

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.83 of 2015

IN

Civil Writ Jurisdiction Case No. 18807 of 2014

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1. The Bihar Legislative Assembly Patna through the Secretary.

.... Appellant

Versus

1. Gyanendra Kumar Singh S/o Late Kamla Prasad Singh resident of - 23, Bailey Road, P.O. + P.S.- Shashtri Nagar, District- Patna
2. Rabindra Rai S/o Late Sone Lal Rai resident of Village + P.O. + P.S.- Mahua, District- Patna
3. Neeraj Kumar Singh S/o Ram Kishore Singh resident of - 10, Birchand Patel Path, Patna, District- Patna.
4. Rahul Kumar S/o Jagdish Sharma resident of - 15, Hardinge Road, P.S.- Secretariat, District- Patna.
5. Shri Shravan Kumar son of Late Hari Prasad Singh Chief Whip of the ruling party, Bihar Legislative Assembly, presently residing at- 12A, Bailey Road, P.O.- GPO, PS- Secretariat, District- Patna

.... Respondents

With

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Letters Patent Appeal No. 128 of 2015

IN

Civil Writ Jurisdiction Case No. 18807 of 2014

- =====
1. Shri Shravan Kumar S/o Late Hari Prasad Singh Chief Whip of the Ruling Party, Bihar Legislative Assembly, presently residing at 12A, Bailey Road, P.O. G.P.O., P.S. Secretariat, District Patna.

.... Appellant

Versus

1. Gyanendra Kumar Singh S/o Late Kamla Prasad Singh Resident of 23, Bailey Road, P.O. + P.S. Shashtri Nagar, District Patna.
2. Rabindra Rai S/o Late Sone Lal Rai Resident of Village + P.O. + P.S. Mahua, District Patna.
3. Neeraj Kumar Singh S/o Ram Kishore Singh Resident of 10, Birchand Patel Path, Patna, District Patna.
4. Rahul Kumar S/o Jagdish Sharma Resident of 15, Hardinge Road, P.S. Secretariat, District Patna.
5. The Bihar Legislative Assembly, Patna through the Secretary.

.... Respondents

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Appearance :

(In LPA No. 83 of 2015)

For the Appellant : Mr. Y. V. Giri, Senior Advocate
Mr. Ashish Giri, Advocate
Mr. Pranav Kumar, Advocate

For Resp. No. 1 to 4: Mr. Vinod Kumar Kanth, Senior Advocate
Mr. S. B. K. Manglam, Advocate

For Resp. No. 5 : Mr. Lalit Kishore, Senior Advocate
Mr. Piyush Lal, Advocate

(In LPA No. 128 of 2015)

For the Appellant : Mr. Lalit Kishore, Senior Advocate
Mr. Piyush Lal, Advocate

For Resp. No. 1 to 4: Mr. Vinod Kumar Kanth, Senior Advocate
Mr. S. B. K. Manglam, Advocate

For Resp. No. 5 : Mr. Y. V. Giri, Senior Advocate
Mr. Ashish Giri, Advocate
Mr. Pranav Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 07-04-2015

Axiomatic! is it not that members, Bihar Legislative Assembly, come to this Court with a writ petition, made under Article 226 of the Constitution of India, seeking to get, *inter alia*, set aside and quashed the order, dated 01.11.2014, passed by the Speaker, Bihar Legislative Assembly, disqualifying them from being members of the Bihar Legislative Assembly and while filing the writ petition,



though the Speaker, Bihar Legislative Assembly, and Shri Shravan Kumar, Chief Whip of the Ruling Party, who was *complainant* and on whose *complaint*, the order, dated 01.11.2014, aforementioned had been passed by the Speaker, Bihar Legislative Assembly, was impleaded as party in the writ petition, the writ petitioners chose to delete the Speaker, Bihar Legislative Assembly, from the array of the party-respondents despite the fact that the writ petitioners had prayed for setting aside and quashing the order aforementioned, which was passed by none other than the Speaker, Bihar Legislative Assembly, himself, and, in consequence thereof, since the Speaker, Bihar Legislative Assembly, no longer remained a party in the writ petition, the writ petitioners retained Bihar Legislative Assembly, Patna, through its Secretary, and Shri Shravan Kumar, Chief Whip of the ruling Party (i.e., the *complainant*) as party-respondents; however, since a learned single Judge of this Court has allowed, on 06.01.2015, the writ petition, Bihar Legislative Assembly, Patna, through its Secretary, and Shri Shravan Kumar, Chief Whip of the Ruling Party (i.e., the *complainant*), have preferred separate appeals, but the very maintainability of the appeals is, now, being questioned and resisted by the writ petitioners-*private respondents* on the ground that the *complainant* cannot be described as a necessary party and he



cannot consequently be regarded as an aggrieved party and has, therefore, no *locus standi* to file any appeal nor can the Bihar Legislative Assembly file any appeal, through its Secretary, without there being a resolution of the Bihar Legislative Assembly to prefer any appeal against the order, dated 06.01.2015, passed in the writ petition, with the result that the persons, who were impleaded as party-respondents to the writ petition, shall not be allowed to file appeals and the person, whose order was set at naught, was not a party before the Court ?

2. Whether, therefore, in the circumstances as indicated above, the appellants herein shall be treated to be debarred from preferring any appeal and, then, what would be the remedy for a person, who feels aggrieved by an order passed in a writ petition, wherein he stood impleaded as a party?

3. The confounding scenario, as depicted above, has to be resolved and in order to resolve the flabbergasting situation, which has so arisen, we have to *per force* take note of the material facts and various stages, which have led to the passing of the order in the writ petition, which is under challenge in the present two appeals. We, therefore, in brief, set out hereinbelow the material facts and various stages, which have led to present appeals.

BACKGROUND FACTS:

4. Three sitting members of Rajya Sabha from the State of Bihar were elected as members of Parliament (Lok Sabha) in general Parliamentary Elections, 2014. Consequently, three vacancies of the members of Rajya Sabha from the State of Bihar occurred. To fill up these three seats, the Election Commission of India notified election and the date of election was fixed as 19.06.2014. Janta Dal (United), a Political Party to which the writ petitioners belonged, nominated its three candidates, namely, Shri Sharad Yadav, Shri Pawan Kumar Verma and Shri Gulam Rasul Baliyaw, for being elected as members of Rajya Sabha. These candidates accordingly filed their nominations before the Returning Officer as official candidates of Janta Dal (United) and they were allotted the symbols reserved for Janta Dal (United) under the Election Symbols (Reservation) and Allotment Order, 1968. The writ petitioners (hereinafter referred to as the "*private respondents*"), though belonged to the same party, i.e., Janta Dal (United), proposed two candidates, namely, Shri Anil Kumar Sharma and Shri Shabir Ali, as *independent candidates* in opposition to the nomination of two of the three official candidates of Janta Dal (United), namely, Shri Pawan Kumar Verma and Shri Gulam Rasul Baliyaw.



5. As a matter of fact, there were 13 legislators of Janta Dal (United), who had proposed the candidature of Shri Anil Kumar Sharma and Shri Shabir Ali aforementioned against the said two officials candidates of Janta Dal (United), namely, Shri Pawan Kumar Verma and Shri Gulam Rasul Baliyawli. The writ petitioners-*private respondents* did not, however, oppose the nomination of Sri Sharad Yadav, who happened to be the National President of the said political party.

6. As scheduled, the election was held on 19.6.2014. The votes were counted and results were declared on the same day, i.e., on 19.6.2014. Since no candidate contested against Shri Sharad Yadav, he was declared elected *uncontested* as a Member of Rajya Sabha. The other two official candidates of Janta Dal (United) were also declared elected. It is not in dispute that altogether 18 Janta Dal (United) legislators did cast their votes in favour of the two *independent candidates*, who were set up by the *private respondents* and other legislators aforementioned.

7. Shri Shravan Kumar (appellant in LPA No. 128 of 2015 and respondent No. 3 in the writ proceedings), who is the chief whip of the Ruling party and a member of Bihar Legislative Assembly, filed a *complaint*, on 21.06.2014, before the Speaker, Bihar Legislative Assembly, seeking an



order disqualifying the *private respondents* and others from being members of Bihar Legislative Assembly on the ground that the conduct of such legislators amounted to *voluntarily giving up their membership* of Janta Dal (United) inasmuch as these proposers had no faith in the policies of Janta Dal (United). It was specifically asserted, in the *complaint* filed by the appellant, Shravan Kumar, that the *private respondents* had *openly canvassed and worked for the success of the independent candidates set up by them*.

8. Notices were accordingly issued by the Speaker, Bihar Legislative Assembly, to the *private respondents* and also against others, who belonged to Janta Dal (United), but *supported* the independent candidature of Shri Anil Kumar Sharma and Shri Shabir Ali, directing them to show cause, if any, on 25.06.2014, as to why they be not disqualified from being members of Bihar Legislative Assembly.

9. The *private respondents* filed, on 16.07.2014, their replies to the show cause notices. The summary of the reply to the show cause notices, as stated, at Paragraph 32 of the writ application, by the *private respondents*, is being quoted hereinbelow:-

"32. It was the summary of their show cause that the allegations made in the complaint petition since does not

have any concern with any legislative function within the House as the conduct of elections are not the proceedings of the House, the Respondent no.2 had no occasion to proceed against the petitioners under the Tenth Schedule of the Constitution."

10. Though the *private respondents* had also raised preliminary objection as regards the maintainability of the *complaint* filed by Shri Shravan Kumar (i.e., appellant in LPA No. 128 of 2015) on the common ground that the complaint had not complied with the mandatory requirement of Sub-Rule (6) and (7) of Rule 6 of of Bihar Legislative Assembly Members (Disqualification on the ground of *Defection*) Rules, 1986, the *private respondents* nevertheless participated in the proceedings before the Speaker. Witnesses were accordingly examined in support of the *complaint* filed by Shri Shravan Kumar and the *private respondents* cross-examined the witnesses of the *complainant* and also adduced their own evidence by examining their witnesses in support of their case that they had not done anything, which would warrant an order of their *disqualification* from being a member of Bihar Legislative Assembly.

11. On conclusion of the proceedings, the Speaker, by a common order, passed on 01.11.2014, declared the *private respondents* as *disqualified* from being

members of Bihar Legislative Assembly. The Speaker, Bihar Legislative Assembly, also declared, under the said order, dated 01.11.2014, that the *private respondents* would not be entitled to any privileges as ex members of Bihar Legislative Assembly.

12. The decision of the Speaker, Bihar Legislative Assembly, was followed by publication of a notification, bearing No. 1695, dated 01.11.2014, by the Secretary, Bihar Legislative Assembly, disqualifying the *private respondents* from being the members of Bihar Legislative Assembly.

13. The common order, dated 01.11.2014, passed by the Speaker, Bihar Legislative Assembly, and consequent notification, dated 01.11.2014, declaring the *private respondents* disqualified from being members of the Bihar Legislative Assembly, was challenged by the *private respondents* by filing a writ petition, under Article 226 of the Constitution of India, which came to be registered as CWJC No. 18807 of 2014.

14. In their writ petition, apart from levelling allegations of *mala fide* against the Speaker, the *private respondents* also took a plea of discrimination and selective action against them on the ground that the Speaker had acted promptly, in the cases of the *private respondents*, for



taking action under Tenth Schedule of the Constitution of India, whereas the Speaker had not acted with equal promptitude in the cases of some other legislators of Janta Dal (United), who had also proposed the names of the aforesaid two candidates, who had contested against the *official candidates* of the Janta Dal (United). The *private respondents* asserted, in their writ petition, that such selective action amounted to violation of Article 14 of the Constitution of India.

15. By the judgment and order, dated 06.01.2015, a learned single Judge of this Court sustained the challenge, allowed the writ application and set aside the impugned order, dated 01.11.2014, passed by the Speaker, Bihar Legislative Assembly, and the impugned notification, dated 01.11.2014, aforementioned published pursuant to the said order of the Speaker.

16. It is in the background of the set of facts, as noted above, that these appeals have been preferred. The appeal, which has been preferred by Shri Shravan Kumar, the Chief Whip and Convener of Janta Dal (United), who was respondent No. 2 in the writ petition, has given rise to LPA No. 128 of 2015, while the appeal, which has been preferred by Bihar Legislative Assembly, through its Secretary, who was respondent No. 1 in the writ petition, has come to be

registered as LPA No. 83 of 2015.

17. We have heard Mr. Y. V. Giri, learned Senior Counsel, appearing on behalf of Bihar Legislative Assembly, and Mr. Lalit Kishore, learned Senior Counsel, appearing on behalf of appellant, namely, Shri Shravan Kumar. We have also heard Mr. Vinod Kumar Kanth, learned Senior Counsel, appearing on behalf of writ petitioners-*private respondents*.

