

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF MAY, 2018

PRESENT

THE HON'BLE MR. JUSTICE B. VEERAPPA

AND

THE HON'BLE MR. JUSTICE S. SUNIL DUTT YADAV

WRIT APPEAL No.1319/2018

C/W

WRIT APPEAL Nos.1342-1343/2018,

WRIT APPEAL Nos.1344-1345/2018, (GM-RES)

IN WA NO. 1319/2018

BETWEEN:

1. SRI B. Z. ZAMEER AHMED KHAN,  
S/O LATE ZIAULLA KHAN,  
AGED ABOUT 53 YEARS,  
R/AT NO.34, BENSON CROSS ROAD,  
BENSON TOWN,  
BENGALURU-560046.
2. SRI N. CHELUVARAYASWAMY,  
(SWAMYGOWDA),  
S/O LATE NARASIMHE GOWDA,  
AGED ABOUT 58 YEARS  
R/AT IJJALAGHATTA VILLAGE,  
BRAHMADEVARAHALLI POST,  
HONANKERE HOBLI,  
NAGAMANGALA TALUK,  
MANDYA DISTRICT.
3. SRI H. C. BALAKRISHNA,  
S/O H.G.CHENNAPPA,

AGED ABOUT 53 YEARS,  
R/AT "AMMA" NO.21(22),  
1<sup>ST</sup> CROSS, KHB COLONY,  
1<sup>ST</sup> STAGE, BASAVESHWARANAGAR,  
BENGALURU-560079.

4. SRI AKHANDA SRINIVAS MURTHY R  
S/O C. RAMAIAH,  
AGED ABOUT 48 YEARS  
R/AT NO.32, PRESENT NO.-19,  
KAVALBYRASANDRA MAIN ROAD,  
R.T.NAGAR, SIDDHARATHA LAYOUT,  
BENGALURU-560032.

... APPELLANTS

(BY SRI PROF. RAVIVARMA KUMAR, SENIOR COUNSEL FOR  
SRI M. R. RAJAGOPAL, ADVOCATE )

AND:

1. THE STATE OF KARNATAKA  
REPRESENTED BY ITS CHIEF SECRETARY,  
VIDHANA SOUDHA,  
BENGALURU-560001.
2. THE SECRETARY TO LEGISLATIVE ASSEMBLY  
& RETURNING OFFICER, ROOM NO.121,  
VIDHANA SOUDHA,  
BENGALURU-560001.
3. THE HON'BLE SPEAKER,  
KARNATAKA LEGISLATIVE ASSEMBLY,  
VIDHANA SOUDHA,  
BENGALURU-560001.
4. SRI C. N. BALAKRISHNA,  
S/O NANJAPPA,  
AGED ABOUT 50 YEARS  
MEMBER OF KARNATAKA  
LEGISLATIVE ASSEMBLY,

NO.93, SHRAVANABELAGOLA  
ASSEMBLY CONSTITUENCY,  
R/A, CHOLENAHALLI, ADAGURU POST,  
KASABA HOBLI, CHANNARAYAPATNA TALUK,  
HASSAN DISTRICT-573116.

5. SRI B. B. NINGAIAH,  
S/O BOMMAIAH,  
AGED ABOUT 50 YEARS,  
MEMBER OF KARNATKA  
LEGISLATIVE ASSEMBLY  
NO.124-MUDIGERE (SC)  
ASSEMBLY CONSTITUENCY,  
R/A BETTEGERE VILLAGE AND POST,  
BUDIGERE TALUK,  
CHIKKAMGALURU DISTRICT-562101.
6. SRI A. B. RAMESHA BANDISIDDEGOWDA  
S/O A.S. BANDISIDDEGOWDA,  
AGED ABOUT 51 YEARS  
RESIDING AT AREKERE POST,  
SRIRANGAPATANA TALUK,  
MANDYA DISTRICT-571101.
7. SRI IQBAL ANSARI  
S/O S.M. ANSARI,  
AGED ABOUT 56 YEARS,  
RESIDING AT KOPPAL ROAD,  
ISLAMPUR, KOPPAL-583227.
8. SRI S. BHEEMANAİK,  
S/O SAMYA NAIK,  
AGED ABOUT 44 YEARS,  
RESIDING AT 15/16, RAJEEVNAGAR,  
1<sup>ST</sup> CROSS, 1<sup>ST</sup> MAIN ROAD,  
HOSPET-583201, BALLARI DISTRICT.

... RESPONDENTS

(BY SRI MADHUSUDHAN R. NAIK, ADVOCATE GENERAL A/W  
SRI S.S. MAHENDRA, AGA FOR R1 AND R2;

SRI JAYAKUMAR S, PATIL, SENIOR COUNSEL FOR  
SRI ASHOK N NAYAK, ADVOCATE FOR R3;  
SRI UDAY HOLLA, SENIOR COUNSEL FOR  
SRI USMAN P. ADVOCATE FOR R4 AND R5;  
SMT. ANUPARNA BORDOLOI, ADVOCATE FOR R6 TO R8)

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THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE  
ORDER DATED 24/4/2018 PASSED BY THE LEARNED SINGLE  
JUDGE IN WP 12338-12339/2018 [GM-RES]

IN WA Nos.1342-43/2018

BETWEEN:

1. SECRETARY TO KARNATAKA  
LEGISLATIVE ASSEMBLY &  
RETURNING OFFICER  
ROOM NO.121,  
VIDHANA SOUDHA,  
BENGALURU-560001.
2. THE HON'BLE SPEAKER,  
KARNATAKA LEGISLATIVE ASSEMBLY,  
VIDHANA SOUDHA,  
BENGALURU-560001.

... APPELLANTS

(BY SRI JAYAKUMAR S. PATIL, SENIOR COUNSEL FOR  
SRI ASHOK N. NAYAK, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA  
REPRESENTED BY ITS CHIEF SECRETARY,  
VIDHANA SOUDHA,  
BENGALURU-560001.

2. SRI C. N. BALAKRISHNA,  
S/O NANJAPPA,  
AGED ABOUT 50 YEARS,  
MEMBER OF KARNATAKA LEGISLATIVE  
ASSEMBLY NO.193  
SHRAVANABELAGOLA ASSEMBLY CONSTITUTENCY  
R/A CHOLENAHALLI,  
ADAGURU POST,  
KASABA HOBLI,  
CHANNARAYANPATNA TALUK,  
HASSAN DISTRICT-560 079.
3. SRI B. B. NINGAIAH  
S/O BOMMAIAH,  
AGED ABOUT 50 YEARS,  
MEMBER OF KARNATAKA  
LEGISLATIVE ASSEMBLY,NO.124-  
MUDIGERE(SC),  
ASSEMBLY CONSTITUENCY,  
R/A BETTEGERE VILLAGE & POST,  
BUDIGERE TALUK,  
CHIKKAMAGALURU DISTRICT.
4. SRI B. Z. ZAMEER AHMED KHAN,  
S/O LATE ZIAULLA KHAN,  
AGED ABOUT 53 YEARS,  
RESIDING AT NO.34,  
BENSON CROSS ROAD,  
BENSON TOWN,  
BENGALURU-560046.
5. SRI N. CHELUVARAYASWAMY  
(SWAMYGOWDA)  
S/O LATE NARASIMHE GOWDA,  
R/AT IJJALAGHATA VILLAGE,  
BRAHMADEVARAHALLI POST,  
HONANKERE HOBLI,  
NAGAMANGALA TALUK,  
MANDYA TALUK-571 101.

