28]. Lastly, it is pointed out that the practice of issuing directions by the Constitutional Courts to decide pending cases in a time bound manner has been frowned upon by the Constitution Bench of the Supreme Court in **High Court Bar Association, Allahabad vs. State of Uttar Pradesh**[29].

(v) SUBMISSIONS ON BEHALF OF THE RESPONDNET No.5 IN WRIT APPEAL No.1160 OF 2024:

18. Learned Senior Counsel for the respondent No.5 in W.A.No.1160 of 2024 has submitted that limited powers of judicial review are available to this Court as enunciated by the Constitution Bench decision of the Supreme Court in paragraph

[26] (1986) 1 SCC 581
[27] (2004) 10 SCC 201
[28] (2007) 3 SCC 720
[29] (2024) 6 SCC 267

No.111 in **Kihoto Hollohan vs. Zachillhu**[30]. It is further submitted that the decisions of the Supreme Court in **Rajendra Singh Rana vs. Swami Prasad Maurya**[31] and **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[32] are not the authorities for the proposition that a writ of mandamus can be issued to the Speaker before decision is taken on the petition for disqualification. It is also submitted that the aforesaid decisions have been rendered in the peculiar facts of each case and the directions, in the aforesaid decisions have been given by the Supreme Court in exercise of powers under Article 142 of the Constitution of India, which is not the *ratio decidendi* and therefore, does not bind this Court.

19. It is contended that *ratio decidendi* of a case has to be ascertained by applying the principle of "inversion test". In support of the aforesaid submission, reliance has been placed on the decision of the Supreme Court in **Career Institute Educational Society vs. Om Shree Thakurji Educational Society**[33]. It is argued that the writ petition appears to be in the realm of administrative law and the writ petitioner comes to

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[30] 1992 Supp (2) SCC 651
[31] (2007) 4 SCC 270
[32] (2021) 16 SCC 503
[33] 2023 SCC OnLine SC 586

the Court on the inaction of the State or instrumentalities. It is pointed out that the writ petition has been filed merely within ten days after the submission of additional information. Therefore, it amounts to abuse of process of law and is liable to be dismissed. It is also contended that the jurisdiction of this Court under Article 226 of the Constitution of India is constitutionally prohibited and therefore has to be strictly construed.

(vi) SUBMISSIONS ON BEHALF OF THE RESPONDNET No.5 IN WRIT APPEAL No.1158 OF 2024:

20. Learned Senior Counsel for respondent No.5 in W.A.No.1158 of 2024 has submitted that the learned Single Judge ought to have appreciated that a Constitution Bench of the Supreme Court in **Subhash Desai vs. Principal Secretary, Government of Maharashtra**[34] has not approved the decision of the Supreme Court in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[35]. It is urged that a Constitution Bench of the Supreme Court in **Subhash Desai**

[34] (2024) 2 SCC 719
[35] (2021) 16 SCC 503

(supra) has reiterated the view taken by another Constitution Bench decision in **Kihoto Hollohan vs. Zachillhu**[36].

(vii) SUBMISSIONS ON BEHALF OF THE RESPONDNET No.6 IN WRIT APPEAL No.1158 OF 2024:

21. Learned Senior Counsel for respondent No.6 in W.A.No.1158 of 2024 submitted that the learned Single Judge erred in placing reliance on the decision of the Supreme Court in **Keisham Meghachandra Singh** (supra) and ought to have appreciated that the aforesaid decision pertains to a writ of *quo warranto* which was filed to disqualify the concerned member of the Legislative Assembly. It is contended that the Supreme Court in the said case while issuing a time bound direction to the Speaker had exercised power under Article 142 of the Constitution of India. The decision in **Keisham Meghachandra Singh** (supra) is not a binding precedent under Article 141 of the Constitution of India. It is pointed out that the Division Bench of the Andhra Pradesh High Court in **Errabelli Dayakar Rao vs. Talasani Srinivas Yadav**[37], while applying the principles laid down by the Constitution Bench of the Supreme Court in

[36] 1992 Supp (2) SCC 651
[37] 2015 SCC OnLine Hyd 418

Kihoto Hollohan (supra) and in **Rajendra Singh Rana vs. Swami Prasad Maurya**[38] have only held that the Speaker must decide such disqualification expeditiously. It is also pointed out that the issue whether the Court in exercise of power of judicial review can fix time limits for the Speaker to decide the disqualification petition has been referred to the Constitution Bench and the reference is yet to be answered. It is submitted that in the absence of the action of the Speaker being vitiated by *mala fides* or arbitrariness or violative of provisions of the Constitution of India, no interference is called for by this Court. It is also pointed out that mere delay of ten days would not require this Court to give a direction to the Speaker. It is contended that the Constitutional Courts should not answer academic or hypothetical questions and no important point of law should be decided without a proper *lis* between the parties properly ranged on opposite sides. In support of the aforesaid submissions, reliance has been placed on the Constitution Bench decision of the Supreme Court in **Sanjeev Coke Manufacturing Company vs. M/s.Bharat Coking Coal Limited**[39].

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[38] (2007) 4 SCC 270
[39] (1983) 1 SCC 147

(viii) SUBMISSIONS ON BEHALF OF THE RESPONDNET No.1 IN WRIT APPEAL Nos.1158 AND 1160 OF 2024:

22. Learned Senior Counsel for the respondent No.1 in W.A.Nos.1158 and 1160 of 2024 has submitted that Tenth Schedule to the Constitution of India was inserted by Constitution (Fifty-second Amendment) Act, 1985 with effect from 01.03.1985, with an object to curb the menace of defection. It is pointed out that the Speaker did not receive the petition seeking disqualification and only in pursuance of an interim order dated 25.04.2024 passed by the learned Single Judge, the copy of the disqualification petition was served to Government Pleader for Law and Legislative Department. It is submitted that from the date of filing of disqualification petition till the counter was filed on 25.06.2024, the Speaker of the Assembly did not take any action on the petition for disqualification made by the respondent No.1. It is pointed out that the learned Single Judge has merely directed the Secretary of Telangana State Legislative Assembly to place the disqualification petition before the

Speaker within a period of four weeks and the Speaker of the Assembly has to fix the schedule for hearing of the disqualification petition.

23. It is argued that the writ petition filed by the Secretary on behalf of the Telangana State Legislative Assembly is not maintainable as the Speaker cannot be termed as a person who is aggrieved. It is also pointed out that in exercise of powers under paragraph 8 of the Tenth Schedule to the Constitution of India, the Speaker has framed the Rules and under the Rules the Speaker is under an obligation to decide the disqualification petition expeditiously. It is contended that the order dated 17.07.2019 was passed by a Division Bench of this Court in W.P.No.2698 of 2019 which has been upheld by the Supreme Court as S.L.P preferred against the aforesaid order was dismissed on 07.01.2020. While referring to the aforesaid decision it is contended that the respondent No.5 is not even entitled to be given notice and has to be disqualified.

24. It is submitted that the law declared in the judgment which is binding on the Courts is the *ratio decidendi* of the decision. In support of the aforesaid submission, reference has been made to the decision of the Supreme Court in **Natural**

Resources Allocation, In re, Special Reference No. 1 of 2012[40]. It is contended that the Speaker while deciding the petition for disqualification exercises judicial power and is a Tribunal and is therefore subject to power of superintendence of this Court under Article 227 of the Constitution of India.