18. Whether conduct of the *private respondents* in setting up the candidates, in opposition to the official candidates of Janta Dal (United), *canvassing and working* for the candidates so set up by becoming their proposers and also by working as their *Election Agents* could amount to voluntarily giving up the membership of the Janta Dal (United) so as to incur *disqualification*, as members of the Bihar Legislative Assembly, on the ground of *defection*, is the principal issue, which falls for determination in the present two appeals.

19. The principal issue, indicated above, in conjunction with other ancillary issues, is proposed to be disposed of by this common judgment and order inasmuch as both these appeals having arisen out of the one and the same order, dated 06.01.2015, passed in the writ petition, namely, CWJC No. 18807 of 2014, have been heard together, on the request made by learned Counsel for the parties concerned,

for the purpose of final disposal.

**PRELIMINARY OBJECTION TO THE MAINTAINABILITY
OF THE TWO LETTERS PATENT APPEALS:**

**Submissions made on behalf of the writ
petitioners-private respondents to the issue of
maintainability of appeal :**

20. Resisting the present two appeals at their very threshold, Mr. Vinod Kumar Kanth, learned Senior Counsel, has raised preliminary objection with regard to the maintainability of the two appeals on the ground that the appellant of **LPA No. 83 of 2015**, namely, Bihar Legislative Assembly, is in no way an aggrieved party against the order of the writ Court and as far as the appellant of LPA No. 128 of 2015, namely, Shri Shravan Kumar, Chief Whip of Janta Dal (United), is concerned, it is contended that though he was authorized by the then leader of the Legislative Party to file *complaint* before the Speaker, Bihar Legislative Assembly, there is no such authorization, in favour of Shri Shravan Kumar, by the leader of the Legislative Party of Janta Dal (United) to prefer the present appeal and, hence, the appeal, preferred by Shri Shravan Kumar, is not sustainable in the eyes of law.

21. In substance, putting to challenge the very maintainability of these two appeals, Mr. Vinod Kumar Kanth,

learned Senior Counsel, has raised separate and distinct preliminary issues.

22. Questioning the maintainability of **LPA No. 83 of 2015**, which has been preferred by Bihar Legislative Assembly, through its Secretary, Mr. Kanth has submitted as under:-

(a) Within the meaning of Paragraph 1 (a) of the Tenth Schedule of the Constitution of India, "*House*" would mean Bihar Legislative Assembly, constitution and composition of which is governed by Articles 168 and 170 of the Constitution of India, but there is nothing on record to show that there was any decision of the "*House*", within the meaning of Paragraph 1 (a) of the Tenth Schedule of the Constitution of India, read with Articles 168 and 170 of the Constitution of India, to prefer the present appeal. The appeal, thus, filed by Bihar Legislative Assembly, through its Secretary, is not maintainable.

(b) The appeal, preferred by Bihar Legislative Assembly, through its Secretary, is not maintainable inasmuch as Bihar Legislative Assembly is neither a legal entity nor a juristic person and/or State within the meaning of Article 12 of the Constitution of India and, therefore, Bihar Legislative Assembly can neither sue nor be sued.

(c) By the order of the learned single Judge, the

order of the Speaker of Bihar Legislative Assembly has been set aside and, therefore, the Speaker could have preferred the appeal if he felt aggrieved by the order of the learned single Judge.

23. Elaborating his submission with regard to maintainability of **LPA No. 83 of 2015**, preferred by Bihar Legislative Assembly, through its Secretary, Mr. Kanth, learned Senior Counsel, has submitted that Bihar Legislative Assembly would mean Governor and 243 legislators directly elected from the territorial constituencies and not the 'Secretary' of Bihar Legislative Assembly and since there is nothing on record to demonstrate that any decision was taken by the "House", i.e., Bihar Legislative Assembly, within the meaning of Article 168 of the Constitution of India, to prefer appeal against the order of the learned single Judge nor is there any decision of the House authorizing the Secretary of Bihar Legislative Assembly to prefer appeal against the order, dated 06.01.2015, passed by the learned single Judge, the appeal, preferred by Bihar Legislative Assembly, through its Secretary, cannot be maintained.

24. Mr. Kanth, learned Senior Counsel, has referred to Article 168 of the Constitution of India to contend that it defines the constitution of legislature in the State as 'consisting of 'Governor and two houses', in case of bi-



cameral system and 'Governor and Legislative Assembly', where there is no bi-cameral system. Referring to Article 170 of the Constitution of India, Mr. Kanth, learned Senior Counsel, has submitted that even Article 170 of the Constitution of India does not define "*Legislative Assemblies*", rather, it provides for composition of the *Legislative Assemblies*. It is contended by Mr. Kanth, learned Senior Counsel, that the State Legislative Assembly is neither a legal entity having competence to sue or be sued nor is it State within the meaning of Article 12 of the Constitution of India. Mr. Kanth, learned Senior Counsel, has accordingly submitted that no *lis* can be entertained, at the instance of the Bihar Legislative Assembly, through its Secretary, since Bihar Legislative Assembly is not a legal entity or juristic person or State within the meaning of Article 12 of the Constitution of India.

25. With regard to **LPA No. 128 of 2015**, preferred by Shri Shravan Kumar, Chief Whip of the Ruling Party, who was the *complainant* and, on whose *complaint*, the impugned order, dated 01.11.2014, was passed by the Speaker, Bihar Legislative Assembly, Mr. Kanth, learned Senior Counsel, submits that in his *complaint*, Shri Shravan Kumar had clearly stated that he had preferred the appeal on being authorized by the Chief Minister, Bihar, namely, Shri

Jeetan Ram Manjhi, and, upon passing of the order, dated 06.01.2015, which is under appeal, the reaction of Shri Jeetan Ram Manjhi had been published in the newspapers showing that Shri Jeetan Ram Manjhi had welcomed the order of the Court and, in such circumstances, the appeal could not have been preferred by Shri Shravan Kumar without any instructions to this effect from Shri Jeetan Ram Manjhi, the then Chief Minister, Bihar.

Response of the appellant, Bihar Legislative Assembly, through its Secretary, in LPA no. 83 of 2015, to the issue of maintainability of the appeal:

26. Countering the submissions made on behalf of the *private respondents* putting to challenge the very maintainability of the **LPA No. 83 of 2015**, which has been filed by Bihar Legislative Assembly, through its Secretary, Mr. Y. V. Giri, learned Senior Counsel, has submits as follows:

27. The *private respondents* had arrayed Bihar Legislative Assembly, through its Secretary, as party respondent No. 1 in the writ petition, and the Secretary, Bihar Legislative Assembly, had accordingly filed counter-affidavit and contested the case on merits and, hence, the appeal, which has been preferred by Bihar Legislative Assembly, through its Secretary, cannot be questioned as not maintainable.

28. The *private respondents* had never raised any objection, in the writ proceedings, to the Secretary representing the Bihar Legislative Assembly, Patna, and/or contesting the writ petition on merit.

29. Hence, under these circumstances, according to Mr. Giri, the *private respondents* have waived their rights, if any, to raise objection to the very maintainability of the appeal at the instance of Bihar Legislative Assembly, through its Secretary.

30. The provisions of Paragraph 6(2) of the Tenth Schedule read with Article 212 of the Constitution of India clearly establishes that the order of a Speaker is deemed to be proceeding in the Legislature of State and as Article 208 of the Constitution of India empowers the House of a Legislature of a State to make rules for regulating the conduct of its business, such rules have been, accordingly, framed called the Rules of Procedure and Conduct of Business in the Bihar Vidhan Sabha, adopted by the Legislative Assembly on 21.12.1965 (hereinafter referred to as "1965 Rules") Rule 2 thereof defines Secretary to mean the Secretary of the Assembly. Thus, Secretary of Bihar Legislative Assembly, points out Mr. Giri, is a duly recognized authority under the 1965 Rules made under the provisions of the Constitution and, hence, the Secretary is rightly representing Bihar

Legislative Assembly in **LPA No. 83 of 2015**.

31. In the light of Article 212 read with Paragraph 6(2) of the Tenth Schedule, since the proceedings, held in the present case, before the Speaker, and the impugned order, dated 01.11.2014, passed by the Speaker are to be *deemed* to be proceedings of Bihar Legislative Assembly, Bihar Legislative Assembly becomes a necessary party for any effective reliefs to be granted in the writ application.

32. Thus, being a necessary party, Bihar Legislative Assembly, through its Secretary, was validly made a party-respondent in the writ petition and has, consequently, a right to maintain the appeal through its Secretary. Even assuming, but not accepting that Bihar Legislative Assembly was only a proper party, yet there is no bar in filing an appeal by a proper party, who was duly arrayed as a respondent in the writ petition; so submits Mr. Giri.

33. It is also pointed out by Mr. Giri, learned Senior Counsel, that it is as per the order, dated 01.11.2014, passed, in the writ petition, by the learned single Judge, that the Speaker, Bihar Legislative Assembly, was deleted from the array of respondents by the writ petitioners and, hence, if it is held that the appeal, at the instance of the appellant, is not maintainable, then, the writ petition itself would be liable to be dismissed inasmuch as it would virtually become a

'private dispute' between the writ petitioners, on the one hand, and the complainant, namely, Shri Shravan Kumar, on the other.

34. Coupled with the above, the issue of maintainability of the appeal, submits Mr. Giri, is merely academic for the reason that an appeal has also been filed by the complainant, namely, Shri Shravan Kumar, bearing LPA No. 128 of 2015, wherein Bihar Legislative Assembly, through its Secretary, is party-respondent No. 5. Hence, all the issues raised and the arguments advanced on merits by the appellant herein would also be available and applicable to LPA No. 128 of 2015, which the complainant, Shri Shravan Kumar, has filed.

Response of the appellant, Shri Shravan Kumar, complainant, in LPA No.128 of 2015 to the issue of maintainability of the present appeals:

35. Mr. Lalit Kishore, learned Senior Counsel, submits that the appellant, Shri Shravan Kumar, was authorized to file the *complaint*, dated 21.06.2014 by the then leader of the legislative party, namely, Shri Jeetan Ram Manjhi, so as to get the writ petitioners declared disqualified to be members of Bihar Legislative Assembly and since it was the *complaint* made by the appellant, Shri Shravan Kumar, which led to the passing of the impugned order, dated 01.11.2014, and since the present appeal is in continuation of



the writ proceedings relating to disqualification of the writ petitioners, no separate authorization was required to be filed by the appellant, while preferring the appeal, particularly, when this appellant's appearance and participation in the writ proceeding was never questioned, and could not have been questioned, when the appellant stood impleaded as party-respondent in the writ petition.

36. According to Mr. Lalit Kishore, learned Senior Counsel, independent of the authorization by the then Chief Minister, Shri Jeetan Ram Manjhi, Shri Shravan Kumar, being the Chief Whip of the party, could have lodged the *complaint* and since he was impleaded as a party-respondent in the writ petition and the order, under appeal, interferes with the order passed by the Speaker on the *complaint* made by Shri Shravan Kumar, as the Chief Whip of Janta Dal (United), Shri Shravan Kumar has the *locus standi* to prefer a letters patent appeal.

Are the appeals maintainable? Conclusions of the Court:

37. When a *lis* is brought or a proceeding is instituted in a Court of law, desirable it is that the Court, unless the law indicates otherwise, decides the maintainability of such a *lis* or proceeding. Howsoever, appealing may be the case of the party bringing the matter before the Court, the



Court shall, keeping its mind completely disabused from the impression that it might have formed on the merit of the case, decide the question of maintainability. If the Court finds that the proceeding is not maintainable, the proceeding must terminate without carrying out any exercise to determine the merit or otherwise of the respective cases of the parties concerned and/or, the question as to what reliefs the parties are entitled to.

38. The general principle, which have been indicated above, is, however, subject to certain exceptions, one of such exceptions being that if the proceeding cannot progress on account of omission to implead a necessary party, the Court shall give an opportunity to the person, who approaches the Court, to implead the necessary party and if, even after being afforded with such an opportunity, the person, who approached the Court, does not implead the party concerned, the proceeding must end in dismissal. Such is the scenario, which the writ appeal depicts.

39. While considering the appeals at hand, it is of paramount importance to note that there is a marked, though subtle, distinction between the concepts of necessary party in a civil suit and the concept of necessary party in a writ petition. This distinction has become a little more pronounced with the passage of time, for, writ Courts, under



Article 226 of the Constitution of India, have been required, as the time passed by, to interfere on numerous occasions, when, during discharge of public duty, the State or an authority established by the State, its instrumentalities and even individuals, both natural as well as juristic persons, infringe fundamental or legal rights of a citizen or even of a foreigner in an appropriate case.