6. SRI A B RAMESHA BANDISIDDEGOWDA  
S/O A.S.BANDISIDDEGOWDA,  
AGED ABOUT 51 YEARS,  
R/AT AREKERE POST,  
SRIRANGAPATTANA TALUK,  
MANDYA DISTRICT-571 101
7. SRI H. C. BALAKRISHNA,  
S/O H.G.CHENNAPPA,  
AGED ABOUT 53 YEARS  
R/AT "AMMA"NO.21(22),  
1<sup>ST</sup> CROSS, KHB COLONY,  
1<sup>ST</sup> STAGE,  
BASAVESHWARANAGAR,  
BENGALURU-560079.
8. SRI AKHANDA SRINIVAS MURTHY R  
S/O C. RAMAIAH,  
AGED ABOUT 48 YEARS  
RESIDING AT NO.32,  
PRESENT NO.-19,  
KAVALBYRASANDRA MAIN ROAD,  
R.T.NAGAR,  
SIDDHARATHA LAYOUT,  
BENGALURU-560032.
9. SRI IQBAL ANSARI  
S/O S.M.ANSARI,  
AGED ABOUT 56 YEARS  
RESIDING AT KOPPAL ROAD,  
ISLAMPUR,  
KOPPAL-583227.
10. SRI S. BHEEMANAİK  
S/O SAMYA NAIK,  
AGED ABOUT 44 YEARS  
RESIDING AT 15/16,  
RAJEEVNAGAR, 1<sup>ST</sup> CROSS,

1<sup>ST</sup> MAIN ROAD,  
HOSPET-583201,  
BALLARI DISTRICT.

... RESPONDENTS

(BY SRI MADHUSUDHAN R. NAIK, ADVOCATE GENERAL A/W  
SRI S.S. MAHENDRA, AGA FOR R1;  
SRI UDAY HOLLA, SENIOR COUNSEL FOR  
SRI USMAN P. ADVOCATE FOR R2 AND R3;  
SRI PROF. RAVIVARMA KUMAR, SENIOR COUNSEL FOR  
SRI RAJAGOPAL M.R., ADVOCATE FOR R4 TO R7;  
SMT. ANUPARNA BORDOLOI, ADVOCATE FOR R8 TO R10)

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THESE WRIT APPEALS ARE FILED UNDER SECTION 4 OF  
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ORDER DATED 24/4/2018 PASSED BY THE LEARNED SINGLE  
JUDGE IN WP 12338-12339/2018 [GM-RES] AND ETC.

IN WA Nos. 1344-1345/2018

BETWEEN:

1. SRI A. B. RAMESHA BANDISIDDEGOWDA  
S/O A S BANDISIDDEGOWDA,  
AGED ABOUT 51 YEARS  
R/A AREKERE POST,  
SRIRANGAPATANA TALUK,  
MANDYA DISTRICT-571 101.
  
2. SRI IQBAL ANSARI  
S/O S M ANSARI,  
AGED ABOUT 56 YEARS  
R/A KOPPAL ROAD,  
ISLAMPUR,  
KOPPAL-583 227.

3. SRI S. BHEEMANAİK,  
S/O SAMYA NAIK,  
AGED ABOUT 44 YEARS  
R/A NO.15/16,RAJEEVNAGAR,  
1<sup>ST</sup> CROSS, 1<sup>ST</sup> MAIN ROAD,  
HOSPET-583 201  
BELLARY DISTRICT.

... APPELLANTS

(BY SMT. ANUPARNA BORDOLOI (SHETTY AND HEGDE  
ASSOCIATES), ADVOCATE

AND:

1. THE STATE OF KARNATAKA  
REPRESENTED BY ITS CHIEF SECRETARY,  
VIDHANA SOUDHA,  
BENGALURU-560001.
2. THE SECRETARY TO LEGISLATIVE ASSEMBLY  
& RETURNING OFFICER,  
ROOM NO.121,  
VIDHANA SOUDHA,  
BENGALURU-560001.
3. THE HON'BLE SPEAKER  
KARNATAKA LEGISLATIVE ASSEMBLY,  
VIDHANA SOUDHA,  
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S/O LATE ZIAULLA KHAN,  
AGED ABOUT 53 YEARS  
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S/O H.G.CHENNAPPA,  
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CONSTITUTENCY  
R/A CHOLENAHALLI,  
ADAGURU POST, KASABA HOBLI,  
CHANNARAYAPATNA TALUK,  
HASSAN DISTRICT
9. SRI B B NINGAIAH  
S/O BOMMAIAH,  
MEMBER OF KARNATAKA LEGISLATIVE  
ASSEMBLY,NO.124-MUDIGERE (SC)  
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... RESPONDENTS

(BY SRI MADHUSUDHAN R. NAIK, ADVOCATE GENERAL A/W  
SRI S.V. GIRIKUMAR, AGA FOR R1 AND R2;  
SRI JAYAKUMAR S, PATIL, SENIOR COUNSEL FOR  
SRI ASHOK N NAYAK, ADVOCATE FOR R3;  
SRI PROF. RAVIVARMA KUMAR, SENIOR COUNSEL FOR  
SRI RAJAGOPAL M.R., ADVOCATE FOR R4 TO R7;  
SRI UDAY HOLLA, SENIOR COUNSEL FOR  
USMAN P. ADVOCATE FOR R8 AND R9;

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THESE WRIT APPEALS ARE FILED UNDER SECTION 4 OF  
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ORDER DATED 24/4/2018 PASSED BY THE LEARNED SINGLE  
JUDGE IN WP 12338-12339/2018 [GM-RES] AND ETC.

THESE WRIT APPEALS HAVING BEEN HEARD AND  
RESERVED FOR JUDGMENT, COMING ON FOR  
PRONOUNCEMENT OF JUDGMENT TODAY, **B. VEERAPPA J.**,  
DELIVERED THE FOLLOWING:-

### J U D G M E N T

These intra-Court appeals are filed by respondent Nos.1  
to 10 in W.P.Nos.12338-12339/2018 against the order dated  
24.04.2018 passed by the learned single Judge allowing the  
writ petitions in part and directing the 3<sup>rd</sup> respondent/  
Hon'ble Speaker of Karnataka Legislative Assembly, to decide

the disqualification petition filed by the petitioners, on or before 07.05.2018.