25. Paragraphs 32, 38, 78, 85 to 88, 94 to 97, 99, 100, 109 to 111 of the Constitution Bench of the Supreme Court in **Kihoto Hollohan vs. Zachillhu**[41] have been commended to us and it has been argued that the aforesaid decision does not bar the judicial review, in case, the Speaker fails to act on the petition seeking disqualification. It is urged that the failure on the part of the Speaker to decide the disqualification amounts to violation of Constitutional mandate and the same is subject to judicial review. It is urged that the decision in **Kihoto Hollohan** (supra) is an authority for the proposition that *quia timet* action is prohibited. Reference has also been made to another Constitution Bench decision of the Supreme Court in **Rajendra Singh Rana vs. Swami Prasad Maurya**[42] and it is contended that the same is an authority for the proposition that in case

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[40] (2012) 10 SCC 1
[41] 1992 Supp (2) SCC 651
[42] (2007) 4 SCC 270

Speaker fails to act on petition for disqualification, the Courts in exercise of power of judicial review can issue a direction.

26. It is argued that judicial review of inaction on the part of the Speaker in the petition for disqualification is not an issue decided in **Kihoto Hollohan** (supra) and a direction issued to decide the petition for disqualification within a reasonable time is not a direction interfering with the function of the Speaker and/or direction in the aid of the Speaker arriving at an early decision in the matter to fulfil the constitutional mandate.

27. It is further submitted that the *ratio decidendi* of the decision in **Kihoto Hollohan** (supra) and **Rajendra Singh Rana** (supra) were considered and analysed in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly** [43] and it was held that the decision in **Kihoto Hollohan** (supra) do not in any manner interdict judicial review in aid of Speaker arriving at a decision as to disqualification under the provisions of the Tenth Schedule to the Constitution of India. It is argued that the Speaker acting as a Tribunal is bound to decide the disqualification petition within a reasonable time and what would be the reasonable time depends on facts

[43] (2021) 16 scc 503

and circumstances of the case. It is also pointed out that the decision in **Kihoto Hollohan** (supra), **Rajendra Singh Rana** (supra) and **Keisham Meghachandra Singh** (supra) were considered by a Constitution Bench of the Supreme Court in **Subhash Desai vs. Principal Secretary, Government of Maharashtra**[44] and the Speaker of the House was directed to decide the petition for disqualification within a reasonable time. It was also pointed out that when the Speaker fails to decide the disqualification petition within a period of four months, series of directions were issued to the Speaker by setting out the time limit to dispose of the disqualification petition. In support of the aforesaid submissions, reference has been made to the orders dated 18.09.2023, 17.10.2023 in W.P. (Civil) No.685 of 2023, orders dated 30.10.2023, 15.12.2023 and 29.01.2024 in W.P. (Civil) No.1077 of 2023. Lastly, it is contended that the order passed by the learned Single Judge does not call for any interference in these appeals.

(ix) SUBMISSIONS ON BEHALF OF THE RESPONDNET No.1 IN WRIT APPEAL No.1157 OF 2024:

[44] (2024) 2 SCC 719

28. Learned Senior Counsel for the respondent No.1 in W.A.No.1157 of 2024, while inviting the attention of this Court to paragraph Nos.13 and 14 of W.P.No.18553 of 2024 submitted that the contention urged on behalf of the respondents that the filing of the writ petition amounts to abuse of process of law is misconceived. It is submitted that the writ petition filed by the respondent No.1 cannot be labelled as premature. It is urged that the provisions of the Tenth Schedule of the Constitution of India are mandatory in nature and merely because a decision has been referred for consideration to the Larger Bench, the same does not lose its value as binding precedent. It is also urged that the inaction on the part of the Speaker tantamount to refusal to act in consonance with the constitutional provision and no entity under the Constitution of India can refuse to act in defiance of the constitutional mandate. It is contended that the failure to exercise the constitutional mandate is subject to judicial review. It is submitted that neither Article 212 of the Constitution of India nor the Tenth Schedule of the Constitution of India is a bar in entertaining the writ petition and the direction issued by the learned Single Judge cannot be construed as interference with the adjudicatory powers of the Speaker. It is also pointed out that the learned Single Judge has

merely directed the Secretary of the Telangana Legislative Assembly to place the papers for consideration before the Speaker and order of the learned Single Judge does not call for any interference in this appeal. In support of his submissions, reliance is placed on **Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha**[45], **Amarinder Singh vs. Special Committee, Punjab Vidhan Sabha**[46], **Dr. Shah Faesal vs. Union of India**[47] , **Union Territory of Ladakh vs. Jammu and Kashmir National Conference**[48], **Union of India vs. Pranav Srinivasan**[49], **Sapna Negi vs. Chaman Singh**[50], **Mukul Kumar Tyagi v. State of Uttar Pradesh**[51] and **M/s. Bajaj Alliance General Insurance Co. Ltd. vs. Rambha Devi** (Civil Appeal No.841 of 2018, dated 06.11.2024).

(x) REJOINDER SUBMISSIONS OF THE LEARNED ADVOCATE GENERAL FOR THE APPELLANT:

29. By way of rejoinder, the learned Advocate General submitted that the decision of Division Bench of erstwhile High

[45] AIR 2007 SC (Supp) 1448
[46] 2010 AIR SCW 3901
[47] (2020) 4 SCC 1
[48] 2023 SCC OnLine SC 1140
[49] 2024 SCC OnLine SC 2920
[50] 2024 SCC OnLine SC 3067
[51] 2024 SCC OnLine SC 3127

Court of Andhra Pradesh in **Errabelli Dayakar Rao vs. Talasani Srinivas Yadav**[52] binds the Court. It is further submitted that the decisions in **Rajendra Singh Rana vs. Swami Prasad Maurya** [53] and **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[54] were rendered in the peculiar facts of the case. It is pointed out that the writ petitioners represent BRS party which itself was contesting in **Errabelli Dayakar Rao** (supra) that no direction can be issued to the Speaker for fixing a time limit for disposal of disqualification petitions.

30. We have considered the submissions made on both sides and have perused the record.

(xi) Relevant Provisions of the Constitution of India:

31. Before proceeding further, it is apposite to take note of the relevant constitutional provisions of Articles 191, 212 and the paragraphs 6 and 8 of the Tenth Schedule to the Constitution of India. Article 191 deals with disqualification for the membership of the Legislative Council/Assembly. The said Article was amended by the Constitution (Fifty-second) Amendment Act,

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[52] 2015 SCC OnLine Hyd 418
[53] (2007) 4 SCC 270
[54] (2021) 16 SCC 503

1985 by which Tenth Schedule to the Constitution of India was incorporated. Article 212 prohibits the Courts from enquiring into the proceedings of the legislature. Article 212 and relevant extract of the Tenth Schedule to the Constitution of India read as under:

Article 212 of the Constitution of India:

"212. Courts not to inquire into proceedings of the Legislature:- (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

Paragraphs 6 and 8 of the Tenth Schedule:

"6. Decision on questions as to disqualification on ground of defection.—(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be

referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212."

"8. Rules.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for—

(*a*) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(*b*) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (*b*) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(*c*) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished; and

(*d*) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including

the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of Article 105 or, as the case may be, Article 194, and to any other power which he may have under this Constitution direct that any willful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House."

(xii) THE RULES:

32. In exercise of the powers conferred by paragraph 8 of the Tenth Schedule to the Constitution of India, the Speaker of the Telangana Legislative Assembly has made the rules, namely the Members of Telangana Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986. The relevant rules, namely Rules 6, 7, 8 and 9 of the aforesaid rules, are extracted below for the facility of reference:

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

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

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

(3) The Secretary shall,—

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

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

(4) Before making any Petition in relation to any member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.

(5) Every Petition,—

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

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

(6) Every petition shall be signed by the petitioner and

verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of Pleadings.