40. It is Order I of the Code of Civil Procedure, which deals with parties, in general, as well as necessary parties. In a civil suit or proceeding, the Court considers the question of necessary party keeping in view the litigation before it and the litigants appearing before it or available on the record, whereas a writ Court takes a birds eye view of the whole matter and, in such a process, its vision embraces not only those, who are litigating before it, but also those, who are likely to be affected by the decision in the litigation.

41. In a civil suit, so long as the question of granting of relief, sought for, can be decided in the presence of the parties appearing before the Court, the Civil Court will not consider anyone other than such a litigant as a necessary party; but a decision emanating from a writ Court reverberates, at times, far beyond the litigants and affects a large section of the people. Hence, the writ Court cannot keep itself confined merely to the litigants appearing before it or on



the record nor will it keep itself confined only to the *lis* before it, but will also take into account the consequences or the effect, which the decision will have or is likely to have on the interest of others, who may not be wholly necessary for decision of the issue at hand, but whose interest would be vitally affected in consequence of the decision rendered in the writ petition. Viewed from this angle, the concept of necessary party in a purely civil suit and a writ petition cannot be one and the same. Far from this, the scope of necessary party in a writ petition will be much wider than in the civil suits.

42. While considering the case of **Rama Krishna Narain (AIR 1953 SC 521: MANU/SC/0112/1953)** (supra) and the law laid down therein, it is of utmost importance to note that this is a decision, which rests on a civil suit. The law laid down in **Rama Krishna Narain** (supra) is, undoubtedly, binding on all the Courts, in India, yet the fact remains that the law enunciated therein was in respect of civil suits. In **Rama Krishna Narain** (supra), the Supreme Court has observed thus,

*" The majority judgment was delivered by Pathak J. He enunciated two tests for deciding whether certain person was a necessary party in a proceeding **(1) that there must be a right to some relief against such a party in respect of the***

matter involved in the proceedings, in question; and (2) that it should not be possible to pass an effective decree in the absence of such a party** and proceed to observe that the creditors of a landlord who have claimed relief under the Encumbered Estates Act are necessary parties to the object of the Act is to compel the landlord to surrender his entire property for the benefit of his creditors and to liquidate the debts for all the creditors in accordance with and to the extent permitted by the Act. **There can be no question that these are the true tests for determining whether a person is a necessary party to certain proceeding."

(Emphasis is supplied)

43. In the light of the decision in **Rama Krishna Narain** (supra), there are two tests for determining the question as to who can be regarded as necessary party in a civil suit, the tests being (1) that there must be a right to some relief against such a party in respect of the matter involved in the proceedings, in question, and (2) that it should not be possible to pass an effective decree in the absence of such a party.

44. When the scope of necessary party was taken up for consideration in **Udit Narain Singh Malpaharia** (supra), the Supreme Court was really dealing

with the scope of necessary party in a writ petition under Article 226 of the Constitution of India. In this case, the Supreme Court observed,

*"7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled, it is enough if we state the principle. **A necessary party is one without whom no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.**"*

8. xx xx xx

9. The next question is **whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal.** As we have seen a tribunal or authority performs a judicial or quasi judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari, the defeated party seeks for the quashing of the order issued by the tribunal, in favour of the successful party. How can the High Court vacate the said order without the successful party being before it : Without the presence of the successful party, the High Court cannot issue a substantial order affecting his right.



*Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunals order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the Court, would certainly be incompetent. **A party whose interests are directly affected, is, therefore, a necessary party.**"*

(Emphasis is added)

45. The above observations, made in **Udit Narain Singh Malpaharia** (supra), clearly show that leaving the narrow confines of determining the question of necessary parties from the standpoint of giving of reliefs to the parties concerned in a civil litigation, as had been considered in **Rama Krishna Narain** (supra), the Supreme Court considered even those persons as necessary parties, whose rights were to be directly affected by the order that would be passed in the writ petition. **Rama Krishna Narain** (supra), the Supreme Court made it clear that behind the back of such a party, no order shall be passed by a writ Court.

46. A new dimension was, thus, added to the concept of necessary party by laying down, in effect, in **Udit**



Narain Singh Malpaharia (supra), that while considering the question of necessary party in a Writ application, the principles of natural justice are required to be maintained. The High Court, fundamentally speaking, seeks to "*preserve*", "*protect*" and "*defend*" the Constitution. The Constitution enjoins upon the High Court the duty to interfere whenever the fundamental or legal rights of a citizen are sought to be infringed. For the purpose of civil suit, it is enough for the civil Court to bring on record only those persons or parties, whose presence is necessary for effective disposal of the dispute or for granting of the decree as sought for. But the High Court, sitting as a writ Court, looks beyond the parties appearing before them and must ensure that not only the persons, who are essential for the purpose of the disposal of a case before it, but also those, who will be vitally affected by the order to be passed, are made parties so that nothing is decided behind their back.

47. When the question of necessary party was considered in **Prabodh Verma** (supra), the Supreme Court broadened the scope of the necessary party by further laying down as follows :

"28. . . **A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it**

as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Singh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non joinder of necessary party."

(Emphasis is supplied)

48. From the observations of the Court in **Udit Narain Singh Malpaharia** (supra), read with what have been observed and laid down in **Prabodh Verma** (supra), it clearly follows that it would be against the principles of natural justice to make an adverse remark behind the back of the persons, who are to be directly affected by the decision, sought for, in the writ petition.

49. In other words, if the decision of a writ Court is likely to adversely affect even the reputation of a person, such a person must be regarded as a necessary party. This, in turn, indicates that a writ Court, while considering the question of necessary party, has to bear in mind the principles of natural justice and should be conscious of the fact that no decision be reached behind the back of the



party, whose interest will be vitally affected by the decision that may be pronounced in the writ petition, though in the writ petition, no relief has been sought for against such persons and though they may not be necessary for deciding the question of relief. In short, in view of the fact that such persons are likely to be affected by the decision that may be taken, principles of natural justice demand that they be heard before the decision is taken and, in this context, such a party will be regarded as a necessary party for disposal of an application under Article 226 of the Constitution of India.

50. We may also point out that in the context of the facts of a given case, a person may become a necessary party in a writ petition, though he may not be an authority or a person within the meaning of Article 226 of the Constitution of India. Supposing an employee of an Association approaches the High Court for invoking its jurisdiction under Article 226 of the Constitution of India on the ground of arbitrary dismissal from service. If the Court comes to take the view that the Association, in question, is not an authority within the meaning of Article 12 of the Constitution of India and/or an authority or person within the meaning of Article 226 of the Constitution of India, the consequence would be that the writ application would not be maintainable.

51. Now, let us, look into this problem from a



different angle. Assuming that the District Collector of the district, where the Association is located, settles a plot of land in favour of the Association. A person, who has been in occupation and use of the plot of the land, approaches High Court with an application under Article 226 of the Constitution of India for quashing of the order of settlement on the ground that he had been in occupation and use of the land for more than 50 years and had been repeatedly applying, in accordance with law to the authorities concerned, to settle the land in his favour, but arbitrarily and without considering his case at all, the land has been settled in favour of the Association, in question.

52. Strictly speaking, for the purpose of giving relief to such an applicant, making of the Association, in question, a party to the writ petition is not necessary, but in view of the fact that the interest of the Association, in question, can be directly and vitally affected by the order, the Association becomes a necessary party. At the same time, however, though the Association, in question, becomes a necessary party, it may not be an authority within the meaning of Article 12 of the Constitution of India and/or an authority or a person within the ambit of Article 226 of the Constitution of India.

53. The conclusion, therefore, which we safely



reach, is that for considering as to whether a person is or is not a necessary party in a writ application under Article 226 of the Constitution of India, there can be no condition precedent that the person concerned must be an authority or person under Article 226 of the Constitution of India. In other words, even if a person is not an authority or a person within the meaning of Article 226 of the Constitution of India, yet in the given set of facts and circumstances, impleading of such a person may become necessary and such a person has to be, then regarded and treated as a necessary party. In such a case, it will be immaterial as to whether the writ petitioner has asked for any relief against such a party or from such a party or not.

54. The law, as laid down by the Supreme Court, in the case of **Udit Narayan Singh Malpaharia** (supra), on the question as to the effect of the non-impleadment of necessary parties, has been considered recently by the Supreme Court in a decision, rendered in **Census Commissioner and Others v. R. Krishnamurthy**, reported in **(2015) 2 SCC 796**. The relevant observations made at paragraph 21 reads as follows:

"21. *As we evince from the sequence of events, the High Court in the earlier judgment had issued the direction relating to carrying of Census in a particular manner by adding certain facets though the lis was absolutely different. **The appellant, the real***

aggrieved party, was not arrayed as a party respondent. The issue was squarely raised in the subsequent writ petition where the Census Commissioner was a party and the earlier order was repeated. **There can be no shadow of doubt that the earlier order is not binding on the appellant as he was not a party to the said lis.** This view of ours gets fortified by the decision in *H. C. Kulwant Singh v. H. C. Daya Ram*, reported in (2015) 3 SCC 177, wherein this Court, after referring to the judgments in *Khetrabasi Biswal v. Ajaya Kumar Baral*, reported in (2004) 1 SCC 317 : 2004 SCC (L & S) 182, *Udit Narain Singh Malpaharia v. Board of Revenue* (AIR 1963 SC 786), *Prabodh Verma v. State of U.P.*, reported in (1984) 4 SCC 251 : 1984 SCC (L & S) 704, and *Tridip Kumar Dingal v. State of W.B.*, reported in (2009) 1 SCC 768 : (2009) 2 SCC (L & S) 119, has ruled thus:

"..... if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice."

(Emphasis is added)

55. In our opinion, absence of Speaker, Bihar Legislative Assembly, in the array of party-respondent, as a matter of fact, was fatal for the writ petitioners-private respondents and learned single Judge, in our opinion, could not

have issued any writ in the nature of *certiorari* in his absence in the writ proceedings.

56. Bearing in mind the position of law with regard to necessary and proper parties in a writ proceeding, when we revert to the facts of the case at hand, what attracts our attention, most prominently, is that Shri Shravan Kumar was the one, whose *complaint* had led to the passing of the impugned order, dated 01.11.2014, by the Speaker, Bihar Legislative Assembly, *disqualifying* the writ petitioners-*private respondents* from being members of Bihar Legislative Assembly.

57. In our view, any of the parties to the writ proceedings in the present case (i.e., the writ petitioners or the respondents in the writ petition), had the right to prefer appeal if they were aggrieved by the final decision, finding or conclusion arrived at, or direction given by, the learned single Judge. Secondly, we are also of the view that appellant of **LPA No. 128 of 2015**, Shri Sharvan Kumar, apart from being the Chief Whip of the Ruling Party, is, admittedly, a member of Bihar Legislative Assembly and he was, according to the *private respondents* themselves, authorized by the then leader of the Legislative Party to file *complaint* and this authorization is not proved to have been withdrawn. Mr. Shravan Kumar, therefore, continued to enjoy the authority

so given to him.