2. The parties are referred to as per their ranking in the writ petitions, to avoid confusion.

3. The original petitioners filed writ petitions for a writ of quo-warranto to respondents 4 to 10 to demit their office as members of 14<sup>th</sup> Karnataka Legislative Assembly, forthwith, and for a writ of mandamus directing the 3<sup>rd</sup> respondent, to disqualify respondent Nos.4 to 10 as members of Karnataka Legislative Assembly, with immediate effect,

or  
in the alternative,

to issue a writ of mandamus directing the 3<sup>rd</sup> respondent, Hon'ble Speaker of Karnataka Legislative Assembly to dispose of disqualification petition No.1 of 2016 pending before him, on or before 23.03.2018.

I THE FACTUAL MATRIX OF THE CASE

4. It is the case of the petitioners before the learned single Judge that they are the elected members of the Karnataka Legislative Assembly on the tickets issued by the political party-Janatha Dal (Secular) [hereinafter called as JD(S)], from Shravanabelagola Assembly Constituency-No.193, Mudigere (SC) Assembly Constituency-No.124 of 14<sup>th</sup> Karnataka Legislative Assembly elections held in the year 2013. It was further contended that a free and fair governance as envisaged under the Constitution of India is utmost necessary for survival of the democracy in the country. The legislature is most important pillar of democracy in the Country and it goes without saying that, the members of the Parliament and Legislative Assembly are required to maintain serenity, transparency and corruption free conduct so as to inspire the people of the country, especially the younger generation.

5. It was further contended that respondent Nos.4 to 10 got elected to the Karnataka Legislative Assembly in the elections held in the year 2013 and took as members of the Karnataka Legislative Assembly from JD(S) party. Four members of Rajya Sabha were retiring on 30.06.2016, elected from the State of Karnataka. Therefore, calendar of events for election to Rajya Sabha came to be issued by the Election Commission of India on 12.05.2016 fixing the date before which the elections shall be completed, as on 13.06.2016. In view of the same, on 06.06.2016, Sri H.D.Kumaraswamy, President of Karnataka JD (S) party issued whip to all the members of the Legislative Assembly of Karnataka belonging to his party and directed them to vote for the official candidate of JD (S) viz., Sri B.M. Farooq and said whip was pasted on the rooms of respondent Nos.4 to 10 at the legislature home at Bengaluru and sufficient notice was given to them of the direction issued by the President of JD (S) party to cast their vote to their official candidate and they were made known the process known to law and press note.

It was further alleged that, unlike the public elections where secret ballot is practiced, the proceedings to Rajya Sabha elections are designed in such a manner that the voter must disclose in whose favour he has cast his vote to the party agent/representative. The said procedure was adopted to ensure that the whip issued by the party is not violated by a party member.

6. It was further contended that respondents 4 to 10 have marked their ballot papers for K.C.Ramamurthy, official candidate of the Indian National Congress. It was also reported that a political party agent of J.D.(S) party has seen marking ballot paper of respondents 4 to 10 which was apparently in violation of the whip issued by President of J.D.(S) party. The action on the part of respondents 4 to 10 makes them liable to be disqualified on account of their disobeying and committing violation of whip issued by the President of J.D.(S) political party under which

they contested and were elected as members of Legislative Assembly. Therefore, petitioners filed a disqualification petition as provided under Rule 6(2) of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, to the 3<sup>rd</sup> respondent/Hon'ble Speaker of Karnataka Legislative Assembly and specifically contended that respondents 4 to 10 should be declared as disqualified in terms of Article 191(2) and paragraph 2(1)(a) of the Tenth schedule of the Constitution of India. Respondents 4 to 10 filed their objections before the 3<sup>rd</sup> respondent and petitioners filed rejoinder to the objections. Despite the pleadings being complete, even after lapse of more than one and a half years, respondent No.3/Hon'ble Speaker has not yet decided the disqualification petition. When things stood thus, again members of Rajya Sabha were scheduled to retire on 20.04.2018. Accordingly, the Election Commission of India by notification dated 05.03.2018 issued calendar of events fixing the date of election as 23.03.2018. In response to the said calendar of events, there are five candidates viz.,

Sri Rajeev Chandrashekar, candidate set up by Bharathiya Janatha Party, Sri B.M.Farooq, candidate set up by J.D.(S) and three candidates, Dr. Hanumanthaiah, Dr.Syed Naseer Hussain and Sri C.G.Chandrashekar, nominated by Indian National Congress Party. Respondents 4 to 10 have once again declared that they are going to vote one of the candidates of Indian National Congress. If such situation arises, it will result in constitutional crisis on account of inaction of the 3<sup>rd</sup> respondent, who intentionally postponed the ruling to be passed on a petition pending before him for disqualification of respondents 4 to 10. In spite of the same, respondents 4 to 10 have again proceeded to vote against the whip issued by the President of J.D.(S) party. Therefore, writ petitions came to be filed for the relief sought for.



## II STATEMENT OF OBJECTIONS BY RESPONDENTS 2 AND 3

7. The respondents 2 and 3 i.e., the Secretary, State Government and Hon'ble Speaker filed objections to the main writ petition specifically contending that the writ petition filed seeking writ of mandamus is not maintainable in view of Tenth schedule of the Constitution which bars jurisdiction of any court. It was further contended that whether the action of MLA warrants disqualification or not is to be decided by the Speaker. The Speaker is yet to take decision and during consideration of same several applications/objections were filed before the Speaker in the same proceedings. Therefore, at this stage, writ of mandamus does not lie against the Speaker. In view of the dicta of Hon'ble Supreme Court, the final order passed or decision taken by a Speaker in the matter of disqualification against which whether jurisdictional review is permitted or not and ultimately it is for the speaker to take action. Therefore writ is not maintainable and sought for dismissal of the same.

### III THE ORDER PASSED BY THE LEARNED SINGLE JUDGE

8. The learned single Judge, after hearing both the parties and considering the entire material on record, has recorded a finding that it is the obligation on the part of the Hon'ble Speaker to decide the petition filed for disqualification, within a reasonable period. Same has not been done by the 3<sup>rd</sup> respondent. Therefore, the learned single Judge allowed the writ petitions in part and directed the 3<sup>rd</sup> respondent/Hon'ble Speaker of Karnataka Legislative Assembly to decide the disqualification petition on or before 07.05.2018. Hence, the present appeals are filed by the aggrieved respondents.

9. The petitioners have not filed any Appeal with regard to the adverse findings recorded by the learned single Judge in respect of the contentions urged by learned Senior Counsel for the petitioners.