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

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

(2) If the Petition does not comply with the requirements of rule 6, the Speaker shall dismiss the Petition and intimate the petitioner accordingly.

(3) If the Petition complies with the requirements of rule 6 the Speaker shall cause copies of the Petition and of the annexures thereto to be forwarded:

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

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

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

(5) The Speaker shall, as soon as may be after referring a petition to the Committee under sub-rule (4), intimate the petitioner accordingly and make an announcement with

respect to such reference in the House or, if the House is not then in session, cause the information as to the reference, to be published in the Bulletin.

(6) Where the Speaker makes a reference under sub-rule (4) to the Committee, he shall proceed to determine the question as soon as may be after receipt of the report from the Committee.

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

(8) The provisions of sub-rules (1) to (7) shall apply with respect to a petition in relation to the Speaker as they apply with respect to a Petition in relation to any other member and for this purpose, reference to the Speaker in these sub-rules shall be construed as including references to the member elected by the House under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule.

8. Decision on Petitions: (1) At the conclusion of the consideration of the petition, the Speaker or as the case may be, the member elected under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule shall by order in writing:

(a) dismiss the petition, or

(b) declare that the member in relation to whom the petition has been made has become subject to disqualification

under the Tenth Schedule, and cause copies of the order to be delivered or forwarded to the Petitioner, the member in relation to whom the petition has been made and to the Leader of the Legislature party, if any, concerned.

(2) Every decision declaring a member to have become subject to disqualification under the Tenth Schedule shall be reported to the House forthwith if the House is in session, and if the House is not in session, immediately after the House reassembles.

(3) Every decision referred to in sub-rule (1) shall be published in the Bulletin and notified in the official Gazette and copies of such decision forwarded by the Secretary to the Election Commission of India and the Government.

9. Directions as to detailed working of these Rules: The Speaker may, from time to time, issue such directions as he may consider necessary in regard to the detailed working of these Rules."

The Rules prescribe the manner of making a petition seeking disqualification, the procedure to be adopted on receipt of such petition and decision thereon.

(xiii) NATURE AND SCOPE OF POWER OF SPEAKER:

33. In **Kihoto Hollohan vs. Zachillhu** [55] and **Shrimanth Balasaheb Patil vs. Karnataka Legislative Assembly** [56], the Supreme Court has held that the Speaker while adjudicating the

[55] 1992 Supp (2) SCC 651
[56] (2020) 2 SCC 595

petition for disqualification under the Tenth Schedule to the Constitution has to act fairly, independently and impartially. It has further been held that in exercise of power under the Tenth Schedule to the Constitution, the Speaker acts as a Tribunal and therefore, his order is subject to judicial review under Articles 136, 226 and 227 of the Constitution of India. It has also been held that the issue with regard to the disqualification incurred by the Member of House has to be adjudicated by the Speaker alone except in exceptional circumstances and the finality clause contained in paragraph 6 of the Tenth Schedule does not completely exclude the jurisdiction of the Court.

(xiv) ANALYSIS:

34. At this stage, it is necessary to advert to decisions of the Supreme Court in **Kihoto Hollohan vs. Zachillhu**[57], **Rajendra Singh Rana vs. Swami Prasad Maurya**[58], **S.A.Sampath Kumar vs. Kale Yadaiah** [59] , **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[60] and **Subhash Desai vs. Principal Secretary, Government of Maharashtra**[61] and a

[57] 1992 Supp (2) SCC 651
[58] (2007) 4 SCC 270
[59] (2021(16 SCC 528
[60] (2021) 16 SCC 503
[61] (2024) 2 SCC 719

Division Bench decision of erstwhile High Court of Andhra Pradesh in **Errabelli Dayakar Rao vs. Talasani Srinivas Yadav**[62].

(a) KIHOTO HOLLOHAN:

35. The validity of the Constitution (Fifty Second) Amendment Act was challenged before the Supreme Court in **Kihoto Hollohan** (supra), *inter alia* on the ground that the aforesaid amendment insofar as it seeks to introduce Tenth Schedule to the Constitution of India is violative of fundamental principles of parliamentary democracy and the basic feature of the Indian Constitution. The validity of the aforesaid Constitution Amendment Act was also assailed on the ground that provisions of the Tenth Schedule are destructive of freedom of speech, right to dissent and freedom of conscience, as they seek to penalise and disqualify the elected representatives for the exercise of the said fundamental rights and freedoms. The issue whether the deeming provision under paragraph 6(2) of the Tenth Schedule imparts a finality to the decision of the Speaker and excludes the powers of judicial review was also considered.

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[62] 2015 SCC OnLine Hyd 418

36. The Constitution Bench of the Supreme Court in **Kihoto Hollohan** (supra) in paragraphs 109, 110 and 111, which are relevant for the purposes of controversy involved in these appeals, held as under:

> "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, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, 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):

That the Tenth Schedule does not, in providing for an additional grant (*sic* ground) for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the speakers/Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in *Keshav Singh case* [(1965) 1 SCR 413 : AIR 1965 SC 745] to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words 'be deemed to be proceedings in Parliament' or 'proceedings in the legislature of a State' confines the scope of the fiction accordingly.

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

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/Chairmen. 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."

37. The Constitution Bench of the Supreme Court in **Kihoto Hollohan** (supra), while upholding the validity of the Tenth Schedule appended to the Constitution *inter alia* held as follows:

(i) The object of the amendment is to curb the evil of political defections motivated by lure of office or other similar consideration which endanger the foundations of our democracy.

(ii) The Speaker is a Tribunal for the purposes of Tenth Schedule and therefore, the exercise of power by the Speaker under Tenth Schedule is subject to judicial review under Articles 136, 226 and 227 of the Constitution of India.

(iii) The finality clause contained in paragraph 6(2) of the Tenth Schedule does not exclude the jurisdiction of the Courts, but limits the scope of judicial review as the Constitution

envisages the Speaker to be repository of adjudicatory powers under the Tenth Schedule.

(iv) The exclusive power to decide the issue of disqualification under the Tenth Schedule vests with the Speaker of the House. The power to resolve the issue of disqualification is a judicial power which is exercised by the Speaker.

(v) The power of judicial review is not available at a stage anterior to making of a decision by the Speaker/Chairman and a *quia timet* action would not be permissible.

(vi) No interference is permissible at an interlocutory stage of the proceeding except when the disqualification or suspension is imposed during the pendency of the proceeding and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequences.

(vii) The judicial review under Articles 136, 226 and 227 of the Constitution of India, in respect of an order passed by the Speaker under paragraph 6 of the Tenth Schedule, is confined to jurisdictional errors only i.e., infirmities based on violation of

constitutional mandates, mala fides, non-compliance with rules of natural justice and perversity.

(b) RAJENDRA SINGH RANA:

38. Another Constitution Bench of the Supreme Court in **Rajendra Singh Rana vs. Swami Prasad Maurya**[63] considered the decision rendered by its previous Constitution Bench in **Kihoto Hollohan vs. Zachillhu**[64]. The factual backdrop in **Rajendra Singh Rana** (supra) needs mention. The elections held to the fourteenth Legislative Assembly of State of Uttar Pradesh resulted in formation of a coalition government headed by Bahujan Samaj Party (BSP). On 25.08.2023, the Cabinet of the government headed by Ms. Mayawati recommended dissolution of the State Assembly and on 26.08.2003, the Cabinet resigned. In the meanwhile, Samajwadi Party (SP) staked a claim to form the government. On 27.08.2003, thirteen MLAs elected on BSP ticket met the Governor and asked the Governor to invite SP to form the government. The Governor refused the recommendation of the BSP Cabinet to dissolve the Assembly. Thereafter, Governor on 29.08.2003 administered the oath to SP led

[63] (2007) 4 SCC 270
[64] 1992 Supp (2) SCC 651

Cabinet, with a direction to prove the majority within a period of two weeks.