58. Independent of what has been indicated above, one can also not lose sight of the fact that Rule 6 of Bihar Legislative Assembly Members (Disqualification on the ground of *Defection*) Rules, 1986 (hereinafter referred to as "1986 Rules") lays down as follows:

"6. निर्देश का आवेदन—पत्र द्वारा किया जाना ।

— (1) कोई सदस्य दसवीं अनुसूची के अधीन निरर्हता से ग्रस्त हो गया है या नहीं इस प्रश्न का निर्देश उस सदस्य के संबंध में इस नियम के उपबंधों के अनुसार दिये गये आवेदन—पत्र द्वारा ही किया जायेगा अन्यथा नहीं ।

(2) किसी सदस्य के संबंध में कोई आवेदन—पत्र सदस्य द्वारा अध्यक्ष को लिखित रूप में दिया जा सकेगा :

परन्तु अध्यक्ष के संबंध में प्रत्येक आवेदन—पत्र सचिव को संबोधित किया जायेगा ।

(3) सचिव —

(क) उप—नियम (2) के परन्तुक के अधीन दिये गये आवेदन—पत्र की प्राप्ति के पश्चात् यथाशीघ्र उसके बारे में सदन को एक प्रतिवेदन देगा, और

(ख) दसवीं अनुसूची के पैरा 6 के उप—पैरा (1) के परन्तुक के अनुसरण में सदन द्वारा किसी सदस्य के निर्वाचित किये जाने के पश्चात् आवेदन—पत्र को यथाशीघ्र उस सदस्य के समक्ष प्रस्तुत करेगा ।

(4) किसी सदस्य के संबंध में कोई आवेदन—पत्र

देने से पूर्व आवेदक अपना यह समाधान करेगा कि यह विश्वास करने का युक्तियुक्त आधार है कि यह प्रश्न उठता है कि क्या वह सदस्य दसवीं अनुसूची के अधीन निरर्हता से ग्रस्त हो गया है या नहीं ।

(5) प्रत्येक आवेदन-पत्र निम्नांकित रूप में होंगे :-

(क) आवेदन-पत्र में उन तात्विक तथ्यों का संक्षिप्त विवरण होगा, जिन पर आवेदक निर्भर करता है, और

(ख) आवेदन-पत्र के साथ ऐसे दस्तावेजी साक्ष्य की, यदि कोई हो, प्रतियाँ संलग्न होगी, जिस पर आवेदक निर्भर करता है और जहाँ आवेदक किसी व्यक्ति द्वारा उसे दी गयी किसी जानकारी पर निर्भर करता है वहाँ उन व्यक्तियों के नाम और पते सहित विवरण और ऐसे प्रत्येक व्यक्ति द्वारा दी गई ऐसी जानकारी का सारांश संलग्न होगा ।

(6) प्रत्येक आवेदन-पत्र पर आवेदक के हस्ताक्षर होंगे और उसे अभिवचनों के सत्यापन के लिये सिविल प्रक्रिया संहिता, 1908 (1908 का 5) में अधिकथित रीति से सत्यापित किया जायेगा ।

(7) आवेदन-पत्र के प्रत्येक उपबंध पर भी आवेदक के हस्ताक्षर होंगे और उनका सत्यापन आवेदन-पत्र के सत्यापन की रीति से ही किया जायेगा ।”

59. From a close reading of Rule 6 (2) of 1986 Rules, as quoted above, it will appear that a member of Bihar Legislative Assembly is entitled to make an application



before the Speaker of the House, complaining that any member of the Bihar Legislative Assembly has become subject to disqualification under the Tenth Schedule of the Constitution of India. Sub-Rule (4) of Rule 6 of 1986 Rules contemplates that before making any petition in relation to any member under Rule 6 (2) of 1986 Rules, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such a member has become subject to disqualification under the Tenth Schedule of the Constitution of India.

60. Sub-Rule (5) of Rule 6 of 1986 Rules provides the manner in which a petition under sub-Rule (2) of Rule 6 of 1986 Rules is to be presented before the Speaker and requires that such petition shall contain a concise statement of the material facts on which the petitioner relies and such a petition shall be accompanied by the 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 the said person. Sub-Rule (6) of Rule 6 of 1986 Rules further provides that every petition under sub-Rule (2) shall be signed by the petitioner and verified in the manner laid down in the Civil Procedure Code for verification of

pleadings. Sub-Rule (7) further provides that every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

61. A microscopic reading of the provisions of sub-Rule (2) of Rule 6 of 1986 Rules makes it abundantly clear that by taking recourse to the provisions embodied in 1986 Rules, any member of Bihar Legislative Assembly may make an application, in writing, seeking *disqualification* of another member of the said Legislative Assembly on the ground of *defection*.

62. Keeping in focus the provisions of Rule 6 of 1986 Rules, which vest the right in every member of Bihar Legislative Assembly to make an application, in writing, to the Speaker of Bihar Legislative Assembly, seeking an order of *disqualification* of another member of the said Legislative Assembly by resorting to the provisions of the Tenth Schedule of the Constitution of India, when we consider the case at hand, it clearly emerges that independent of the fact that Shri Shravan Kumar, a member of Bihar Legislative Assembly, was authorized, as the Chief Whip of the Ruling Party, by Shri Jeeten Ram Manjhi, the then leader of the Legislative Party, to make the *complaint*, in question, he (Shri Shravan Kumar) was, otherwise also, as a member of Bihar Legislative Assembly, competent, within the ambit of Rule 6(2) of 1986

Rules, to make *complaint* seeking *disqualification* of the *private respondents* on the ground of *defection*.

63. To put it a little differently, Shri Shravan Kumar, in the light of Rule 6 of 1986 Rules, had, in his capacity as a member of Bihar Legislative Assembly, the right to file an application, in writing, to the Speaker, Bihar Legislative Assembly, seeking *disqualification* of a member if, according to him, such a member had become subject to disqualification from being a member of the *House* under Tenth Schedule of the Constitution of India. This right of Shri Shravan Kumar was a statutory right, which remained vested in him and he cannot be taken to have been divested of this right merely because he was, otherwise, authorized by the then leader of the Legislative Assembly to file the *complaint*, in question.

64. Needless to point out that 1986 Rules are statutory and have been framed in exercise of rule-making power under Paragraph 8 of the Tenth Schedule of the Constitution of India in order to give effect to the provisions of the Tenth Schedule and the 1986 Rules shall be construed in such a manner as to ensure that the Rules realize the object with which the Rules have been framed.

65. That being the position, Shri Shravan Kumar, appellant of **LPA No. 128 of 2015**, in his capacity as

a member of Bihar Legislative Assembly, has every right to pursue his present appeal against the order, dated 06.01.2015, passed, in CWJC No. 18807 of 2014, by the learned single Judge.

66. There is yet another dimension to the issue at hand. Shri Shravan Kumar was a person, who ought to have been impleaded as a party in the writ petition inasmuch as interference with the impugned order of the Speaker by this Court, in exercise of its power under Article 226 of the Constitution of India, would have adversely affected the principle of natural justice and denied to Shri Shravan Kumar the right to be heard, when it was on his *complaint* that the impugned order aforementioned was passed by the Speaker. Rightly and justifiably, therefore, Shri Shravan Kumar was made a party to the writ petition. He has every right to maintain his appeal, when the writ petitioners had themselves impleaded, as a party in the writ petition, Shri Sharvan Kumar, whose *complaint* had led to the making of the impugned order by the Speaker, Bihar Legislative Assembly.

67. Coming to the question whether the appeal, preferred by Bihar Legislative Assembly through its Secretary, is maintainable or not, what has to be also kept in mind, if we may repeat, is that Bihar Legislative Assembly, through its Secretary, was impleaded as party-respondents in the writ



proceedings by the writ petitioners (i.e., *private respondents*) themselves. The plea, apart from being apparently untenable, for the reason, which we have indicated above, cannot even be raised in the present proceedings by the *private respondents* (i.e., writ petitioners), when they had themselves made Bihar Legislative Assembly, through its Secretary, a party-respondent in the writ petition.

68. Moreover, the contention of Mr. Kanth, learned Senior Counsel, that since the impugned order of the Speaker, Bihar Legislative Assembly, has been set aside by the learned single Judge by the order under appeal and, therefore, only Speaker could have preferred appeal against the said order of the learned single Judge cannot be accepted. In our view, only such persons/bodies, who were parties to the original proceedings, can prefer Letters Patent Appeal against the order of the learned single Judge unless a person, who may not have been a party to the writ proceeding, is granted *leave* to prefer appeal by the appropriate Bench.

69. Further, though Paragraph 6(2) of the Tenth Schedule of the Constitution of India contemplates that all proceedings, arising out of *reference* of a question to the Speaker, for his decision, as to whether a member of the *House* has become *disqualified* or not, shall be *deemed* to be a proceeding in the Legislature of the State within the



meaning of Article 212 of the Constitution of India, we are unable to accede to the submission made by Mr. Kanth, learned Senior Counsel, that the decision to prefer Letters Patent Appeal by Bihar Legislative Assembly ought to have been taken at the floor of the *House*, the reason for our inability to agree with the submission so made by Mr. Kanth, learned Senior Counsel, is that the *House*, as such, has, in our view, no role to play in the matter of a decision taken by the Speaker on the question of *disqualification* of a member of the *House*, when Rule 8 of 1986 Rules lays down, in clear terms, that it is the Speaker, who is empowered to take the decision as to whether a member of the *House* has become subject to *disqualification* under the Tenth Schedule and when, in the light of the decision in **Kihoto Hollohan v. Zachillhu and Others**, reported in **(1992) Supp (2) SCC 651**, (which we would revert to, the proceedings) under the Tenth Schedule held before a Speaker, do not enjoy immunity from judicial scrutiny, notwithstanding the provisions, embodied in Paragraph 6(2) of the Tenth Schedule deeming the proceedings under the Tenth Schedule as proceedings of the *House* under Article 212 of the Constitution of India.

70. If we may reiterate, Article 208 of the Constitution of India empowers the House of the Legislature of a State to make rules for regulating its procedure and the



conduct of its business subject, of course, to the provisions of the Constitution and Article 212 of the Constitution of India takes beyond the jurisdiction of a High Court the power to exercise judicial review in order to examine the validity of any proceedings in the Legislature of a State by laying down that *(i) 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 (ii) no officer or member of the Legislature of a State in whom powers are vested by or under the Constitution for regulating the 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.*

71. In the backdrop of the provisions embodied in Articles 208 and 212 of the Constitution of India, when we turn to Paragraph 6 of the Tenth Schedule, more particularly, Paragraph 6(2) thereof, what we note is that all the proceedings ,under Paragraph 6(1) of the Tenth Schedule, in relation to any question as to the *disqualification* of a member of a *House* under the Tenth Schedule, shall be *deemed* to be proceedings in the Legislature of a State within the meaning of Article 212 of the Constitution of India.

72. It becomes, therefore, abundantly clear that the proceedings, relating to *disqualification* of a member of a

House, conducted before the Speaker of the House under Tenth Schedule of the Constitution of India, is '*deemed*' to be a proceeding in the House.

73. We must, however, hasten to clarify that notwithstanding the fact that the proceedings, relating to *disqualification* of a member of a *House*, are deemed to be proceedings in the Legislature of State within the meaning of Article 212 of the Constitution of India , the fact remains that these proceedings do not stand on the same footing as do the other proceedings of the *House*, which do not relate to *disqualification* of a member of the *House* under the Tenth Schedule of the Constitution of India. This position of law would be clear if **Kihoto Hollohan** (supra) is properly looked into.

74. In **Kihoto Hollohan** (supra), one of the contentions raised was that since a proceeding, relating to *disqualification* of a member, under Paragraph 6(1) of the Tenth Schedule, is, in the light of Paragraph 6(2), '*deemed*' to be a proceeding in the Legislature of the *House*, a proceeding, in relation to *disqualification* of a member (as contemplated by the Tenth Schedule of the Constitution of India), is not only beyond the reach of the High Court under Article 226 and/or 227 of the Constitution of India, but also beyond the reach of the Supreme Court under Article 136 of the

Constitution of India.

75. Rejecting the above contention, it was pointed out by the Supreme Court, in **Kihoto Hollohan** (supra), that even after introduction of the Tenth Schedule in the year 1986, the Constitution did not evince any intention to invoke Article 122 or 212 in the conduct of resolution of disputes as to the *disqualification* of members under Articles 191(1) and 102(1). The very *deeming provisions* imply, observed the Supreme Court, in **Kihoto Hollohan** (supra), that the proceedings of disqualification are, in fact, not before the *House*, but only before the Speaker of the *House* as a specially designated authority.

76. Leaving none in doubt, the Supreme Court observed, in **Kihoto Hollohan** (supra), in explicit terms, that a decision, under Paragraph 6(1), is not the decision of the *House* nor is it subject to the approval by the *House* and the decision of a Speaker, therefore, operates independently of the *House* and does not consequently enjoy immunity under Articles 122 and 212 from judicial scrutiny.

77. In short, the proceedings relating to *disqualification* of a Member of a *House* under the Tenth Schedule of Constitution is *stricto sensu* not a proceeding of a *House* under Article 122 and 212 and as a result thereof, a Speaker's decision, in relation to a proceeding under the

Tenth Schedule, is open to judicial scrutiny. The relevant observations, appearing at Paragraph 97, in this regard, in

Kihoto Hollohan (supra), read as follows:

*"97. That apart, even after 1986 when the Tenth Schedule was introduced, the Constitution did not **evince any intention** to invoke Article 122 or 212 in the conduct of resolution of disputes as to the disqualification of members under Articles 191(1) and 102(1). The very deeming provision implies that the proceedings of disqualification are, in fact, not before the House; but only before the Speaker as a specially designated authority. **The decision under Paragraph 6(1) is not the decision of the House, nor is it subject to the approval by the House. The decision operates independently of the House. A deeming provision cannot by its creation transcend its own power. There is, therefore, no immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power under Paragraph 6(1) of the Tenth Schedule.**"*

(Emphasis is supplied)

78. From what have been laid down in **Kihoto Hollohan** (supra) and reproduced above, it becomes more than abundantly clear that though the proceedings, relating to *disqualification* of a member under Paragraph 6(1) of the Tenth Schedule, shall be *deemed*, in the light of the provisions, embodied in Paragraph 6(2), as a proceeding in the Legislature of the *House*, the fact remains that the *deeming provisions*, embodied in Paragraph 6(2), imply that these proceedings are, in fact, not before the *House* but only before the Speaker of the *House* as a specially designated

authority and the decision, under Paragraph 6 (1), not being a decision of the House is not subject to the approval of the *House*.