10. We have heard the learned counsel for the parties to the lis.

#### IV ARGUMENTS ADVANCED ON BEHALF OF THE APPELLANTS

11. Sri M.R. Rajagopal, learned counsel appearing for the appellants in Writ Appeal No.1319/2018 (Respondent Nos.4 to 8 in the writ petition) contended that the impugned order passed by the learned Single Judge issuing writ of mandamus in exercise of power conferred on this Court under Article 226 of the Constitution of India against the 3<sup>rd</sup> respondent – Hon'ble Speaker to pass an order on the complaint filed by Respondent Nos.4 and 5 under Tenth Schedule of the Constitution on or before 7.5.2018, is erroneous and inappropriate. Therefore the impugned order passed by the learned Single Judge calls for interference in the present appeal. He would further contend that the 3<sup>rd</sup> respondent – Speaker is also a creature of the Constitution and he is a constitutional authority or a functionary. There is a distinction between an authority contemplated under

Article 226 of the Constitution of India and the functionary under the Constitution. The same has not been considered by the learned Single Judge. Therefore direction issued is inappropriate and erroneous. He would further contend that the dictum of the Division Bench of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dated 28.9.2015 in W.P. No.7217/2015 on a question relating to the power of the High Court under Article 226 of Constitution of India issuing directions to the Hon'ble Speaker to decide the particular proceedings pending before him within the stipulated time, was subject matter of SLP (c) 33677/2015, wherein the Hon'ble Supreme Court relying upon the dictum of the Constitution Bench in the case of KIHOTO HOLLOHAN vs. ZACHILLHU AND OTHERS reported in (1992) Supp. 2 SCC 651 and the dictum of the Division Bench in the case of SPEAKER, HARYANA VIDHAN SABHA vs. KULDDP BISHNOI AND OTHERS reported in (2015)12 SCC 381 held that the point as to whether a Speaker of a Legislative Assembly,

acting under powers granted to him under the Tenth Schedule of Constitution of India (as a quasi judicial authority) can be ordered by a High Court, exercising its writ jurisdiction under Article 226 of the Constitution of India, requires consideration by a Larger Bench. Accordingly, the Hon'ble Supreme Court placed the matter before the Hon'ble Chief Justice of India to constitute an appropriate Bench to decide the question. Therefore the impugned order passed by the learned Single Judge directing the 3<sup>rd</sup> respondent to dispose of the pending disqualification petition would not be justified. He would further contend that earlier to a decision taken by the Speaker on the petition filed for disqualification, this Court exercising the power under Article 226 of the Constitution of India cannot issue direction to the 3<sup>rd</sup> respondent – Speaker. Therefore the impugned order cannot be sustained. He would further contend that the very writ petition filed by the petitioners for issue of writ of mandamus against the 3<sup>rd</sup> respondent – Speaker to decide the disqualification petition is not maintainable. Therefore he

sought to set aside the order passed by the learned Single Judge by allowing the appeal.

12. Prof. Ravivarma Kumar, learned senior Counsel later appeared on behalf of Sri M.R. Rajagopal, learned counsel for the appellants in W.A. No.1319/2018 and vehemently contended that though a specific contention was raised with regard to maintainability, the learned Single Judge has not decided the maintainability of the Writ Petition. He further contended that in view of averments made in paragraphs 13 and 14 of the Writ Petitions, the very Writ Petitions are not maintainable and question of issuing writ of mandamus would not arise. He further contended that the Rajya Sabha elections held on 23.03.2018 and the respondent Nos.4 to 10 have resigned on 24.03.2018 and same was accepted by the Speaker on 25.03.2018 and there is nothing to be decided before the Speaker and complaint filed has become academic. Therefore, the learned Single Judge ought not to have issued direction exercising judicial

review, which is impermissible. Hence, he has sought for setting aside the impugned order passed by the learned Single Judge by allowing the appeal.

13. Ms. Anuparna Bordoloi, learned counsel appearing for the appellants in W.A.Nos.1344-1345/2018 who are respondents 6, 9 and 10 in the writ petitions contended that the impugned order passed by the learned single Judge directing the 3<sup>rd</sup> respondent/ Hon'ble Speaker to dispose of the petition for disqualification on or before 07.05.2018 is erroneous and contrary to the material on record. She further contended that this Court, in exercise of powers under clause (1) of Article 226 of the Constitution of India, writ can be issued against any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, for the enforcement of any of the rights conferred by Part III and for any other purpose. The 3<sup>rd</sup> respondent/ Hon'ble Speaker is neither an authority nor amenable for issue of any writ including a writ in the nature

of mandamus, who is a creature of Constitution and is a Constitutional authority and functionary. Therefore, the order passed by the learned single Judge is erroneous and calls for interference by this Court.

14. Learned counsel further contended that the 3<sup>rd</sup> respondent/ Hon'ble Speaker is the guardian of rights and privileges of the House, its Committees and the members who regulates the affairs of the house when the house is in session. The adjudication power is also conferred upon the Speaker to decide complaint arising out of Tenth schedule of the Constitution and Rules made therein and the Tenth schedule places bar on the jurisdiction of the Courts in respect of any matter connected with the disqualification of a member. Therefore, the learned single Judge cannot direct the Hon'ble Speaker to pass orders on the petition for disqualification within a specified time. Therefore, she sought to allow the appeals by setting aside the order passed by the learned single Judge. In support of her contentions, learned



counsel sought to rely upon the judgments of the Hon'ble Supreme Court, reported in the case of *Kihoto Hollohan vs. Zachillhu and others* reported in 1992 *Supp(2) SCC 651* and *Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi and others* reported in (2015) 12 SCC 381.

15. Sri Jayakumar S. Patil, learned senior counsel appearing for Sri Ashok Nayak for the appellants in Writ Appeal No.1342-1343/2018 i.e., Secretary to Karnataka Legislative Assembly and Returning Officer and the Hon'ble Speaker, would contend that the order passed by the learned Single Judge issuing mandamus to the Hon'ble Speaker – 3<sup>rd</sup> respondent to decide the disqualification petition on or before 7.5.2018 is contrary to the constitutional provisions and without consideration of the preliminary objection raised by the appellants and the same is erroneous and contrary to the material on record. He would further contend that the Hon'ble Speaker is not an authority as contemplated, who is a constitutional functionary and he would not be construed as

subordinate or amenable to the control and power of the High Courts under Article 226 of the Constitution of India and the learned Judge has not even heard on that issue by affording sufficient opportunity in the writ proceedings and the learned Judge without deciding the maintainability of the writ petition raised, proceeded to pass the orders erroneously which cannot be sustained.

16. He would further contend that the question had come before the Constitutional Courts on many occasions insofar as power of judicial review and other constitutional power to impose or exercise against the office of the Speaker and in almost all the occasions, the pronouncement by the Constitutional Courts is against the proposition of amenability of the office of the Speaker in exercise of prerogative rights either by the High Courts or Hon'ble Supreme Court also. He further contended that the Speaker is a high constitutional functionary and ought to have exercised his functions in the highest traditions of the office

of the high constitutional functionary. The Speaker ought not to have dealt with the motion, the prime movers of which are members of his own party. Therefore there cannot be any direction by this Court exercising the powers under Article 226 of the Constitution of India.

17. He would further contend that the learned Judge issued writ of mandamus directing the Hon'ble Speaker to pass an order on the petition filed for disqualification within the time frame. Therefore it affects the interest of the office of the Speaker. As such the appellants are aggrieved by the order of the learned Single Judge issuing impugned order/direction and the same is per se, in excess or it is unwarranted, which would also give room to interfere in the present appeal. Therefore present appeals.