39. Thereupon, one Swami Prasad Maurya filed a petition before the Speaker of the Assembly on 04.09.2003 to disqualify thirteen MLAs belonging to BSP party who had defected to SP. On 06.09.2004, thirty seven MLAs requested the office of the Speaker to recognise a split in BSP party, as they constituted one-third of the total elected members from BSP. The Speaker by an order dated 06.09.2003 decided the issue of merger and postponed the decision on the plea of disqualification presented by aforesaid Sri Swami Prasad Maurya and held that newly formed party, i.e., Lok Tantrik Bahujan Dal merged into SP.

40. Subsequently, a writ petition was filed before Allahabad High Court challenging the proceeding before the Speaker. The Speaker instead of deciding the plea of disqualification adjourned it *sine die* on the ground that the issue is pending before the High Court. The Speaker on 08.09.2005 rejected the plea of disqualification of thirteen MLAs. The High Court by a majority of 2:1 set aside the order of the Speaker and directed him to re-consider the plea of disqualification afresh. The decision of the High Court was assailed in Special Leave Petition

before the Supreme Court. A Constitution Bench of the Supreme Court in paragraphs 25, 29 and 40 and held as under:

> "**25.** In the context of the introduction of sub-article (2) of Article 102 and Article 191 of the Constitution, a proceeding under the Tenth Schedule to the Constitution is one to decide whether a member has become disqualified to hold his position as a Member of Parliament or of the Assembly on the ground of defection. The Tenth Schedule cannot be read or construed independent of Articles 102 and 191 of the Constitution and the object of those articles. A defection is added as a disqualification and the Tenth Schedule contains the provisions as to disqualification on the ground of defection. A proceeding under the Tenth Schedule gets started before the Speaker only on a complaint being made that certain persons belonging to a political party had incurred disqualification on the ground of defection. To meet the claim so raised, the Members of Parliament or Assembly against whom the proceedings are initiated have the right to show that there has been a split in the original political party and they form one-third of the members of the legislature of that party, or that the party has merged with another political party and hence para 2 is not attracted. On the scheme of Articles 102 and 191 and the Tenth Schedule, the determination of the question of split or merger cannot be divorced from the motion before the Speaker seeking a disqualification of a member or members concerned. It is therefore not possible to accede to the argument that under the Tenth Schedule to the Constitution, the Speaker has an independent power to decide that there has been a split or merger of a political party as contemplated by paras 3 and 4 of the Tenth Schedule to the Constitution. The power to recognise a separate group in Parliament or Assembly may rest with the

Speaker on the basis of the Rules of Business of the House. But that is different from saying that the power is available to him under the Tenth Schedule to the Constitution independent of a claim being determined by him that a member or a number of members had incurred disqualification by defection. To that extent, the decision of the Speaker in the case on hand cannot be considered to be an order in terms of the Tenth Schedule to the Constitution. The Speaker has failed to decide the question, he was called upon to decide, by postponing a decision thereon. There is therefore some merit in the contention of the learned counsel for BSP that the order of the Speaker may not enjoy the full immunity in terms of para 6(1) of the Tenth Schedule to the Constitution and that even if it did, the power of judicial review recognised by the Court in *Kihoto Hollohan* [1992 Supp (2) SCC 651 : AIR 1993 SC 412 : (1992) 1 SCR 686] is sufficient to warrant interference with the order in question.

29. In the case on hand, the Speaker had a petition moved before him for disqualification of 13 members of BSP. When that application was pending before him, certain members of BSP had made a claim before him that there has been a split in BSP. The Speaker, in the scheme of the Tenth Schedule and the rules framed in that behalf, had to decide the application for disqualification made and while deciding the same, had to decide whether in view of para 3 of the Tenth Schedule, the claim of disqualification had to be rejected. We have no doubt that the Speaker had totally misdirected himself in purporting to answer the claim of the 37 MLAs that there has been a split in the party even while leaving open the question of disqualification raised before him by way of an application that was already pending before him. This failure on the part of the Speaker to decide

the application seeking a disqualification cannot be said to be merely in the realm of procedure. It goes against the very constitutional scheme of adjudication contemplated by the Tenth Schedule read in the context of Articles 102 and 191 of the Constitution. It also goes against the rules framed in that behalf and the procedure that he was expected to follow. It is therefore not possible to accept the argument on behalf of the 37 MLAs that the failure of the Speaker to decide the petition for disqualification at least simultaneously with the petition for recognition of a split filed by them, is a mere procedural irregularity. We have no hesitation in finding that the same is a jurisdictional illegality, an illegality that goes to the root of the so-called decision by the Speaker on the question of split put forward before him. Even within the parameters of judicial review laid down in *Kihoto Hollohan* [1992 Supp (2) SCC 651 : AIR 1993 SC 412 : (1992) 1 SCR 686] and in *Jagjit Singh* v. *State of Haryana* [(2006) 11 SCC 1 : (2006) 13 Scale 335] it has to be found that the decision of the Speaker impugned is liable to be set aside in exercise of the power of judicial review.

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 Schedule. Such a failure to exercise jurisdiction cannot be held to be covered by the shield of para 6 of the Schedule. He has also proceeded to accept the case of a split based merely on a claim in that behalf. He has entered no finding whether a split in the original political party was prima facie proved or not. This action of his, is apparently based on his understanding of the ratio of the decision in *Ravi S. Naik case* [1994 Supp (2) SCC 641 : (1994) 1 SCR 754] . He has misunderstood the ratio therein. Now that we have approved

> the reasoning and the approach in *Jagjit Singh case* [(2006) 11 SCC 1 : (2006) 13 Scale 335] and the ratio therein is clear, it has to be held that the Speaker has committed an error that goes to the root of the matter or an error that is so fundamental, that even under a limited judicial review the order of the Speaker has to be interfered with. We have, therefore, no hesitation in agreeing with the majority of the High Court in quashing the decisions of the Speaker."

41. Thus it is evident that the Constitution Bench of the Supreme Court in **Rajendra Singh Rana vs. Swami Prasad Maurya**[65] was dealing with the validity of the order dated 06.09.2003 by which decision on the issue of merger was taken and the decision on the disqualification petition was postponed. The Constitution Bench placed reliance on the decision in **Kihoto Hollohan vs. Zachillhu**[66] and *inter alia* held as follows:

(i) The Speaker has failed to decide the question which he was called to decide by postponing the decision thereon. The Speaker may not enjoy full immunity in terms of paragraph 6(1) of the Tenth Schedule to the Constitution and power of judicial review recognised by **Kihoto Hollohan** (supra) is sufficient to warrant interference with the order in question. (paragraph 25)

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[65] (2007) 4 SCC 270
[66] 1992 Supp (2) SCC 651

(ii) The failure on the part of the Speaker not to decide the application seeking disqualification cannot be said to be in the realm of procedure and is against the constitutional scheme of adjudication contemplated by Tenth Schedule. The inaction on the part of the Speaker goes against the rules framed as well as the procedure prescribed under Tenth Schedule. (paragraph 29)

(iii) The action of the Speaker in not deciding the petition for disqualification along with the petition for recognition of a split in the party is a jurisdictional illegality and goes to the root of the decision made by the Speaker with regard to split and interference is permissible in exercise of powers of judicial review even within parameters of judicial review laid down in **Kihoto Hollohan** (supra). (paragraph 29)