79. Necessarily, therefore, the decision of the Speaker operates independently of the *House* inasmuch as a deeming provision cannot, by its creation, transcend its power and, therefore, there is no immunity given to the order of the Speaker passed under Paragraph 6 (1) from judicial scrutiny of the High Court under Article 226 and/or 227 of the Constitution of India and of the Supreme Court under Article 136 of the Constitution of India.

80. Logically, therefore, Bihar Legislative Assembly was not a necessary party to the writ petition and need not have been impleaded as a party in the writ petition. As the Bihar Legislative Assembly has to function through its Executive Officer and Bihar Legislative Assembly was impleaded as a party-respondent in the writ petition through its Secretary, it was open to Bihar Legislative Assembly to challenge the order under appeal by taking recourse to the provisions of Order XLI Rule 4 of the Civil Procedure Code.

81. When viewed from the above angle, what logically follows is that while the *complainant*, Shri Shravan Kumar, was a necessary party to the writ petition, Bihar Legislative Assembly, though not a necessary party, stood



impleaded as a party-respondent in the writ petition. Mr. Giri, learned Senior Counsel, is, therefore, correct, when he submits that the *private respondents* had themselves impleaded Shri Shravan Kumar and Bihar Legislative Assembly as parties-respondents and, hence, they cannot object to the filing of the appeals by the present appellants; otherwise also, having been impleaded as party respondent in the writ petition, Bihar Legislative Assembly could have preferred the appeal through its Secretary as an aggrieved party.

82. At any rate, whether Bihar Legislative Assembly, through its Secretary, could have preferred any appeal becomes academic in nature, when we are completely satisfied that as far as Shri Shravan Kumar is concerned, he, being a member of Bihar Legislative Assembly, could have, independent of any authorization by the then leader of the Legislative Party of Janta Dal (United) Party, filed an application, in writing, in the present case, addressed to the Speaker, seeking *disqualification* of the *private respondents* on the ground that they had voluntarily given up their membership of Janta Dal (United) Party. Whether a case of disqualification had or had not been made out by the complainant is not material at the stage of considering as to whether the *complainant* could have preferred this appeal or

not.

83. Without, therefore, making any comment on the question whether the impugned order passed by the Speaker is a valid order or not, we make it clear that in our considered view, the appeal, at the instance of Shri Shravan Kumar, was, in the facts and attending circumstances of the present case and the law relevant thereto, maintainable.

84. We do not find much force in the submission made by Mr. Kanth, learned Senior Counsel, appearing on behalf of the *private respondents*, while raising objection to the maintainability of the two appeals. The appellants herein, in both these appeals, were parties to the writ proceedings and they were impleaded as respondents in the writ proceedings. The principle as to who may prefer appeal lies in Order XLI Rule 4 of the Civil Procedure Code, which reads thus,

"4. One of several plaintiffs or defendants may obtain reversal of whole decree, where it proceeds on ground common to all.- *Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffss or to all the defendants, any one of the plaintiffs or the defendants may appeal from the whole decree and, thereupon, the appellate court may reverse or vary the decree in favour of*

all the plaintiffs or defendants, as the case may be."

85. We are, therefore, not able to accept the submission of Mr. Kanth, learned Senior Counsel, that Bihar Legislative Assembly being neither a legal entity nor a juristic person or a State within the meaning of Article 12 of the Constitution of India, can neither sue nor be sued and could not have, therefore, preferred an appeal against the order, dated 06.01.2015, passed by the learned single Judge.

86. Having concluded that the present appeals cannot be said to be not maintainable, let us, now, turn to the rival submissions, which have been made before us, on the merit of the appeals so as to answer the question as to whether the order, under appeals, passed by the learned single Judge is sustainable in the context of the facts of the present case and the law relevant thereto.

87. On the above aspect of the present appeals, let us take note of the rival submissions, made on behalf of the parties concerned, on the merit of the present appeals.

Submissions made on behalf of the appellant in LPA no. 83 of 2015: (Bihar Legislative Assembly) on merit of the appeal :

88. Mr. Y. V. Giri, learned Senior Counsel, appearing on behalf of Bihar Legislative Assembly, has submitted that disqualification of the writ petitioners under



the Tenth Schedule of the Constitution of India is wholly justified and would be covered by the decision of the Supreme Court, in **Dr. Mahachandra Prasad Singh v. Chairman, Bihar legislative Council and Others**, reported in **(2004) 8 SCC 747**, inasmuch as the conduct of the writ petitioners-*private respondents*, in setting up the candidates in opposition to the official candidates of Janta Dal (United), becoming their *proposer* and also their Election Agents, *canvassing* and *working* for the candidates so set up by them in order to ensure defeat of the two official candidates put by their political party, amounts to *voluntarily giving up membership of their political party* and attracts disqualification under Paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India. Mr. Giri, learned Senior Counsel, submits that the act of being a proposer of a candidate and actively canvassing in his/her favour coupled with becoming his/her Election Agent, is just like being the candidate himself inasmuch as Section 33 of the Representation of People Act, 1951, if read with Form 2C, clearly shows that there can be no candidate without a *proposer*.

89. Mr. Giri, learned Senior Counsel, submits that the act of the writ petitioners is not an act of exercising the right to vote, as has been canvassed by, and on behalf of



the *private respondents*, and if the act of being a *proposer* is held to be exercising right to vote, then, contesting as a candidate, in opposition to one's own political party's official candidate, would also become an extension to right to vote, though the act of contesting as a candidate, in the light of the Supreme Court's decision, in **Dr. Mahachandra Prasad Singh** (supra), incurs disqualification and, hence, the same fate, according to Mr. Giri, shall await one, who not only becomes a *proposer* and Election Agent for a candidate in opposition to his party's official candidate for Rajya Sabha, but also actively canvasses for him in order to ensure his candidate's victory and defeat of the party's official candidate.

90. It is the contention of Mr. Giri, learned Senior Counsel, that the question of voluntarily giving up membership of a political party is to be judged on the basis of conduct and a single conduct could also amount to voluntarily giving up the membership and it need not be a series of acts or incidents, though the writ petitioners-*private respondents* had, in the case at hand, indulged in a series of acts consciously involving themselves in ensuring that their proposed candidates defeat their political party's official candidates. This, according to Mr. Giri, does not amount to mere casting of votes in accordance with one's own conscience, but to ensure that a candidate, set up by him,

defeats his own party's official nominee as a candidate.

91. It is the submission of Mr. Giri, learned Senior Counsel, that the learned single Judge has incorrectly placed reliance on the decision of the Supreme Court, in **Jagjit Singh v. State of Haryana**, reported in **(2006) 11 SCC 1**, inasmuch as the case of **Jagjit Singh** (supra) was, points out Mr. Giri, a case in relation to the issue as to whether giving outside support by an independent member of a House would lead to an implication of a member joining another political party or not and would attract thereby disqualification under Paragraph 2(2) of the Tenth Schedule of the Constitution of India or not. The learned single Judge, in the present case, submits Mr. Giri, was not dealing with the issue, which the case of **Jagjit Singh** (supra) involved, and, therefore, the decision, in **Jagjit Singh** (supra), lends no support to the contention of the writ petitioners.

92. Mr. Giri further submits that the learned single Judge has, perhaps, been influenced by the minority view of the Division Bench of the High Court, which has been discussed by the Supreme Court, in **Balchandra L. Jarkiholi and Others v. V. B. S. Yadurappa and Others**, reported in **(2011) 7 SCC 1**, in drawing distinction between *defection* and *dissent*. The said view was, according to Mr. Giri, never upheld by the Supreme Court and, hence, it could not have

been applied to the facts and circumstances of the present case. The case at hand, insists Mr. Giri, is not a case of mere *dissent*, but a clear case of *defection*. The present one, submits Mr. Giri, is a case of voluntarily giving up the membership of original political party, Janata Dal (United), to which the writ petitioners belonged.

93. Mr. Giri, then, submits, in the light of the observations made by the Supreme Court, in the case of **Kihoto Hollohan** (supra), that the scope of interference, under Article 226 of the Constitution of India, in a matter of present nature, is limited inasmuch as interference with an order passed by a Speaker is possible in exercise of power under Article 226 of the Constitution of India provided that the Speaker's order suffers from jurisdictional error, namely, infirmity based on violation of constitutional mandate, *mala fide*, non-compliance of the rule of natural justice and perversity. However, the learned single Judge, in the present case, has acted as Court of appeal and substituted his views in place of the view of the Speaker, though the view, taken by the Speaker, cannot be said to be such a view, which no prudent man could have taken or arrived at.

94. Merely because another view, in a given case, is possible, it cannot be made, according to Mr. Giri, ground for issuance of a writ in the nature of *certiorari* in



exercise of court's extra-ordinary jurisdiction under Article 226 of the Constitution of India. The Speaker's order, which stood impugned in the writ petition, contends Mr. Giri, neither suffered from violation of principles of natural justice nor was perverse, particularly, when the Speaker was not impleaded as a respondent in the writ petition and when the Speaker's order took into account all aspects of the issues involved. This apart, no allegation of *mala fide* or *discrimination*, points out Mr. Giri, could have been levelled against the Speaker, when the Speaker was not a party to the writ petition.

95. The learned single Judge, submits Mr. Giri, has held the order of the Speaker as perverse mainly on the ground that the Speaker has not, in the opinion of the learned single Judge, taken into account an essential fact, namely, that the conduct of the writ petitioners of having supported their political party's third candidate, namely, Shri Sharad Yadav, and while arriving at this conclusion, the learned single Judge, submits Mr. Giri, did not take note of the fact that the act of lending support to the third candidate, namely, Shri Sharad Yadav, was not the issue before the Speaker nor did Shri Sharad Yadav require any support as he had been elected uncontested on the ground that no candidate was willing to stand up against him and no one, in fact, stood up against him. When Shri Sharad Yadav had won uncontested,

where was the question of the *private respondents* supporting the candidature of Shri Sharad Yadav, particularly, when no one was willing to even stand against him and no one had, in fact, stood against him, asks Mr. Giri, learned Senior Counsel?

96. The real issue before the Speaker, according to Mr. Giri, was the writ petitioners' conduct of becoming *proposers* and *Election Agents* of the two *independent candidates* in opposition to their own *official candidates* and *canvassing* for the candidates so set up by the writ petitioners-*private respondents* in order to defeat their party's *official nominees* inasmuch as their conduct, undoubtedly, amounted to, contends Mr. Giri, learned Senior Counsel, *voluntarily giving up the membership of Janta Dal (United) Party* and thereby disqualified them, in terms of Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India, from remaining as members of Bihar Legislative Assembly. In the facts and circumstances of the present case, therefore, reiterates Mr. Giri, the question of lending support to Shri Sharad Yadav was not at all a relevant fact.

97. It is contended by Mr. Giri that what was, in the facts of the present case, required to be determined by the Speaker was whether the conduct of becoming *proposers*, working as *Election Agents*, actively *canvassing* for the candidates set up by the writ petitioners-*private respondents*,

in opposition to their party's official candidates, did or did not amount to voluntarily giving up membership of the political party, which the writ petitioners-*private respondents* belonged to.

98. It is also pointed out by Mr. Giri that the learned single Judge's reference to, and reliance upon, the decision in **Sri Rajendra Singh Rana and others v. Swami Prasaad Maurya and others (AIR 2007 SC 1305)**, is wholly misplaced inasmuch as the case of **Sri Rajendra Singh Rana** (supra) was a case, which involved split up in a political party and, hence, the case of **Sri Rajendra Singh Rana** (supra) had no relevance to the facts at hand.

99. The order under appeal, thus, pleads Mr. Giri, suffers from perversity inasmuch as it takes into consideration an irrelevant fact, namely, conduct of the writ petitioners-*private respondents* in lending so called support to Shri Sharad Yadav and, at the same time, failed to consider the relevant fact, namely, as to whether the conduct, as a whole, of the writ petitioners-*private respondents*, amounted to voluntarily giving up membership of the political party, which the writ petitioners-*private respondents* belonged to.

Submissions made on behalf of the appellant in LPA no. 128 of 2015: (Shri Shravan Kumar) on merit of the appeal :

100. Mr. Lalit Kishore, learned Senior Counsel,



appearing on behalf of appellant, Shri Shravan Kumar, Chief Whip of the Ruling Party (i.e., the *complainant*), has, while adopting the arguments advanced by Mr. Y. V. Giri, learned Senior Counsel, submitted that the impugned order of the Speaker, Bihar Legislative Assembly, is based on the facts admitted by the writ petitioners and since the impugned order is based on the admitted facts, the learned single Judge ought to have upheld the said order on the ground that the facts have not been denied by the writ petitioners.