18. He would further contend that in view of the limited scope of judicial review that is available on account of the finality clause at Paragraph-6 of the X Schedule 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. Before a decision is taken by the Speaker exercising his power as contemplated, the Court cannot interfere. Therefore he sought to allow the appeal by setting aside the order passed by the learned Single Judge.

19. In support of his contentions, learned senior counsel relied upon the following judgments:

1. (1991)4 SCC 699 {SUB-COMMITTEE ON JUDICIAL ACCOUNTABILITY vs. UNION OF INDIA AND OTHERS}
2. 1992 Suppl. (2) SCC 651 {KIHOTO HOLLOHAN vs. ZACHILLHU AND OTHERS}

3. (2015)12 SCC 381 {SPEAKER, HARYANA VIDHANA SABHA vs. KULDEEP BISHNOI & OTHERS}

20. Sri Madhusudan R. Naik, learned Advocate General along with Sri S.S. Mahendra and Sri S.V. Girikumar, learned Additional Government Advocates on behalf of the State Government support the case of the appellants, who are respondents in the writ petition and contended that the impugned order passed by the learned Single Judge directing the Hon'ble Speaker to decide the petition for disqualification on or before 7.5.2018 is erroneous and totally without jurisdiction. He would further contend that in view of the provisions of Article 212 of the Constitution of India, 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 and no Officer or member of the Legislature of a State in whom powers are vested by or under the 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. Therefore it is for the Speaker to consider the petition for disqualification filed and the learned Single Judge has no power to issue writ of mandamus as per the impugned order passed.

21. He would contend that similar question of law that fell for consideration in the case of SRI ERRABELLI DAYAKAR RAO & OTHERS vs. SRI TALASANI SRINIVAS YADAV & OTHERS in Writ Appeal No.158 of 2015 before the Division Bench of Andhra Pradesh High Court was whether the High Court, in exercise of its powers under Article 226 of the Constitution of India, can issue mandatory direction to the Speaker of a State Legislative Assembly to dispose of a disqualification petition within a time frame ?. The Division Bench of Anhdra Pradesh High Court held that the High Court had no jurisdiction to pass such an order, which was in the domain of the Speaker. That is the subject matter of SLP before the Hon'ble Supreme Court in the case of S.A.

SAMPATH KUMAR vs. KALE YADAIHAH AND OTHERS made in Special Leave to Appeal (c) No.33677/2015. The Hon'ble Supreme Court by an order dated 8.11.2016 has referred the said matter to the Hon'ble Chief Justice to constitute an appropriate Bench to decide the question i.e., "Whether a Speaker of the Legislative Assembly acting under powers granted to him under the Tenth Schedule of the Constitution of India (as a quasi judicial authority) can be ordered by a High Court, exercising its writ jurisdiction under Article 226 of the Constitution of India, to decide a particular disqualification petition pending before him within a certain time ? " , as early as possible. Therefore he would submit that the impugned order passed by the learned Single Judge cannot be sustained. Therefore he sought to set aside the order passed by the learned Single Judge.

#### V ARGUMENTS ON BEHALF OF THE RESPONDENTS

22. Per contra, Sri Udaya Holla, learned senior counsel appearing for Sri Usman, counsel for the respondents –

original petitioners sought to justify the impugned order passed by the learned Single Judge. He would further contend that the petition was filed by the original petitioners under Rule 6(2) of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 as long back as on 20.6.2016. Though the contesting respondents filed objections and rejoinder also filed by the petitioners, the Speaker has not proceeded to pass any order from 2016 till 19.3.2018 i.e., nearly two years. Therefore petitioners were forced to file writ petition before this Court for writ of mandamus as prayed for.

23. The learned Senior Counsel would further contend that a free and fair election and representative democracy are basic structures of the Constitution of India. The speaker ought to have decided the petition filed for disqualification within a reasonable period. The same has not been done. The political development of the Country has witnessed both progressive events and regressive steps. Democracy seems to



be stable at the macro level, but at the micro level, the lure of money and power has convinced politicians, of all hues, to indulge in defection and to defy the whips issued by their party. Thus, such clever moves destabilize democracy and threaten the existence of the nation as a liberal democracy. Keeping in mind the evil of political defection, the Tenth Schedule was introduced into the Constitution by the Fifty Second Amendment in 1985. Although a responsibility declaring a Member of the House of Legislature as 'disqualified', has been bestowed upon the Hon'ble Speaker of the Legislature, but a member becomes disqualified from the date he or she disobeyed the whip. Therefore, Hon'ble Speaker ought to have decided the application/petition within time. He cannot postpone indefinitely. Therefore, this Court exercising powers under Article 226 of the Constitution of India can issue direction to the speaker to decide the application within the time specified. He would further contend that the Constitutional Bench in the case of **KIHOTO HOLLOHAN -vs- ZACHILLHU AND OTHERS reported in 1982 Supp (2) SC**

**651** held that the Hon'ble Speaker acts as Tribunal. Therefore, he is amenable to judicial review.

24. He would further contend that in view of the dictum of the Hon'ble Supreme Court in the case of **SPEAKER, HARYANA VIDHAN SABHA -vs- KULDEEP BISHNOI AND OTHERS reported in (2015)12 SCC 381** held that High Court under Article 226 of the Constitution of India has ample power to direct the Hon'ble Speaker to decide the disqualification petition within a stipulated time frame.

25. The learned Senior Counsel would further contend that mere resignation of respondent Nos. 4 to 10 would not render the writ petitions infructuous. Even if the said respondents have resigned that does not preclude the Hon'ble Speaker from deciding disqualification petition and the Hon'ble Speaker has a constitutional responsibility to decide the petition and he cannot escape from discharging the said responsibility on the pretext that the said respondents have resigned. He would further contend that the Speaker is

not permitted to maintain silence over disqualification petition even at the end of the year of the Assembly and refusing to exercise his quasi judicial power for oblique political motives cannot be allowed and thus exercising powers under Article 226 of the Constitution of India can issue directions as rightly issued by the learned Single Judge. Therefore, he sought to dismiss the writ appeals.

26. In support of his contentions, the learned Senior Counsel relied upon the following judgments:

- i) DR. KASHINATH G. JALMI -vs- THE SPEAKER (1993)2 SCC 703 – paragraphs-42, 44 and 46;
- ii) D. SUDHAKAR (2) -vs- D.N. JEEVARAJU 2012(2) SCC 708 – paragraph-78;
- iii) RAJENDRA SINGH RANA -vs- SWAMI PRASAD MAURYA AND OTHERS 2007 (4) SCC 270 Constitution Bench – paragraphs-34, 39, 45, 49 and 53;
- iv) RAVI NAIK -vs- UNION OF INDIA reported in 1994 Supp (2) SCC 641 – paragraph-41
- v) MAHANAGAR RAILWAY VENDORS' UNION -vs- UNION OF INDIA reported in 1994 Supp (1) SCC 609 with regard to precedent.