(iv) The Speaker in the original order has left the question of disqualification undecided which amounts to failure to exercise jurisdiction under paragraph 6 of the Tenth Schedule and cannot be said to be covered under shield of paragraph 6 of the Tenth Schedule. The Speaker has committed an error which is fundamental. (paragraph 40)

(v) The Court is bound to protect the Constitution, its values and principles of democracy which is the basic feature of the Constitution. It was noted that the term of Assembly was coming to an end, therefore, the Court itself decided the issue of disqualification. (paragraph 45)

(c) ERRABELLI DAYAKAR RAO:

42. A Division Bench decision of erstwhile High Court of Andhra Pradesh dealt with the issue whether the High Court in exercise of powers under Article 226 of the Constitution can issue mandatory direction to the Speaker of a Legislative Assembly to dispose of disqualification petition within a time frame, in **Errabelli Dayakar Rao vs. Talasani Srinivas Yadav**[67]. The Division Bench in the light of the decision of the Constitution Bench of the Supreme Court in **Kihoto Hollohan** (supra) held that the scope of judicial review, as set out in the aforesaid decision does not cover any stage prior to making of a decision by the Speaker. It was further held that Speaker while exercising the powers and discharging the function under the Tenth Schedule acts as a Tribunal and its decision is amenable to judicial review. It was also held that no *quia timet* action is

[67] 2015 SCC OnLine Hyd 418

permissible in any stage prior to decision of the Speaker and the scope of judicial review in respect of an order made under Paragraph 6 is confined to jurisdictional errors only, namely infirmities based on violation of constitutional mandate, mala fides, non compliance of rules of natural justice and perversity. The writ petition was, therefore, dismissed. However, the Division Bench of the Andhra Pradesh High Court expressed hope and trust that the Speaker shall decide the disqualification petitions expeditiously.

(d) S.A.SAMPATH KUMAR:

43. One of the parties to the writ petition in **Errabelli Dayakar Rao** (supra), namely S.A.Sampath Kumar filed Special Leave Petition before the Supreme Court against the aforesaid order passed by the Division Bench of the erstwhile Andhra Pradesh High Court in **Errabelli Dayakar Rao** (supra). A two-Judge Bench of the Supreme Court in **S.A.Sampath Kumar vs. Kale Yadaiah**[68] held as under:

> "**4.** We feel that a substantial question as to the interpretation of the Constitution arises on the facts of the present case. It is true that this Court in *Kihoto Hollohan case* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp

[68] (2021) 16 SCC 528

(2) SCC 651] laid down that a *quia timet* action would not be permissible and Shri Jayant Bhushan, learned Senior Counsel appearing on behalf of some of the respondents has pointed out to us that in P. Ramanatha Aiyar's *Advanced Law Lexicon* a *quia timet* action is the right to be protected against anticipated future injury that cannot be prevented by the present action. Nevertheless, we are of the view that it needs to be authoritatively decided by a Bench of five learned Judges of this Court, as to whether the High Court, exercising power under Article 226 of the Constitution, can direct a Speaker of a Legislative Assembly (acting in quasi-judicial capacity under the Tenth Schedule) to decide a disqualification petition within a certain time, and whether such a direction would not fall foul of the *quia timet* action doctrine mentioned in para 110 of *Kihoto Hollohan case* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] . We cannot be mindful (*sic* unmindful) of the fact that just as a decision of a Speaker can be corrected by judicial review by the High Court exercising jurisdiction under Article 226, so prima facie should indecision by a Speaker be correctable by judicial review so as not to frustrate the laudable object and purpose of the Tenth Schedule, which has been referred to in both the majority and minority judgments in *Kihoto Hollohan case* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] .

5. The facts of the present case demonstrate that disqualification petitions had been referred to the Hon'ble Speaker of the Telangana State Legislative Assembly on 23-8-2014, and despite the hopes and aspirations expressed by the impugned judgment [*Errabelli Dayakar Rao* v. *Talasani Srinivas Yadav*, 2015

> SCC OnLine Hyd 418] , the Speaker has chosen not to render any decision on the said petitions till date. 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.
>
> **6.** This Court had passed an order dated 26-10-2016 [*S.A. Sampath Kumar* v. *Kale Yadaiah*, 2016 SCC OnLine SC 1874] directing the Speaker to file an affidavit stating therein how much time is required to dispose of the petition filed by the petitioner. Since the Speaker contests the very jurisdiction of the High Court and consequently this Court to pass any such order, we keep this order in abeyance."

Admittedly, the aforesaid reference has not been answered and is pending consideration.

(e) KEISHAM MEGHACHANDRA SINGH:

44. Now we may advert to a decision rendered by a three-Judge Bench of the Supreme Court in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly** [69] . The factual drop, in which the issues for consideration were:

(i) Whether Speaker of the Assembly, in acting as a tribunal under Schedule X of the Constitution is not

[69] (2021) 16 SCC 503

bound to decide disqualification petitions within a reasonable period.

(ii) What is the scope of judicial review under Article 226 of the High Court and under Article 136 of the Supreme Court of the exercise of power by Speaker under Schedule X Para 6 of the Constitution?

45. The elections to the Manipur Assembly were held in March, 2017 which presented a hung Assembly with no political securing a simple majority. Respondent No.3, a candidate elected on a Congress Party ticket, allied himself with Bharatiya Janata Party (BJP), after declaration of results. He was sworn in as a Minister in the government led by BJP, being a Member of Assembly on a Congress ticket. A plea of disqualification was filed against respondent No.3 before the Speaker of the Assembly. However, the Speaker did not take any action on the said plea and kept the same pending. Thereupon, one Mr. Haokip approached the High Court by way of a petition under Article 226 of the Constitution and sought a direction to the Speaker of the Assembly to decide the plea in a time bound manner. The High Court *inter alia* held that issue with regard to power of the Court to issue a time bound direction to the

Speaker to decide the disqualification petition was pending adjudication before the Constitution Bench of the Supreme Court. The High Court therefore directed the petitioner in the said petition to await the outcome of the decision of the Supreme Court.

46. The petitioner Mr. Haokip again approached the High Court by filing a writ petition with a prayer to disqualify respondent No.3 as Member of Assembly as he has incurred disqualification by defecting into BJP, in view of decision of Supreme Court in **Rajendra Singh Rana vs. Swami Prasad Maurya**[70]. The petitioner prayed for a writ of *quo-warranto* to remove him from the post of the Minister. The High Court in its decision *inter alia* held that the Speaker is a quasi judicial authority and is required to take a decision on the disqualification petition within a reasonable time. It was further held that remedy provided in the Tenth Schedule is an alternative remedy and if the alternative remedy is ineffective due to deliberate inaction or indecision on the part of the Speaker, the Court cannot be denied the jurisdiction to issue an appropriate writ to the Speaker. However, the High Court

[70] (2007) 4 SCC 270

declined to issue the writ of *quo-warranto* on the ground that the issue with regard to power of the Court to issue a time bound direction to the Speaker to decide the disqualification petition was pending adjudication before the Constitution Bench of the Supreme Court. The said decision of the High Court was challenged by way of a Special Leave Petition before the Supreme Court.