101. Questioning the very maintainability of the writ petition, Mr. Lalit Kishore, learned Senior Counsel, submits that in the light of the decision in **Kihoto Hollohan v. Zarchillhu**, reported in **(1992) Supp 2 SCC 650**, a Speaker stands on the same footing as does a Tribunal and it is well settled principle, in the backdrop of the law laid down in **Udit Narayan Singh Malpaharia** (supra), that in a writ petition, seeking issuance of a writ in the nature of *certiorari*, the Tribunal has the right to defend its order and, thus, the Tribunal is a necessary party and, in absence of the Tribunal as a party-respondent in the present writ proceedings, the writ petition itself was not maintainable, but this aspect appears to have escaped the attention of the learned single Judge.

102. Mr. Lalit Kishore, learned Senior Counsel,



contends that in a case of present nature, when the learned single Judge has not upheld the contention of the writ petitioners that the order of the Speaker suffers from *mala fide* and/or suffers from denial of the principles of natural justice, it clearly follows that the only ground available, in the present case, for interference, in exercise of power of judicial review, under Article 226 of the Constitution of India and, especially, when a writ of *certiorari* had been sought for, was *perversity*, which, according to Mr. Lalit Kishore, did not exist in the present case inasmuch as the impugned order of the Speaker is based on the admitted facts available on record and upon taking into consideration all relevant facts.

103. Power of judicial review, under Article 226 of the Constitution of India, points out Mr. Lalit Kishore, is available against a decision-making process and not against the decision itself and, in the case at hand, when, according to Mr. Lalit Kishore, no irrelevant fact has been taken into account, and no relevant fact has been omitted to be taken into consideration, by the Speaker, the impugned order, dated 01.11.2014, did not call for any interference in exercise of power under Article 226 of the Constitution of India.

104. Mr. Lalit Kishore, learned Senior Counsel, further submits that disqualification takes place on a particular date if the conduct of a particular member stands



proved on a given date and in the present case, though there may not be a particular date, when the writ petitioners could be said to have voluntarily abandoned their membership of the Janta Dal (U) political party, the fact remains that it is the chain of events, ranging from the stage of proposing the names of candidates against the official candidates of Janta Dal (U) political party and continued up to the date, when they became Election Agents and actively canvassed to ensure victory of their own candidates by defeating the official candidates of Janta Dal (United), which were all required to be taken into consideration. In these circumstances, the Speaker, Bihar Legislative Assembly, had correctly held, according to Mr. Lalit Kishore, that the writ petitioners had voluntarily given up the membership of their party and disqualified them accordingly.

105. Mr. Lalit Kishore, learned Senior Counsel, submits that the claim of the writ petitioners regarding discrimination is not sustainable at all as the said ground of violation of Article 14 of the Constitution of India is not available in a proceeding relating to a writ of *certiorari* and the impugned order of the Speaker is to be adjudged on its own strength and weaknesses.

106. Coupled with the above, according to Mr. Lalit Kishore, no case of discrimination has been made out by

the writ petitioners-*private respondents* and even the learned single Judge has not found the impugned order, dated 01.11.2014, suffering from any discrimination.

107. Mr. Lalit Kishore, learned Senior Counsel, appearing on behalf of the appellant, in LPA No. 128 of 2015, has rightly relied upon a Constitution Bench of the Supreme Court, in the Case of **Udit Narayan Singh Malpaharia** (supra), wherein, discussing as to who are necessary parties in a *certiorari* proceeding, the Supreme Court has held thus:

"It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed the decree need not be made a party and on the same parity of reasoning it is contended that a tribunal need not also be made a party in a writ proceeding. But there is an essential distinction between an appeal against a decree of a subordinate court and a writ of certiorari to quash the order of a tribunal or authority : in the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, but in



*the case of the latter, a writ of certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. **If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceeding.** In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition.*

(Emphasis is supplied)

Submissions made on behalf of writ petitioners-private respondents on merit of the appeals :

108. Defending the order under appeal, passed by the learned single Judge, on the merits of the appeal and in response to the arguments advanced on behalf of the appellants, Mr. Kanth, learned Senior Counsel, has submitted that the findings of the Speaker, in his impugned order, dated 01.11.2014, were not sustainable on all counts in terms of the Constitution Bench decision in the case of **Kihoto Hollohan** (supra). Mr. Kanth has further submitted that the right to elect and right to be elected are not only statutory



rights under the Representation of the People Act, 1951, but also, in view of Article 326 of the Constitution of India, constitutional right inasmuch as Article 326 of the Constitution of India provides election to the House of People and the Legislative Assemblies of every State on the basis of adult suffrage, that is to say, every person, who is a citizen of India and who is not less than 18 years of age, on such date, as may be fixed in this regard, may, by any law made by any Legislature and is not otherwise qualified under the Constitution or any other law made by appropriate Legislature on the ground of being non-resident, unsoundness of mind, guilty of crime, corrupt or illegal practice, shall be entitled to be registered as voter at any such election.

109. Mr. Kanth has further contended that Section 62 of the Representation of the People Act, 1951, provides that no person, who is not, and except as expressly provided under the said Act, every person, who is for the time being, entered into the electoral roll of any constituency, shall be entitled to vote in their constituency.

110. According to Mr. Kanth, right to propose a candidate in any election is vested only in the electors residing in that particular constituency and a contesting candidate cannot necessarily be elector of that constituency, but so far proposer is concerned, he must necessarily be a

voter in that constituency. Mr. Kanth has accordingly submitted that right to vote includes right to propose since one cannot vote for a candidate of his choice if a candidate of his choice is not proposed by an elector.

111. Mr. Kanth has placed reliance on a Constitution Bench decision of the Supreme Court, in **Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others**, reported in **(1978) 1 SCC 405**, with particular reference to Paragraph 92 (1) (b) thereof, to submit that the word '*election*' has a very wide connotation, commencing from the Presidential notification calling upon the electorate to elect and culminating in final declaration of the returned candidate. He has, thus, submitted that conduct of election, in terms of the provisions under the Representation of the People Act, 1951, confers a right upon the electorate to propose a candidate and right to elect is inseparable from the right to propose.

112. Coming to the facts of the present case, it is the submission of Mr. Kanth, learned Senior Counsel, that the candidates, proposed by the writ petitioners-*private respondents*, were of the same political party and, therefore, the allegations, contained in the *complaint*, do not constitute a *defection*; rather, it is a case of *dissent* from the dictatorship of the party leadership.



113. Highlighting *mala fide* against the Speaker, it is contended by Mr. Kanth, learned Senior Counsel, that there were 10 (ten) petitions filed by Shri Sharvan Kumar, as *complainant*, seeking disqualification under Paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India, but the Speaker did not fix any date of hearing after 18.06.2014 so far the petitions against Ms. Renu Kumari and Ms. Anu Shukla are concerned, whereas the proceedings against the writ petitioners-*private respondents* were taken up on day-to-day basis for quick disposal. It is pointed out by Mr. Kanth, learned Senior Counsel, that till date, the aforesaid proceedings are pending before the Speaker without any date of hearing being fixed.

114. Attacking the impugned order passed by the Speaker, Mr. Kanth, learned Senior Counsel, has submitted that it is in breach of the principles of natural justice also inasmuch as the writ petitioners-*private respondents* were stopped from arguing their case in the midst of arguments. He has submitted that the points, mentioned in the written statements, were not considered by the Speaker and though the writ petitioners-*private respondents* took specific stand that they had never opposed the party at any point of time nor had they joined their hands with any other political party, rather, they had raised their voices against the decision of a

leader of the party, while supporting the other member of the party, and their conduct, therefore, do not amount to *defection*.

115. Alleging discrimination against the Speaker, Mr. Kanth, learned Senior Counsel has submitted that while passing the impugned order, the Speaker has ignored the fact that there were 13 legislators of the party, who had proposed the two candidates, and the *complaint* was filed against 09 (nine) of them and the retraction on behalf of Ms. Renu Kumari was accepted by the Party and the proceedings against her had been abandoned and, therefore, the act of making the *complainant* is violative of Article 14 of the Constitution of India. In support of his submission, Mr. Kanth, learned Senior Counsel, has placed reliance upon the Supreme Court's decisions in the case of **Balchandra L. Jarkiholi V. B. S. Yedurappa**, reported in **(2011) 7 SCC 1** (Paragraphs 152 and 153) and **D Sudhakar (2012) 2 SCC 708** (Paragraphs 55 to 61).

116. Mr. Kanth has also submitted that it would be a relevant consideration as to whether the writ petitioners-*private respondents* had changed their political affiliation and if there is no material on record indicating that they had joined any other political party or they even proposed candidature of any other political party in the election, in

question, it cannot be said that they had voluntarily given up membership of their party or that their conduct is such as would amount to voluntarily giving up of membership of their party.

117. In support of his above submissions, Mr. Kanth, learned Senior Counsel, has referred to the fact that the two candidates, whom the writ petitioners-*private respondents* had proposed, were members of Janta Dal (United), when they were proposed by the writ petitioners-*private respondents*, and they are still the members of the same political party, i.e., Janta Dal (United). Mr. Kanth, learned Senior Counsel, has added that the political party does not have any grudge against them and their primary memberships of Janta Dal (United) party have not even been suspended.

118. Mr. Kanth, learned Senior Counsel, has further submitted that the legislative intent in enacting the *Anti-defection* Law was to curb and control the menace of floor crossing. He has referred to the object of the Bill, relevant portion from Paragraph 3 of which, as extracted from Third Edition of the Book, "Law and Parliamentary Privileges by Dr. Subhash C. Kashyap", is being quoted hereinbelow:

"In order to bring about a national consensus on the Bill, the Prime Minister held prolonged

consultation with the leaders of the opposition groups. The Government acceded to the demand of dropping a controversial clause from the Bill relating to disqualification of a member on his expulsion from his political party for his conduct outside the House."

119. Mr. Kanth concluded his arguments with the submission that since the writ petitioners-*private respondents* had proposed the two members of their own political party for the election, in question, by raising a voice of *dissent* against the decision of a member of the party and had also worked as the Election Agents of their proposed candidates, the learned single Judge rightly held that the conduct of the writ petitioners-*private respondents* can be said to be an act of *dissent* and not *defection*.

WAS THE WRIT PETITION MAINTAINABLE IN THE ABSENCE OF THE SPEAKER, BIHAR LEGISLATIVE ASSEMBLY

120. Before we proceed to enter into the dispute as to whether the conduct of the *private respondents*, in the facts and circumstances of the case, rendered them liable for *disqualification* as Members of Bihar Legislative Assembly and whether the decision of the Speaker, impugned in the writ proceeding, was valid or not and whether the learned Single Judge rightly interfered with the decision of the Speaker or not, there is an unavoidably significant aspect of law, which

warrants our consideration.

121. Turning to the question as to whether this Court shall enter into the merits of the present appeals, we are confronted with a situation, which is, to our mind, is somewhat flabbergasting.

122. Having pointed out that a proceeding, in relation to *disqualification* of a member of a Legislative Assembly, is not a proceeding beyond the scope of judicial scrutiny of the High Court under Article 226 or 227 of the Constitution of India, concluded the Supreme Court, at Paragraph 109, in **Kihoto Hollohan** (supra), that taking into account the nature of function, which is exercised by a Speaker of the Legislative Assembly under Paragraph 6 of the Tenth Schedule, his decision or order would be amenable to Article 136, 226 and 227 of the Constitution of India, but the scope of judicial review would be confined to *jurisdictional errors*, namely, infirmities based on violation of constitutional mandate, *mala fide*, non-compliance with rules of natural justice and perversity.

123. In no uncertain words, concluded the Supreme Court, in **Kihoto Hollohan** (supra), that while acting as an authority to adjudicate the question relating to *disqualification* of a member of a House in the Legislative Assembly, the Speaker functions as a Tribunal and his orders

would, therefore, remain open to judicial review, though the scope of judicial review would remain, as already pointed out above, confined to *jurisdictional errors*, namely, infirmities based on violation of constitutional mandate, *mala fide*, non-compliance with rules of natural justice and perversity.

124. What surfaces from the above discussion is that while dealing with the proceedings under Paragraph 6 (1) of the Tenth Schedule, relating to *disqualification* of a Member of a House, the Speaker acts as a Tribunal and, therefore, a writ of *certiorari* can be issued against the orders passed by the Speaker under Paragraph 6(1) of the Tenth Schedule if the order suffers from any *jurisdictional error*, such as, infirmities based on violation of constitutional mandate, *mala fide*, non-compliance of rules of natural justice and/or perversity.

125. No wonder, therefore, that in the case at hand, the *private respondents* sought for issuance of a writ in the nature of *certiorari* for quashing of the order, dated 01.11.2014, passed by the Speaker, disqualifying the *private respondents* from being members of Bihar Legislative Assembly.