#### VI POINT FOR DETERMINATION

27. In view of the aforesaid rival contentions urged by the learned Counsel for the parties. the point that arises for consideration is

“Whether this High Court can request a constitutional authority to consider and take a decision on the petition filed under Rule 6(2) of the Rules for disqualification petition at the earliest in the facts and circumstances of the present case?”

#### VII CONSIDERATION

28. We have given our thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the entire material on record, carefully.

29. It is the specific case of the petitioners in the writ petitions that respondents 4 to 10 are elected members of the Karnataka Legislative Assembly on the tickets issued by JD(S)

have violated the whip issued by the President of JD(S) whereby they have violated the provisions of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986. Therefore, they have filed petition under Rule 6(2) of the Rules for disqualification.

30. In spite of the petition filed, the 3<sup>rd</sup> respondent/Hon'ble Speaker did not discharge his constitutional obligation as contemplated under Article 191(2) and paragraph 2(1)(a) and 6 of the Tenth schedule of the Constitution of India. Therefore, they filed writ petitions before this Court seeking various reliefs including writ of mandamus directing 3<sup>rd</sup> respondent to consider petition and pass orders in accordance with law.

31. It is the specific contention of the learned Counsel of the appellants that till a decision is taken by the Hon'ble Speaker, this Court cannot issue any writ of mandamus exercising judicial review which is prohibited in view of the

provisions of the Tenth schedule and the rules made therein and this Court cannot direct the Hon'ble Speaker to pass orders on the petition for disqualification within a specific time. It was further contended that the Speaker is also a creature of the Constitution and is a constitutional authority/functionary. The direction issued by the learned Single Judge is inappropriate and erroneous. The learned Counsel for the appellants relied upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu and others reported in 1992 Supp(2) SCC 651*** and other judgments, to the effect that in view of the limited scope of judicial review that is available on account of finality clause in para-6 and also having regard to the constitutional intent and status of repository of adjudicatory power, i.e., Speaker or Chairman, judicial review cannot be available at a stage prior to making a decision by the Speaker or Chairman and quia timet action would not be permissible nor would interfere be permissible at an interlocutory stage of the proceedings. Exception will,

however, have to be made in respect of the cases where disqualification or suspension is imposed during pendency of the proceedings and such disqualification or suspension is likely to have a grave or immediate irreversible repercussions and consequence. It was further contended that in terms of the dictum of the Hon'ble Supreme Court stated supra, however, having regard to the Constitutional Schedule in the 10<sup>th</sup> Schedule, judicial review should not cover at any stage prior to making of a decision by Speaker or Chairman.

32. We have no quarrel with the said dictum of the Hon'ble Supreme Court that in view of paragraph-6 of 10<sup>th</sup> Schedule, it is only the Hon'ble Speaker, who is authority to take a decision on the petition filed for disqualification and no Courts should interfere with the exclusive jurisdiction of Honb'le Speaker.

33. Admittedly in the present case, though a petition was filed by the petitioners under Rule 6(2) of the Rules, the duty is cast upon the Hon'ble Speaker to consider the said

petition and dispose of the same within a reasonable period to discharge his constitutional obligation as contained in 10<sup>th</sup> Schedule. The same has not been done by the Hon'ble Speaker. The material on record clearly depicts that this Court/learned Single Judge has not passed any order so as to attract judicial review at a stage prior to making a decision by the Hon'ble Speaker or Chairman on the petition filed for disqualification. The learned Single Judge has only reminded the Hon'ble Speaker to discharge his constitutional obligation and there is no question of interference by this Court with the exclusive power of Hon'ble Speaker as contemplated under Tenth schedule. Mere reminding the Hon'ble Speaker to discharge his obligation to consider and take a decision on the petition filed for disqualification does not amount to judicial review. Therefore the contention of the learned Counsel for the appellants that this Court has exercised the power of judicial review before a decision is taken by the Hon'ble Speaker would not arise.



34. In the 52<sup>nd</sup> amendment of the Constitution by Act of 1985 w.e.f. 01.03.1985, the statement of objects and reasons of the Bill which finally became the Act of 1985 whereby the Schedule-X was added to the Constitution w.e.f. 01.03.1985, inter-alia indicated that the evil of political defection had become a matter of national concern and if it was not checked, it could very well undermine the very foundation of our democracy and the principles which sustain the same. In such event, if the provisions of Schedule-X are interpreted to exclude the right of any person interested to bring to the notice of the Speaker of the House, the fact that any or some of its members had incurred disqualification from the membership of the House on any of the eventualities indicated in paragraphs 2 and 4 therein it would render the inclusion of the schedule X to the Constitution *otiose* and defeat the objects and intent of the 52<sup>nd</sup> amendment of the Constitution. The purpose and object of the Rules framed by the Chairman in exercise of the powers conferred under Schedule X para 8 was to facilitate the Chairman in

discharging his duties and responsibilities in resolving any dispute as to whether the member of the house had become subject to disqualification under Schedule X.

35. The provisions of para 6, Schedule X clearly depicts that,

(1) if any question arises as to whether a member of the 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 the 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.

36. The object of the Tenth schedule is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the foundations of democracy. The underlying promise in declaring an individual act of defection as forbidden is that lure of office or money could be presumed to have prevailed. Legislature has made this presumption on its own perception and assessment of the extant standards of political parties and morality. The provisions in X Schedule are salutary and are intended to strengthen the fabric of Indian Parliamentary system by curbing unprincipled and unethical political defections. The

anti-defection law seeks to recognize the practical need to place the properties of political and personal conduct above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation.

37. Schedule X recognizes the importance of political parties in our democratic set up especially in dealing with members of Parliament and Legislative Assemblies or Council. Being a member of political party on whose tickets he has been elected as a member, in the first place he is generally expected to follow the direction of the party, which is one of the basic units in our democracy.

38. The nature and functions of the Hon'ble Speaker under para 2(1)(a) read with para 6 of 10<sup>th</sup> Schedule is quasi-judicial. Hence, notwithstanding the finality given in schedule X para 6, an order passed by Speaker in that capacity is subject to judicial review under Articles 32, 226 and 136 of the Constitution as held by the Hon'ble Supreme

Court in the case of **Balachandra L. Jarkiholi vs. B.S.Yeddyurappa** reported in **(2011) 7 SCC 1**.

VIII CONSTITUTIONAL PROVISIONS

39. Schedule-X of the Constitution reads as under:

**‘TENTH SCHEDULE**

*[Articles 102(2) and 191(2)]*

**Provisions as to disqualification on  
ground of defection**

**1. Interpretation.**—*In this Schedule, unless the context otherwise requires,—*

- (a) *“House” means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;*
- (b) *“legislature party”, in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;*

(c) “original political party”, in relation to a member of a House, means the political party to which he belongs for the purposes of subparagraph (1) of paragraph 2;

(d) “paragraph” means a paragraph of this Schedule.