47. The Supreme Court took note of the Constitution Bench decisions of the Supreme Court in **Kihoto Hollohan vs. Zachillhu**[71], **Rajendra Singh Rana vs. Swami Prasad Maurya**[72] and **S.A.Sampath Kumar vs. Kale Yadaiah**[73], in paragraph 13 of its judgment in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[74] noted that decision rendered by a Constitution Bench of Supreme Court in **Rajendra Singh Rana** (supra) unfortunately was not brought to the notice of a two-Judge Bench in **S.A.Sampath Kumar vs. Swami Prasad Maurya** (supra). In paragraphs 14 to 16, the relevant paragraphs of decision rendered by a Constitution Bench in **Kihoto Hollohan** (supra) were reproduced. In paragraphs 17 to

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[71] 1992 Supp (2) SCC 651
[72] (2007) 4 SCC 270
[73] (2021) 16 SCC 528
[74] (2021) 16 SCC 503

23, the Constitution Bench decision of Supreme Court in **Rajendra Singh Rana** (supra) was referred. Thereafter, in paragraphs 25, 30 and 33 it was held as under:

> "**25.** Indeed, the same result would ensue on a proper reading of *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] . Paras 110 and 111 of the said judgment when read together would make it clear that what the finality clause in Para 6 of the Tenth Schedule protects is the exclusive jurisdiction that vests in the Speaker to decide disqualification petitions so that nothing should come in the way of deciding such petitions. The exception that is made is also of importance in that interlocutory interference with decisions of the Speaker can only be qua interlocutory disqualifications or suspensions, which may have grave, immediate, and irreversible repercussions. Indeed, the Court made it clear that judicial review is not available at a stage prior to the making of a decision by the Speaker either by a way of *quia timet* action or by other interlocutory orders.
>
> **30.** A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in para 110 of *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] are *quia timet* actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. Paras 110 and 111 of *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] do not, therefore, in any manner, interdict judicial

review *in aid of* the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period. What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is 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 Tenth Schedule is to be adhered to. This period has been fixed keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is 5 years and the fact that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for a single day, as found in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] , if they have infracted the provisions of the Tenth Schedule.

33. It is not possible to accede to Shri Sibal's submission that this Court issue a writ of *quo warranto* quashing the appointment of Respondent 3 as a minister of a cabinet led by a BJP Government. Mrs Madhavi Divan is right in stating that a disqualification under the Tenth Schedule from being an MLA and consequently minister must first be decided by the exclusive authority in this behalf, namely, the Speaker of the Manipur Legislative Assembly. It is also not possible to accede to the argument of Shri Sibal that the disqualification petition be decided by this Court in these appeals given the inaction of the Speaker. It cannot be said that the facts in the present case are similar to the facts in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270]. 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. 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."

48. The Supreme Court in the said decision explained the decision in **Kihoto Hollohan vs. Zachillhu**[75] and *inter alia* held that:

(i) Constitution Bench decision in **Kihoto Hollohan** (supra) does not interdict judicial review in aid of the speaker arriving at a prompt decision as to disqualification petitions under the Tenth Schedule.

(ii) It was observed that Speaker as a Tribunal is bound to decide the disqualification petition within a reasonable time and what would be the reasonable time will depend on facts of each case. It was further held that except in exceptional

[75] 1992 Supp (2) SCC 651

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 the petitioner for disqualification before the Speaker must be decided, if the constitutional objective of disqualifying the person who have infracted the Tenth Schedule has to be adhered to. (paragraph 30)

(iii) The three-Judge Bench dealt with the relief, which could be granted to the appellant, who was seeking a writ of *quo-warranto*. It was held that the only relief which can be granted in the appeal is a direction to the Speaker to decide the disqualification petition within a period of four weeks from the date of receipt of judgment. (paragraph 33)

(f) SUBHASH DESAI:

49. In a batch of writ petitions filed under Article 32 of the Constitution of India, a Constitution Bench of Supreme Court in **Subhash Desai vs. Principal Secretary, Government of Maharashtra**[76] *inter alia* dealt with (a) the issue of reference of decision rendered by Supreme Court in **Nabam Rebia and Bamang Felix vs. Arunachal Pradesh Legislative Assembly**[77] to a Larger Bench, (b) power of Supreme Court to decide petition

[76] (2024) 2 SCC 719
[77] (2016) 8 SCC 1

for disqualification at the first instance, (c) the scope and ambit of bar under Article 212 of the Constitution, (d) interpretation of provisions of Tenth Schedule to the Constitution, Members of Maharashtra Legislative Assembly (Disqualification on the ground of defection) Rules, 1986 and Maharashtra Legislature Members (Removal of disqualification) Act, 1956, (e) the purpose of Tenth Schedule and the effect of disqualification, (f) the purpose of Symbols Order and effect of decision under paragraph 15 of the Symbols Order, (g) impact of deletion of paragraph 3 of Tenth Schedule etc. The petitioners by placing reliance on the decision of the Constitution Bench of the Supreme Court in **Rajendra Singh Rana vs. Swami Prasad Maurya**[78] made a prayer before the Constitution Bench either to decide disqualification petitions itself or alternatively to issue a direction to the Deputy Speaker to decide the disqualification petitions.

50. The Constitution Bench of the Supreme Court in **Subhash Desai** (supra) took note of its decisions in **Kihoto Hollohan vs. Zachillhu** [79] , **Rajendra Singh Rana** (supra) and **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative**

[78] (2007) 4 SCC 270
[79] 1992 Supp (2) SCC 651

Assembly[80]. In paragraph 76 of its judgment, the Constitution Bench referred to its decision rendered in **Kihoto Hollohan** (supra) and held as under:

> "**76.** In *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651], this Court held that the Speaker is a Tribunal for the purposes of the Tenth Schedule. Therefore, the exercise of power under the Tenth Schedule is subject to the jurisdiction of courts under Articles 136, 226 and 227 of the Constitution. This Court further observed that the finality clause contained in Para 6(2) did not completely exclude the jurisdiction of courts. However, it was held that such a clause limits the scope of judicial review because the Constitution intended the Speaker or the Chairman to be "the repository of adjudicatory powers" under the Tenth Schedule. This Court held that judicial review is not available at a stage prior to the decision of the Speaker or Chairman, save in certain exceptional circumstances detailed in that case. Thus, *Kihoto Hollohan* [*Kihoto Hollohan* v. *Zachillhu*, 1992 Supp (2) SCC 651] makes it evident that the exclusive power to decide the question of disqualification under the Tenth Schedule vests with the Speaker or Chairman of the House."

51. The Constitution Bench thereafter referred to its decision rendered in **Rajendra Singh Rana** (supra), in paragraphs 78, 79, 86 and 88, which are extracted below for the facility of reference, held as under :

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[80] (2021) 16 SC 503

"**78.** In *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270], disqualification petitions were filed against thirteen MLAs of the Bahujan Samaj Party ("BSP") on 4-9-2003. On 26-8-2003, the Speaker accepted a split in the BSP and recognised a separate group by the name of Lok Tantrik Bahujan Dal. The thirteen MLAs against whom disqualification petitions were instituted were also part of the Lok Tantrik Bahujan Dal. On 6-9-2003, the Speaker accepted the merger of the Lok Tantrik Bahujan Dal with the Samajwadi Party without deciding the disqualification petitions against the thirteen MLAs. On 7-9-2005, the Speaker rejected the disqualification petitions against the MLAs. By its judgment dated 28-2-2006 [*Swami Prasad Maurya* v. *Speaker, U.P. Legislative Assembly*, 2006 SCC OnLine All 2216] , the High Court quashed the order of the Speaker rejecting the disqualification petitions against the MLAs and directed him to reconsider the petitions.