126. Could the learned single Judge have entertained the writ petition without the Speaker having been retained as party to the writ proceedings? The answer to this

question is not very far to seek inasmuch Mr. Lalit Kishore, learned Senior Counsel, has rightly pointed out to the case of **Udit Narayan Singh Malpaharia** (supra), wherein a Constitution Bench of the Supreme Court observed,

" or even illegally, but in the case of the latter, a writ of certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. **If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceeding.** In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition."

(Emphasis is supplied)

127. From the observations made, and the law laid down, in **Udit Narayan Singh Malpaharia** (supra), it becomes clear that if a writ of *certiorari* is sought for against an order passed by a Tribunal, then, the Tribunal becomes a necessary party and in its absence, therefore, a writ petition,

such as one at hand, could not have been entertained, adjudicated upon, decided and/or disposed of.

128. Logically extended from what have been concluded above, it would mean that the writ petition, in the present case, but without the Speaker having on the record as a party to the writ petition, was not maintainable and ought to have been dismissed.

129. It is, however, of paramount importance to note that the Speaker, Bihar Legislative Assembly, stood, indeed, impleaded as a party-respondent in the writ petition, at the time, when the writ petition was filed. Later on, however, on the objection being raised, the Speaker, Bihar Legislative Assembly, was deleted from the array of the parties. The decision to delete the Speaker, Bihar Legislative Assembly, from the array of the parties was the decision taken at the peril of the writ petitioners.

130. Notwithstanding, however, the *private respondents'* decision to delete the Speaker, Bihar Legislative Assembly, from the array of the parties was at the peril of the *private respondents*, the fact remains, as we have already indicated above (while discussing the question of necessary and proper parties) that when the Court finds that a proceeding is not maintainable, the proceeding must be terminated without carrying out any exercise to determine the



merit or otherwise of the respective cases of the parties concerned and/or the question as to what reliefs the parties are entitled to, but this general principle is subject to certain exceptions, one of such exceptions being that if the proceeding cannot progress on account of omission to implead a necessary party, the Court shall give an opportunity to the person, who approaches the Court, to implead the necessary party and if, even after being afforded with such an opportunity, the person, who approached the Court, does not implead the party concerned, the proceeding must end in dismissal.

131. Situated thus, we are clearly of the view that either the learned single Judge ought not to have allowed deletion of the Speaker, Bihar Legislative Assembly, from the array of the parties in the writ petition, or if the deletion was allowed, then, the writ petition ought to have been dismissed.

WHAT SHALL BE THE COURSE TO BE ADOPTED BY THIS COURT, IN THE PRESENT APPEALS?

132. Though we have toyed with the idea of setting aside the order, under appeal, passed by the learned single Judge and remit the matter for the purpose of giving an opportunity to the writ petitioners-*private respondents* to implead the Speaker, Bihar Legislative Assembly, as a party respondent in the writ petition, yet when, deeply and dispassionately, we reflect on this aspect of the present appeals,



we realize that even if the writ petition is remitted for the purpose of decision afresh by the learned single Judge with the direction as indicated above, no fruitful purpose would be served and such a direction will be a fruitless exercise in the light of the fact that the appeals have been heard on merit, apart from the preliminary issue of maintainability, and since we have held the appeals maintainable, it would be prudent and wiser to dispose of the appeals on merit, more so, if the disposal of the appeals, in the absence of the Speaker, as a party, would not adversely affect the Speaker's decision, which stood impugned in the writ petition.

MERIT OF THE ORDER UNDER APPEAL

133. In the backdrop of the view taken above, when we consider the impugned order in the face of the facts of the case and the law relevant thereto, we find that though limited jurisdiction is available to a High Court against the order of a Speaker passed under the Tenth Schedule of the Constitution of India, the learned single Judge has set aside the order for the reasons, which have been described in the impugned order, dated 06.01.2015, as under:

"The circumstances noted hereinabove lead to several questions and the most striking of which is that if the conduct of the petitioners to act as proposers/election agents/canvassers of Shri Anil Kumar Sharma and Shri Shabir Ali be held as an act of voluntary surrender of their membership,



how their conduct is to be judged where in the same transaction these petitioners have supported the candidature of Shri Sharad Yadav. The order impugned is silent on this issue which is very relevant in the present context where the disqualification of the petitioners solely rests on their conduct in the Rajya Sabha election. In my opinion this single aspect of the matter as well as the absence of any other evidence to reflect the act of disloyalty of these petitioners or of floor-crossing or their act being backed by any lure of benefits, their conduct cannot constitute an act of voluntary surrender for even when an elected representative owes his allegiance to the party to which he belongs and is also answerable to the electorate for his conduct but until such time that there are materials to demonstrate his disloyalty to his party and an act of abandonment of membership, a disqualification in such circumstances would be an abuse of the avowed object for which the Law on Defection was conceived.

*Though learned senior counsel for the respondents have laboured hard to impress this Court on the scope of judicial review and its restrictions even when the law on the issue stands settled as back as in 1992 vide judgment of the Supreme Court rendered in the case of **Kihoto Holohan** (Supra) and the subsequent judgments of the apex court some of which find discussion in this judgment but in my opinion the order under challenge in failing to take note of the circumstances discussed hereinabove, it stands covered within the parameters of paragraph 28 of*

the judgment rendered in the case of **Municipal Committee** (supra) warranting a judicial review on the following summarized grounds:

(a) A voluntary surrender of membership falling within the meaning of term „defection“ and „dissent“ are not synonymous and although every act of „defection“ may be for reasons attributable to dissent either backed by a lure for office or for other considerations but the converse is not always true and every act of „dissent“ does not necessarily amount to „defection“ or a voluntary surrender of membership.

(b) “Dissent” is an integral part of a vibrant democracy and is not the same as „defection“ especially in the present context where admittedly the candidates fielded by the party were not approved by its Parliamentary Board and the petitioners expressed their dissent against only two of the three candidates fielded by the party;

(c) A conduct of legislator has to be adjudged cumulatively and not in a partial manner. The dissent shown by the petitioners by extending support to the two members of the party who stood as independents against two of the three candidates fielded by the party in the Rajya Sabha election while

extending support to the third candidate is by itself not sufficient to unseat them from membership in absence of accompanying circumstances backing such act which have reflections of abandonment of loyalty to the party;

(d) The order impugned is resting entirely on a single act of these petitioners of extending support to two members of the Janta Dal (United) Party who stood as independents in the Rajya Sabha election against two of the candidates fielded by the party but has completely failed to measure the act of these petitioners in supporting the candidature of Sri Sharad Yadav, the third candidate fielded by the Party in the very same election;

(e) Though an isolated act of standing independent against the party's candidate may be capable of interpretation as a disloyalty to the party and an abandonment of membership but an isolated act of extending support to such independents with nothing further to add on, cannot amount to voluntary surrender of membership;

(f) The order fails to take notice of the fact that except for the admitted position that these petitioners had acted as proposers and election agents

of Sri Anil Kumar Sharma and Sri Shabir Ali, there is no other evidence on record confirming the opinion expressed in the petition of the convener;

(g) If voting as per conscience in a Rajya Sabha election cannot be a subject of disqualification under paragraph 2(1)(a) of the Tenth Schedule, then an act of extending support by becoming proposer/election agent is only a step behind the conscience vote so exercised;

(h) The order is silent on the date of voluntary surrender of membership.

For my reasons recorded hereinabove, I am unable to uphold the view expressed by the learned Speaker and for the same reasons the judgment and order dated 01.11.2014 passed by the Speaker as contained in Annexure-13 to the writ petition as well as the notification bearing no.1695 dated 01.11.2014 issued pursuant thereto cannot be upheld and are accordingly set aside. The petitioners stand restored to their respective positions. The consequences shall follow.

The writ petition is allowed but in the circumstances there shall be no order as to costs."

134. What, in substance, the learned single Judge has held is that the Tribunal, i.e. the Speaker in the present case, ought to have taken the cumulative effect of all the



relevant facts and, according to the learned single Judge, one of the relevant facts, which had not been considered by the Speaker, was the fact that the writ petitioners (i.e., the *private respondents*) had not set up any candidate against Shri Sharad Yadav, who was, eventually, elected uncontested to Rajya Sabha as a nominee of Janta Dal (United) Party.

135. Before we proceed further, we must also, at this very stage, point out that though it had been raised in the writ petition that Shri Sharad Yadav's nomination had not been decided by the Parliamentary Board of Janta Dal (United) Party, the learned single Judge has, we note, correctly held that this relates to internal affairs of a political party, which is not fit to be examined in a writ proceeding. Obviously, the issue, so raised, required determination of disputed questions of fact and as Shri Sharad Yadav was not a party to the writ petition from the inception of the writ petition and, no such issue, in his absence, could have been framed or determined. This apart, the political party concerned ought to have been heard before any decision, on the issue aforementioned, was arrived at and this would have necessitated impleading the political party, too, as a party to the writ petition. Secondly, Shri Sharad Yadav was, admittedly, allotted symbol of the party concerned and filed his nomination as a candidate of Janta Dal (United) Party. Thus, when Shri Sharad Yadav was allotted the symbol of Janta Dal (United)

Party, he became, admittedly nominee of the said party. Even the writ petitioners (i.e., *private respondents*) have submitted to the effect that because of the fact that Shri Sharad Yadav is the National President of the party concerned, they refrained from setting up any candidate against him.

136. What has, however, not been pleaded, and escaped the attention of the learned single Judge, is that there is no pleading in the writ petition and there is no material on record to show that anyone was willing to contest against Shri Sharad Yadav. A *proposer* can propose the name of a candidate provided that the candidate is willing to be elected, if necessary, by a contest. In the complete absence of any pleading that there was any candidate willing to contest against Shri Sharad Yadav and yet the writ petitioners (i.e., private respondent) chose not to propose or support such a candidate against Shri Sharad Yadav, it was *otiose* to contend that merely because of the fact that the writ petitioners (i.e., *private respondents*) had not proposed the name of any candidate against Shri Sharad Yadav, the writ petitioners shall be taken to have refrained from proposing the name of any candidate against the candidature of Shri Sharad Yadav, just like they have done in the case of the other two Janta Dal (United) Party nominees, namely, Shri Pawan Kumar Verma and Shri Gulam Rasul Baliyawari.

137. What ought to have been pleaded in the writ



petition, if we may reiterate, is that there was or were person or persons ready and willing to contest against Shri Sharad Yadav, but because of the fact that he is the National President of Janta Dal (United) Party, the writ petitioners (i.e., *private respondents*) refrained from proposing the name of any such candidate or candidates. In the absence of any pleading and in the absence of any material on record that there was anyone available to contest election, in question, against Shri Sharad Yadav, the fact that the writ petitioners had not set up any candidate was irrelevant, redundant and could not have been a relevant factor for determination in the present writ proceedings.

138. In short, the fact that the writ petitioners (i.e., *private respondents*) had not set up any candidate against Shri Sharad Yadav was not a relevant factor and non-consideration of this aspect by the Speaker, under the impugned order, was not bad in the facts of the present case and the law relevant thereto.

139. The other ground, which has persuaded the learned single Judge to interfere with the impugned order, dated 01.11.2014, passed by the Speaker, is that the learned single Judge has found that the act of proposing the name of Shri Anil Kumar Sharma and Shri Shabir Ali, as candidates against Shri Pawan Kumar Verma and Shri Gulam Rasul Baliyawari, *canvassing and working* for the candidates so set up by becoming their

proposers and also by working as their *Election Agents*, amounted to mere '*dissent*' and not to '*voluntarily giving up the membership of the political party concerned*'.

140. It is of paramount importance to recall, as we have already indicated above, that in the complete absence of any pleading that there was anyone available to contest, in question, the election against Shri Sharad Yadav, it was not available to the writ petitioners (i.e., *private respondents*) to contend that the fact, that they had not set up any candidate against Shri Sharad Yadav, showed that they were only expressing their resentment against the dictatorial attitude of their own political party in nominating Shri Pawan Kumar Verma and Shri Gulam Rasul Baliyawari.

141. *Dehors* the fact, therefore, that the writ petitioners (i.e., *private respondents*) had not set up any candidate against Shri Sharad Yadav, the question for consideration was as to whether their conduct, in *proposing* the names of Shri Anil Kumar Sharma and Shri Shabir Ali, as candidates for membership of Rajya Sabha against the nominated candidates of their own political party, namely, Shri Pawan Kumar Verma and Shri Gulam Rasul Baliyawari, their becoming election agents, their acts of canvassing in favour of their proposed candidates, amounted to *voluntarily giving up membership of their political party* or did their conduct merely

amount '*dissent*'.