**2. Disqualification on ground of defection.—**

(1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

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

*within fifteen days from the date of such voting or abstention.*

*Explanation.—For the purposes of this subparagraph,—*

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

*(b) a nominated member of a House shall,—*

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

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

*(2) An elected member of a House who has been elected as such otherwise than as a*

*candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.*

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

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

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



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

*2[\*\*\*\*]*

**4. Disqualification on ground of defection**

**not to apply in case of merger.**—(1) *A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—*

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

*(b) have not accepted the merger and opted to function as a separate group,*

*and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.*

*(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.*

**5. Exemption.**—*Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the*

*Legislative Assembly of a State, shall not be disqualified under this Schedule,—*

*(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or*

*(b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.*

**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.*

**7. Bar of jurisdiction of courts.—**

*Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.*

**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 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 wilful 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.*

40. The Karnataka Legislature thought it fit to enact the provisions of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, made by the Chairman in pursuance of the provisions contained in sub-para 1 of para 8 of the Schedule X. The relevant provisions of Rule 6 read as under:

*“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 Chairman by any other member.*

*(3) 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.*

*(4) 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.*

*(5) 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.*

*(6) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”*

41. Rule 6(2) of the said Rules prescribes that References to be by Petitions-filed in relation to a member may be made in writing to the Chairman by any other member in accordance with rules for defection to any member.

42. The provisions of Article 179 of the Constitution of India clearly prescribes Vacation and Resignation of, and Removal from, the offices of Speaker and Deputy Speaker and

the second proviso is provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after dissolution which reads as under:

**179.** *Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.—A member holding office as Speaker or Deputy Speaker of an Assembly—*

*(a) shall vacate his office if he ceases to be a member of the Assembly;*

*(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and*

*(c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:*

*Provided that no resolution for the purpose of clause (c) shall be moved unless at least*

*fourteen days' notice has been given of the intention to move the resolution:*

*Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.*

43. Article 191 of the Constitution of India prescribes that a person shall be disqualified for being chosen as, and for being, a member of Legislative Assembly or Legislative Council of a State shall be disqualified if he violates provisions of Article 191(1)(a)(b)(c)(d)(e) mentioned in the said Article and sub clause (2) of the said Article prescribes that a person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he so disqualified under the Tenth schedule, which reads as under:

**191. Disqualifications for membership.**—(1) *A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—*

- (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;]*
- (b) if he is of unsound mind and stands so declared by a competent court;*
- (c) if he is an undischarged insolvent;*
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;*
- (e) if he is so disqualified by or under any law made by Parliament.*

*Explanation.—For the purposes of this clause,] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.*

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

44. The provisions of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, makes it abundantly clear that, if any member of the House belonging to a political party had joined another political party which is a disqualification under para 2(1) of Tenth Schedule, any person interested could make a reference to the Speaker under Rule 6 of 1986 Rules and it was not necessary that such a reference had to be made by a member of Legislative Assembly.

45. Admittedly in the present case, the petitioners filed memorandum of petition under Rule 6(2) of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, as long back as on 20.06.2016. The Hon'ble Speaker ought to have considered and taken a decision within a reasonable period of time. The material on

record clearly depicts that when the petition was pending before the Hon'ble Speaker, again respondent Nos.4 to 10 violated the whip issued by a particular political party. If the Hon'ble Speaker acted in a reasonable manner and decided the petition filed, the respondents who are elected from a particular party could not have voted to another political party. Thereby, the Hon'ble Speaker has not discharged his constitutional obligations.

46. It is also relevant to state that though objections filed before the learned Single Judge and writ appeal filed by the Hon'ble Speaker before this Court in W.A. Nos.1342-1343/2018, in the entire pleadings or grounds, the Hon'ble Speaker does not disclose what prevented him to discharge his Constitutional duty and obligation as contemplated which clearly indicates that the Hon'ble Speaker has shirked his responsibility and obligation showered on him by the Constitution.

47. The confidence placed by the citizens of the State in the “High Tradition” of the High Office of the Speaker, as in practice, been found to be misplaced. Thereby he has not discharged his institutional responsibility and obligation, as contemplated under Schedule X of the Constitution of India.

48. Though the learned counsel for the appellants have contended that the very writ petitions filed by the petitioners for a writ of mandamus was not maintainable, question of granting writ of mandamus would not arise, in view of paragraphs 13 and 14 of the pleadings of the writ petition. It was further contended that the Rajya Sabha elections were scheduled to be held on 23.03.2018 and on 24.03.2018, respondent Nos.4 to 10 have resigned and same were accepted by Speaker on 25.03.2018. Hence nothing was left to be decided in the complaint and complaint has become academic. The said contentions urged cannot be accepted for the simple reason that admittedly on the alleged defection by respondent Nos.4 to 10, a petition came to be filed before the

Hon'ble Speaker as contemplated under Rule 6(2) of the Rules. It was the duty and obligation of the Hon'ble Speaker to consider and take a decision within reasonable time. But the same has not been done. Thereafter, again the respondent Nos.4 to 10 have violated the whip of a particular party in the elections of Rajya Sabha held on 23.03.2018 and thereafter resigned on 24.03.2018. Though it was accepted by the Speaker, still the petition filed for disqualification is pending adjudication before the Hon'ble Speaker. Therefore, the writ of mandamus is maintainable since he has not taken any decision till today. Therefore, contentions of the learned counsel for the appellants cannot be accepted.

49. It was also contended that the Hon'ble Supreme Court in the case of ***S.A.Sampath Kumar vs. Kale Yadaiah and others in Special Leave to Appeal (C)No.33677/2015 dated 08.11.2016*** has referred the question in dispute to a larger Bench. A careful perusal of the said order makes it clear that it was a case where the High Court passed interim



orders in exercise of its powers of judicial review under Articles 226 and 227 of the Constitution of India preventing MLAs from effectively functioning as members of the Legislative Assembly. In those circumstances, the Hon'ble Supreme Court held that, whether a Speaker of a Legislative Assembly acting under the powers granted to him under Schedule X of the Constitution of India, (as a quasi-judicial authority) can be ordered by the High Court in exercise of jurisdiction under Article 226 to decide a particular disqualification petition pending before him within certain time. Admittedly in the present case, when the petition was pending before Hon'ble Speaker, the learned Single Judge has not passed any order in exercise of judicial power restraining respondent Nos.4 to 10 (MLAs) preventing to function as Members of Legislative Assembly. The only directions/observation made by learned Single Judge is reminding the constitutional obligation of the Speaker to consider and take a decision on the petition for disqualification. Therefore, the judgment in the case of

Sampath Kumar relied upon the learned counsel for the appellants is not applicable to the facts and circumstances of the present case.

50. Admittedly in the present case, the life of the Karnataka Legislative Assembly is almost over. The next election would be held on 12.05.2018. Still the Hon'ble Speaker has not discharged his constitutional duty and obligation to decide the petition filed under Rule 6(2) of the Rules for disqualification as contemplated under the provisions of paragraph 6 of the Tenth Schedule till today. Therefore, the learned Single Judge was justified in requesting the Speaker to decide the application and pass orders. Though certain observations/adverse remarks made by the learned Single Judge and directing the Speaker to decide the disqualification Petition on or before 7<sup>th</sup> May 2018, may not be a correct, but the fact remains that the Speaker has not decided the disqualification Petition pending before him even at the fag end of the term of the Legislative

Assembly. Therefore, it is the duty and constitutional obligation of the Hon'ble Speaker Office which has a high tradition to discharge its duty impartially and cannot prolong the Petition without any reasons.