79. On appeal, this Court observed [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] that it would not be appropriate for it to decide the disqualification petitions for the first time when the authority concerned had not taken a decision. It observed that this Court would normally remit the matter to the Speaker or Chairman to take a proper decision in accordance with law. However, this Court decided to adjudicate the disqualification petitions in view of the following peculiar facts and circumstances : (*i*) the Speaker of the Legislative Assembly in that case failed to decide the question of disqualification in a time-bound manner; (*ii*) the Speaker decided the issue of whether there was a split in the party without deciding whether the MLAs in question were disqualified; and (*iii*) the necessity of an expeditious decision in view of the fact that the

disqualification petitions were not decided by the Speaker for more than three years and the term of the Assembly was coming to an end. In view of the above facts and circumstances, this Court was of the opinion that remanding the disqualification proceedings to the Speaker would lead to them becoming infructuous.

86. In *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] , a Constitution Bench of this Court observed that disqualification is incurred at the point when the MLA indulges in conduct prohibited under the Tenth Schedule. The petitioners rely on this observation to contend that the validity of the proceedings in the House during the pendency of the disqualification petitions depends on the outcome of the disqualification petitions. The petitioners urge that though the MLAs cannot be barred from participating in the proceedings of the House merely on the initiation of disqualification petitions against them, the outcome of such proceedings will be subject to the decision of the Speaker in the pending disqualification petitions. It is important to understand the context in which this Court decided *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270] to appreciate the gamut of its observations.

88. This Court held that the Speaker could not have decided whether a split existed dehors the disqualification petitions. The Court considered the issue of the point in time when the defence of a split must have existed. The respondents in that case contended that the defence of a split in terms of Para 3 must have existed on the day on which the MLAs indulged in prohibitory conduct. In response, the petitioners contended that it is sufficient for

> the MLAs to prove a split in terms of Para 3 as on the day when the disqualification petitions are decided by the Speaker. It was in this context that this Court observed that the MLAs incurred disqualification when they indulged in prohibitory conduct and therefore, the defence to disqualification (in this case, a split) must also have existed when the MLAs indulged in prohibitory conduct."

52. In paragraph 84 of its decision, the Supreme Court dealt with the decision rendered by three-Judge Bench in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[81]. Paragrah 84 reads as under:

> "**84.** A similar submission was made before this Court in *Keisham Meghachandra Singh* v. *Manipur Legislative Assembly* [*Keisham Meghachandra Singh* v. *Manipur Legislative Assembly*, (2021) 16 SCC 503 : 2020 SCC OnLine SC 55], wherein it was submitted that this Court should issue a writ of quo warranto against the appointment of an MLA as a minister when disqualification petitions are pending. Rejecting the submission, this Court held as under : (SCC pp. 513 & 527, paras 10 & 33)
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> > "*10.* Shri Kapil Sibal, learned Senior Advocate appearing on behalf of the Appellant, in the Civil Appeal arising out of SLP (C) No. 18659 of 2017, has argued that the Speaker in the present case has deliberately refused to decide the disqualification petitions before him. … In these circumstances, he has exhorted us to issue a writ of quo warranto against Respondent 3 stating that he has usurped a

[81] (2021) 16 SCC 503

constitutional office, and to declare that he cannot do so. …

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33. It is not possible to accede to Shri Sibal's submission that this Court issue a writ of quo warranto quashing the appointment of Respondent 3 as a minister of a cabinet led by a BJP Government. Mrs Madhavi Divan is right in stating that a disqualification under the Tenth Schedule from being an MLA and consequently minister must first be decided by the exclusive authority in this behalf, namely, the Speaker of the Manipur Legislative Assembly. It is also not possible to accede to the argument of Shri Sibal that the disqualification petition be decided by this Court in these appeals given the inaction of the Speaker. It cannot be said that the facts in the present case are similar to the facts in *Rajendra Singh Rana* [*Rajendra Singh Rana* v. *Swami Prasad Maurya*, (2007) 4 SCC 270]. 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. 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."

53. The Constitution Bench in paragraph 85 of its decision concluded that the Speaker is the appropriate constitutional authority to decide the disqualification petition under the Tenth Schedule. Thereafter, the Supreme Court *inter alia* held that the decision rendered in **Nabam Rebia and Bamang Felix vs. Arunachal Pradesh Legislative Assembly**[82] needs reference to a Larger Bench of seven-Judges and recorded the conclusions in paragraph 213 of its judgment. The conclusion recorded by the Supreme Court, relevant for the purposes of controversy, is extracted below for the facility of reference:

> "**213.2.** This Court cannot ordinarily adjudicate petitions for disqualification under the Tenth Schedule in the first instance. There are no extraordinary circumstances in the instant case that warrant the exercise of jurisdiction by this Court to adjudicate disqualification petitions. The Speaker must decide disqualification petitions within a reasonable period;"

(xv) PRINCIPLE OF *RATIO DECIDENDI*:

54. We now deal with the principle of *ratio decidendi*. It is well settled that the ratio of a decision has to be understood in the

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[82] (2016) 8 SCC 1

background of the facts of the case and difference in facts or additional facts may make a lot of difference in precedential value of a decision (see **Ambica Quarry Works vs. State of Gujarat and others**[83] and **Bhavnagar University vs. Palitana Sugar Mills (Private) Limited** [84]). It is equally well settled proposition that Court should not place reliance on the decision without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance has been placed. It is trite that observations of the Court are neither to be read as Euclid's Theorems nor as provisions of the Statute (see **Bharat Petroleum Corporation Limited vs. N.R. Vairamani and another**[85]).

55. In Halsbury's Laws of England (fourth edition, para 1237), the principle has been stated as under:

> "The enunciation of the reason or principle which a question before a Court has been decided is alone binding as a precedent. This underlying principle is called the 'ratio decidendi', namely the general reasons given for the decision or the general grounds upon which it is based, detached or abstracted from the specific peculiarities of the particular case which give rise to the decision."

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[83] (1987) 1 SCC 213
[84] (2003) 2 SCC 111
[85] AIR 2004 SC 477

56. The said principle has been reiterated and followed in **Deepak Bajaj vs. State of Maharashtra**[86] and **Madhya Pradesh Housing and Infrastructure Development Board vs. BSS Parihar**[87] and it has been held that decision is an authority for what it actually decides. It has further been held that what is of essence in a decision is its ratio and neither every observation finds therein nor what logically follows from various observations in the judgment. It is also held that enunciation of reason or principle on which a question before the court has been decided alone is binding as a precedent.

57. The following words of Lord Denning in the matter of applying precedents, which have been referred to by the Supreme Court in **Madhya Pradesh Housing and Infrastructure Development Board** (supra) have become *locus classicus.*

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J) by matching the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

[86] (2008) 16 SCC 14
[87] (2015) 14 SCC 130

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> Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."

58. At this stage, we may take note of another well settled legal principle that this Court is required to decide the matter on the basis of law as it stands and it is not open, unless specifically directed by the Supreme Court to await the outcome of Reference or a review petition, as the case may be (see **Union Territory of Ladakh and others vs. Jammu and Kashmir National Conference and another**[88]). Thus, it is evident that notwithstanding the order passed by the Supreme Court in **S.A.Sampath Kumar vs. Kale Yadaiah**[89] referring the issue involved in these appeals to a Larger Bench, this Court has to decide these appeals on the basis of law as it stands today.

59. In **Gonal Bihimappa vs. State of Karnataka**[90], the Supreme Court has held that in a precedent bound judicial system binding authorities have got to be respected and the

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[88] 2023 SCC OnLine SC 1140
[89] (2021) 16 SCC 528
[90] AIR 1987 SC 2359

procedure for developing the law has to be one of evolution. This Court is bound by the *ratio decidendi* i.e., the principle of law.

60. Therefore, we are required to ascertain the principle of law which binds this Court. From perusal of the Constitution Bench decisions of the Supreme Court in **Kihoto Hollohan vs. Zachillhu** [91] and **Rajendra Singh Rana vs. Swami Prasad Maurya**[92], a three-Judge Bench decision of the Supreme Court in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[93] as well as another Constitution Bench decision of the Supreme Court in **Subhash Desai vs. Principal Secretary, Government of Maharashtra**[94], the position in law which emerges is as under:

(i) In **Kihoto Hollohan** (supra), the Constitution Bench of the Supreme Court while upholding the validity of the Tenth Schedule to the Constitution held that judicial review is not available at a stage prior to making of the decision by the Speaker and no interference is called for at interlocutory stage of the proceeding except where such disqualification or suspension is imposed during the pendency of the proceeding and such

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91 1992 Supp (2) SCC 651
92 (2007) 4 SCC 270
93 (2021) 16 SCC 503
94 (2024) 2 SCC 719

disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequences.

(ii) In **Kihoto Hollohan** (supra), it was further held that finality clause in Paragraph 6 of the Tenth Schedule to the Constitution of India does not completely exclude the jurisdiction of the Court under Articles 136, 226 and 227 of the Constitution of India, but limits the scope of jurisdiction of the Courts to jurisdictional errors only, i.e., infirmities based on violation of constitutional mandates, mala fides, non-compliance of rules of natural justice and perversity.

(iii) In **Rajendra Singh Rana** (supra), the Constitution Bench dealt with validity of the order passed by the Speaker in deciding the split or merger of a political party and in postponing the decision on petition for disqualification. While placing reliance on the decision rendered by the Constitution Bench in **Kihoto Hollohan** (supra), it was held that failure on the part of the Speaker to decide the petition for disqualification simultaneously with the petition for split or merger of a political party is a jurisdictional infirmity and the decision of the Speaker is liable to be set aside in exercise of power of judicial review as recognised in **Kihoto Hollohan** (supra). (paragraphs 25 and 29)

(iv) The Constitution Bench decision of the Supreme Court in **Rajendra Singh Rana** (supra) did not decide the issue whether in exercise of power of judicial review under Article 226 of the Constitution of India, the High Court can issue a direction to the Speaker to decide a petition for disqualification within a certain time.

(v) In the peculiar facts of the case, taking into account the fact that the term of the Assembly was about to expire and the Court is bound to protect the Constitution, its values and principles of democracy, the Constitution Bench of the Supreme Court in **Rajendra Singh Rana** (supra) decided the disqualification petition etc.

(vi) A three-Judge Bench of the Supreme Court in **Keisham Meghachandra Singh vs. Speaker, Manipur Legislative Assembly**[95] dealt with a case where a writ of *quo-warranto* on account of disqualification incurred under the Tenth Schedule to the Constitution of the Constitution of India was sought. The Supreme Court in penultimate paragraph of its judgment held that the only relief which can be given to the appellant in that case is a direction to the Speaker to decide the

[95] (2021) 16 SCC 503

disqualification petitions pending before him, within a period of four weeks from the date of receipt of judgment.

(vii) In **Keisham Meghachandra Singh** (supra), the writ petitioner had sought a relief of *quo-warranto*. The Supreme Court moulded the relief and directed the Speaker to decide the disqualification petition in a time bound manner. The said decision is not an authority for the proposition that this Court in exercise of powers of judicial review under Article 226 of the Constitution of India can direct the Speaker to decide the disqualification petition in a time bound manner. For yet another reason, we say so. The three-Judge Bench of the Supreme Court was conscious that the aforesaid issue is pending consideration before the Constitution Bench of five-Judges in **S.A.Sampath Kumar vs. Kale Yadaiah**[96].

(viii) In its latest decision, namely **Subhash Desai vs. Principal Secretary, Government of Maharashtra** [97], the Constitution Bench of the Supreme Court considered its decisions in **Kihoto Hollohan** (supra)**, Rajendra Singh Rana** (supra) and **Keisham Meghachandra Singh (supra)**. In the aforesaid decisions, one of the reliefs prayed before the Supreme

[96] (2021) 16 SCC 528
[97] (2024) 2 SCC 719

Court was either to decide the disqualification petition itself or to issue a direction to the Deputy Speaker to decide the disqualification petition.

(ix) The Constitution Bench of the Supreme Court in **Subhash Desai** (supra) while considering **Rajendra Singh Rana** (supra) held that the Constitution Bench in the aforesaid decision decided the disqualification petition in the peculiar facts of the case. It was further held that the Speaker has the exclusive authority to decide the petition for disqualification, except in exceptional circumstances.

(x) The Constitution Bench of the Supreme Court in **Subhash Desai** (supra) concluded in paragraph 213.2 that the Speaker is bound to decide the disqualification petition within a reasonable time.

61. The decision of the Constitution Bench of the Supreme Court in **Subhash Desai** (supra) considers its previous decisions in **Kihoto Hollohan** (supra), **Rajendra Singh Rana** (supra) and **Keisham Meghachandra Singh** (supra) and lays down the legal principle more elaborately and accurately by stating that the petition seeking disqualification should be decided by the Speaker within a reasonable time. Therefore, the ratio of the

decision of the Supreme Court in **Subhash Desai** (supra) binds this Court. Insofar as the decision in **Errabelli Dayakar Rao vs. Talasani Srinivas Yadav** [98] of the erstwhile High Court of Andhra Pradesh is concerned, suffice it to say that the aforesaid decision was rendered prior to the decision in **Subhash Desai** (supra).

62. In view of the preceding analysis, it is evident that the Speaker is the Authority to decide the disqualification petitions, who exercises the powers under the Tenth Schedule to the Constitution of India. The Speaker is a high constitutional functionary. Our society is governed by rule of law and the Constitution is the supreme. The Speaker exercises power under the Tenth Schedule and the same is subject to judicial review on the grounds set out in **Kihoto Hollohan** (supra) and as referred to by the Supreme Court in **Rajendra Singh Rana** (supra) and **Subhash Desai** (supra). The Speaker of the Assembly is required to decide the disqualification petitions within a reasonable time. What would be the reasonable time depends in the facts and circumstances of each case.

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[98] 2015 SCC OnLine Hyd 418

63. The learned Single Judge has directed the Secretary, Telangana Legislative Assembly to place the disqualification petitions before the Speaker. It is pertinent to note that the disqualification petitions were filed on 01.07.2024. Thereafter, the writ petitions were filed on 09.07.2024, which were decided by the learned Single Judge by a common order dated 09.09.2024. Against the aforesaid common order passed by the learned Single Judge, these writ appeals are filed on 30.09.2024. This Court on 03.10.2024 passed the interim order granting liberty to mention the matter in case any precipitative action is taken against the appellant on or before 24.10.2024 and the case was directed to be posted for final disposal on 24.10.2024. Thus, four and half months have lapsed since filing of the disqualification petitions. The action on the petition seeking disqualification has to be taken in consonance with the Rules.

64. For the aforementioned reasons, the common order dated 09.09.2024 passed by the learned Single Judge in W.P.Nos.9472, 11098 and 18553 of 2024 is set aside. The Speaker of the Telangana Legislative Assembly must decide the disqualification petitions filed by the writ petitioners within a reasonable time. Needless to state that the Speaker while dealing

with the disqualification petitions shall bear in mind the concept of reasonable time, by taking into account the period of pendency of the disqualification petitions, the object of inclusion of the Tenth Schedule to the Constitution of India as well as the tenure of the Assembly.

65. Accordingly, the writ appeals are disposed of. There shall be no order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

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ALOK ARADHE, CJ

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J.SREENIVAS RAO, J

22.11.2024

Note: LR copy be marked.
(By order)
Pln