IX THE DICTA OF THE HON'BLE SUPREME COURT  
RELIED UPON

51. The Hon'ble Supreme Court in the case of SPEAKER, HARYANA VIDHAN SABHA v. KULDEEP BISHNOI reported in (2015)12 SCC 381, considering the dictum of the Constitution Bench of Hon'ble Supreme Court in the case of KIHOTO HOLLOHAN vs. ZACHILLHU AND OTHERS {(1992) Supp. 2 SCC 651} and the dictum in the case of RAJENDRA SINGH RANA v. SWAMI PRASAD MOURYA {(2007) 4 SCC 270} held at paragraphs 44 and 46 to 49 as under:

*44. We have to keep in mind the fact that these appeals are being decided in the background of the complaint made to the effect that the interim orders have been*

*passed by the High Court in purported exercise of its powers of judicial review under Articles 226 and 227 of the Constitution, when the disqualification proceedings were pending before the Speaker. In that regard, we are of the view that since the decision of the Speaker on a petition under Para 4 of Schedule X concerns only a question of merger on which the Speaker is not entitled to adjudicate, the High Court could not have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under Para 6 of Schedule X to the Constitution. It is in fact in a proceeding under Para 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order which is amenable to the writ jurisdiction of the High Court. It is in such proceedings that the question relating to the disqualification is to be considered and decided. Accordingly, restraining the Speaker from taking any decision under Para 6 of Schedule X is, in our view, beyond the jurisdiction of the*

*High Court, since the Constitution itself has vested the Speaker with the power to take a decision under Para 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order.*

*46. The appeal filed by the Speaker of the Haryana Vidhan Sabha, against the judgment [Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi, LPA No. 366 of 2011, decided on 20-12-2011 (P&H)] of the Division Bench of the High Court, is not, therefore, capable of being sustained and the appeal filed by the Speaker is accordingly dismissed. The other appeals preferred by the five disqualified MLAs have, therefore, to be allowed to the extent of the directions given by the learned Single Judge and endorsed by the Division Bench that the five MLAs would stand disqualified from effectively functioning as Members of the Haryana*

*Vidhan Sabha till the Speaker decided the petitions regarding their disqualification, within a period of four months.*

*47. In our view, the High Court had no jurisdiction to pass such an order, which was in the domain of the Speaker. The High Court assumed the jurisdiction which it never had in making the interim order which had the effect of preventing the five MLAs in question from effectively functioning as Members of the Haryana Vidhan Sabha. The direction given by the learned Single Judge to the Speaker, as endorsed by the Division Bench, is, therefore, upheld to the extent that it directs the Speaker to decide the petitions for disqualification of the five MLAs within a period of four months. The said direction shall, therefore, be given effect to by the Speaker. The remaining portion of the order disqualifying the five MLAs from effectively functioning as Members of the Haryana Vidhan Sabha is set aside. The said five MLAs would, therefore, be*

*entitled to fully function as Members of the Haryana Vidhan Sabha without any restrictions, subject to the final decision that may be rendered by the Speaker in the disqualification petitions filed under Para 6 of Schedule X to the Constitution.*

*48. The Speaker shall dispose of the pending applications for disqualification of the five MLAs in question within a period of three months from the date of communication of this order.*

*49. Having regard to the peculiar facts of the case, the parties shall bear their own costs.*

## X CONCLUSION

52. In view of the aforesaid reasons, the issue framed in the present appeals has to be held in the affirmative holding that in the facts and circumstances of the present case, this Court exercising powers under the provisions of Article 226 Constitution of India can request the Hon'ble Speaker of the

State Legislative Assembly, who himself is a constitutional authority to dispose of the disqualification Petition at the earliest in the interest of justice and to maintain majesty of the office of the Speaker of the Legislative Assembly.

XI MEMO FILED ON BEHALF OF THE HON'BLE SPEAKER

53. After completion of arguments, when the matter was reserved for judgment, at that stage, the learned counsel for the appellants - Secretary to Karnataka Legislative Assembly & the Hon'ble Speaker in W.A. Nos.1342-1343/2018 filed memo dated 4.5.2018. The said memo is placed on record and it reads as under:

“MEMO

*It is submitted that the directions issued by this Hon'ble court against the 2<sup>nd</sup> appellant herein vide order dated 24-04-2018 in W.P. No: 12338-39/2018, is clearly without an authority of law.*

*Without prejudice to the contentions taken on behalf of the 2<sup>nd</sup> appellant in this writ appeal it is*



*respectfully stated that the 2<sup>nd</sup> appellant herein intends to resume the hearing of the proceedings in disqualification Petition No:1/2016 and will take the final decision well before his term would expire on 27-05-2018. Hence this memo may kindly be recorded and any order to be made on this memo kindly be in substitution of the order of the learned single judge, which is impugned in this writ appeal.*

*Hence the above writ appeals may kindly be allowed upon dismissing the writ petition W.P. No: 12338-39/2018 in the ends of justice and equity.*

*Date: 04-05-2018  
Place: Bengaluru*

*Sd/-  
Advocate for Appellant  
(ASHOK N NAYAK)*

54. The memo dated 4.5.2018 filed by the learned counsel on behalf of the Speaker clearly depicts that the second appellant – Hon’ble Speaker in W.A. No.1342-1343/2018 in categorical terms stated that he intends to resume the hearing of the proceedings in disqualification Petition No. 1 of 2016 and will take the final decision well before his term would expire on 27<sup>th</sup> May 2018, which clearly

depicts that at last the Hon'ble Speaker has exhibited his institutional responsibility to discharge his constitutional obligation.

55. In view of the above subsequent developments, any observations/adverse remarks made against the Hon'ble Speaker by the learned Single Judge, especially at paragraph-27 referred to by learned counsel for appellants, are hereby expunged. The direction issued to decide the disqualification Petition on or before 7<sup>th</sup> May 2018 is modified to the extent of fixing a time frame and remaining order, requesting the Hon'ble Speaker to dispose of the petition is undisturbed.

56. In view of the aforesaid reasons, the Writ Appeals filed by the appellants are ***disposed of***. Before we part, we observe, having regard to the principles of democracy and the intent of the Parliament in introducing the Tenth Schedule in the Constitution to strengthen the faith, trust and confidence in the system, we hope and trust that the Hon'ble Speaker shall decide the disqualification Petition expeditiously and in

terms of the memo dated 4<sup>th</sup> May 2018 filed by him before this Court through his Counsel and in accordance with the provisions of second proviso to Article 179 of the Constitution of India.

57. This Court had the privilege and pleasure of hearing the erudite arguments of the learned Senior Counsels and other Counsels for the parties as well as the learned Advocate General. The sincere efforts made by them are appreciated and placed on record.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Nsu/- Gss\* Kcm