142. We may also add and clarify, at this stage, that Mr. Giri, learned Senior Counsel, is correct when he points out that in **Balchandra L. Jarkiholi v. B. S. Yeddyurappa**, reported in **(2011) 7 SCC 1**, the observations, appearing to the effect that '*dissent*' does not amount to '*defection*' is not really the conclusion of the Supreme Court, but the same was the observation made by the learned single Judge, whose decision laid the foundation for carrying the matter, eventually, to the Supreme Court. No wonder, therefore, that in **B. S. Yeddyurappa** (supra), paragraph 50 reads as under:

"50. *The learned Judge further observed that deserting the leader and deserting the Government is not synonymous with deserting the party. If a Minister resigned from the Ministry, it would not amount to defection. What constitutes defection under Para 2(1)(a) of the Tenth Schedule is deserting the party. The learned Judge observed that dissent is not defection and the Tenth Schedule, while recognising dissent, prohibits defection."*

143. Let us, however, proceed without determination of the question as to whether '*dissent*' amounts to '*defection*' or not, for, as a pure statement of law, such a view is not wholly incorrect.

144. The material question, however, in the

present case, was, and still remains is: whether the acts of the *private respondents*, in setting up the candidates, in opposition to the official candidates of Janta Dal (United), canvassing and working for the candidates so set up by becoming their proposers and also by working as their election agents, amounted to '*defection*' or not.

AMBIT OF *CERTIORARI* JURISDICTION BY HIGH COURT

145. We must point out here the limited role, which the High Court plays, while exercising writ jurisdiction under Article 226/227 of the Constitution of India, when testing correctness or otherwise of an order passed by a Tribunal or any other quasi-judicial authority.

146. In our opinion, and as has been repeatedly held by the Supreme Court, the function of the High Court, in a proceeding for issuance of a writ in the nature of *certiorari*, is not appellate in nature and finding of a fact, arrived at by a Tribunal or a quasi-judicial authority, cannot be interfered with upon re-appreciation of evidence. The Court is concerned with the determination of the question whether the Tribunal has or has not acted within its jurisdiction or has acted in breach of principles of natural justice in exercise of its jurisdiction, or the Tribunal's order suffers from *mala fide* or is perverse.

147. It is, therefore, not open to a High Court, while exercising power of judicial review under Article 226 of the

Constitution of India, to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and/or decide what is the proper view to be taken or the order to be made.

148. In the case of **State of A.P. v. Sree Rama Rao (AIR 1963 SC 1723)**, the Supreme Court, laid down the law, in no uncertain words, as regards exercise of *certiorari* jurisdiction by a High Court while dealing with a departmental proceeding, at Paragraph 7, thus,

*"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. **The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are***



not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed

before the High Court in a proceeding for a writ under Article 226 of the Constitution.

(Emphasis is supplied)

149. In the case of **Syed Yakoob v. K. S. Radhakrishnan (AIR 1964 SC 477)**, the Supreme Court reiterated that a finding of fact, recorded by a Tribunal, cannot be challenged on the ground that relevant and material evidence available before the Tribunal was not sufficient or was inadequate to sustain the finding. The relevant observations, appearing in this regard, at paragraph 7 of **Syed Yakoob** (supra), read:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural



*justice. **There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.*** In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, **we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and**

the inference of fact to be drawn from the said finding is within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Ahmad Ishaque*, 1955-1 SCR 1104: ((S) AIR 1955 SC 233): *Nagendra Nath v. Commr. of Hills Division*, 1958 SCR 1240: (AIR 1958 SC 398) and *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168.

(Emphasis is added)

150. In its later decision, in the case of **State of A.P. v. Chitra Venkata Rao**, reported in **(1975) 2 SCC 557**, the Supreme Court, in explicit terms, held that the jurisdiction to issue a writ of *certiorari*, under Article 226 of the Constitution of India, is a supervisory jurisdiction and not the appellate one. The Supreme Court, in **Chitra Venkata Rao** (supra), has dealt with the scope of Article 226 of the Constitution of India elaborately, considering previous pronouncements on this aspect, and laid down the law as follows:

"21. *The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao (AIR 1963 SC 1723@1964) 3 SCR 25 : (1964) 2 LLJ 150). First, there is no warrant for the view that in considering*



*whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 **over the decision of the authorities holding a departmental enquiry against a public servant.** The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, **it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of***



enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

(Emphasis is supplied)

151. In **Chitra Venkata Rao** (supra), the Supreme Court also referred its earlier decision in **Railway Board, representing the Union of India, New Delhi v. Niranjan Singh**, reported in **(1969) 1 SCC 502**, observed as under:

"23. *The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. **The findings of fact reached by an inferior court or tribunal as a result of the appreciation of***



evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syed Yakoob v. K.S. Radhakrishnan* (AIR 1964 SC 477).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court

to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

(Emphasis is added)

152. In **State of Haryana v. Rattan Singh**, reported in **(1977) 2 SCC 491**, the Supreme Court, pointed out, at paragraph 4, as follows:

"4. Absence of *any* evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is *some* evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

153. Though the pronouncements of the Supreme Court, reproduced above, on the scope of judicial review under Article 226 of the Constitution of India, arise out of departmental



proceedings against an employee, they lay down well established and recognized norms for exercise of jurisdiction by a High Court under Article 226 of the Constitution of India, particularly, in a proceeding for issuance of a writ in the nature of *certiorari*. This principle has been followed by Courts in different cases including the case of **Union of India v. P. Gunasekaran**, reported in **(2015) 2 SCC 610**.

154. In the present case, the learned single Judge has substituted his own view in place of the view taken by the Speaker, Bihar Legislative Assembly. The learned single Judge, while dealing with the writ application, found that the term '*defection*' and '*dissent*' were not synonymous and every act of '*dissent*' does not amount to '*defection*' or voluntarily surrender of membership. The learned single Judge has further concluded that '*dissent*' being an integral part of vibrant democracy is not same as '*defection*', particularly, when the candidates, proposed by the party, were not approved by its parliamentary board and the petitioners expressed their '*dissent*' against only 2 of the 3 candidates proposed by the party. If the learned single Judge was of the view that the Speaker ought to have considered this aspect, which, according to the learned single Judge, the Speaker had failed to consider, the learned single Judge could have remanded the matter back to the Tribunal after quashing the order on this ground for consideration afresh by the Speaker.



155. In our considered view, the learned single Judge assumed the role of an appellate authority and substituted his own views in place of the view taken by the Speaker, Bihar Legislative Assembly, while quashing the order, dated 01.11.2014, passed by the Speaker, Bihar Legislative Assembly, which is impermissible, while exercising jurisdiction under Article 226 of the Constitution of India. Our view is fortified by a catena of decisions of the Supreme Court in the cases of **Veerappa Pillai v. Raman and Raman Ltd. and Others**, reported in **(1952) S.C.R. 583**, **Thakur Birendra Singh v. The State of Madhya Pradesh and Others**, reported in **1969 (3) SCC 489**, **Y. Mahaboob Sheriff and Sons v. Mysore State Transport Authority, Bangalore and Others (AIR 1960 SC 321)**. Reference may also be made, in this regard, to the decision of the Supreme Court in the case of **Ramesh and Another v. Gendalal Motilal Patni and Others (Air 1966 SC 1445)**. The relevant observations, made at paragraph 5, in **Thakur Birendra Singh** (supra), read as under:

"5. It appears to us that the High Court had gone wrong in giving these further directions. The High Court was not sitting in appeal over the decision of the Board of Revenue. The High Court should have quashed the orders without giving any further directions. It was urged before us — and not without some force — that the



appellant had been compelled to come to this Court by way of special leave merely because of the observations of the High Court which the Collector and the Revenue Authorities were bound to give effect to. Once the orders complained of are quashed the matter should have been left at large without any further directions leaving the Revenue Authorities free to take any steps allowable under the law. We therefore allow the appeal making it clear that the Revenue Authorities will be entitled to take any steps for reviewing the earlier orders and making alterations in the records sanctioned by law. In doing so, they will not be bound by any expression of opinion of the High Court or the directions given by it. There will be no order as to costs."

156. Having considered thus, in our opinion, in exercise of *certiorari* jurisdiction, the High Court cannot itself make the proper order, which should have been made by the Tribunal. The order, under appeal, in our opinion, is not sustainable on this ground too.

157. We do not find, on the basis of rival pleadings and submissions made on behalf of the parties, that there has been any violation of principle of natural justice by the Speaker in the proceeding, in question, under Paragraph 6 of the Tenth



Schedule of the Constitution of India, which could be said to have prejudiced their case adversely. As a matter of fact, except the submission that the *private respondents*-writ petitioners were stopped from arguing their case in the midst of their argument, nothing else has been pleaded as to how they were prejudiced. No prejudice has been shown to have been caused to the private respondents-writ petitioners, even if their plea that arguments were closed abruptly in the midst of the argument is accepted.

158. Absolutely no case of discrimination is made out in the present set of facts on the ground that the Speaker has not disposed of further applications presented before him against few other similarly situated members of the House, for their disqualification on the ground of *defection*, particularly, as such applications are still pending.

159. In the absence of impleadment of Speaker himself, in his individual capacity, as party respondent in the writ application, the plea of *mala fide* against the Speaker, while exercising his jurisdiction under Paragraph 6 of the Tenth Schedule of the Constitution of India, is not at all available in the facts of the present case. Further, foundational facts are completely lacking, in the pleadings of the writ petitioners-*private respondents*, to constitute *mala fide* in the Speaker's action.



160. Though the plea of discrimination, *mala fide* and violation of principles of natural justice were taken by the writ petitioners-*private respondents* before the learned single Judge, there is no finding, on these aspects, by the learned single Judge in favour of writ petitioners-*private respondents*. No cross appeal has been preferred by them and, in such circumstances, such a plea cannot be entertained in this appeal and deserves to be, therefore, rejected.

161. In view of the discussions made above, we are of the view that the order passed by the learned single Judge, under appeal, needs to be interfered with for the following reasons:-

(a) The order has been passed in the absence of necessary party, i.e., the Speaker, Bihar Legislative Assembly, as the party respondent, whose order was under challenge before the learned single Judge in a *certiorari* proceedings under Article 226 of the Constitution of India and where the Speaker had acted as a Tribunal, while exercising his jurisdiction under Paragraph 6(1) of the Tenth Schedule of the Constitution of India.

(b) The well recognized principles enunciated and laid down in the binding precedents on the scope of exercise of jurisdiction by the High Court under Article 226 of the Constitution of India, in a *certiorari* proceeding, have not been

adhered to, while allowing the writ application by the learned single Judge and the Court assumed the jurisdiction of an appellate authority over the decision of the Speaker and substituted its own views in place of the findings of the Speaker arrived at in a quasi judicial proceeding.

(c) If, on the basis of the materials and evidence on record and upon appreciation and evaluation of such materials, the Speaker, exercising jurisdiction under Paragraph 6(1) of the Tenth Schedule of the Constitution of India, came to a finding that conduct of the writ petitioners/*private respondents* amounted to '*defection*' so as to make them subject to *disqualification* under the Tenth Schedule of the Constitution of India, the learned single Judge, exercising power of judicial review, could not have held, in the facts and circumstances of the present case, that the conduct of such writ petitioners/*private respondents* can be said to be mere '*dissent*' and not '*defection*', particularly, when the findings, arrived at by the Speaker, cannot be said to be without any evidence or basis and the reasons assigned by him cannot be said to be so illogical and arbitrary that no person of ordinary prudence could have arrived at the conclusion, which was arrived at by the Speaker, particularly, when the fact that of Shri Sharad Yadav having been elected uncontested, was, in the contextual facts of the present case, a wholly irrelevant factor and had rightly not been



taken into account by the Speaker, while making the impugned order, more so, when we find it wholly impossible to treat as a mere *dissent* and not *defection*, the acts of private respondents in setting up the candidates, in opposition to the official candidates of Janta Dal (United), *canvassing and working* for the candidates so set up by becoming their proposers and also by working as their *Election Agents* .

(d) The order of the Speaker, Bihar Legislative Assembly, dated 01.11.2014, cannot be said to be discriminatory or in violation of principles of natural justice. The said order, in the facts and circumstances of the case, as discussed above, cannot be said to be *mala fide* either.

(e) We do not find any infirmity in the decision-making process nor do we find the Speaker's decision (which stood impugned in the writ application) perverse, in any manner, warranting thereby interference by this Court in a *certiorari* proceeding under Article 226 of the Constitution of India.

162. Thus, the order, under appeal, dated 06.01.2015, passed in CWJC No. 18807 of 2014, by the learned single Judge cannot be sustained and has to be necessarily interfered with.

163. In the result and for the foregoing reasons, these appeals succeed and the order, under appeal, dated 06.01.2015, passed in CWJC No. 18807 of 2014, stand hereby

set aside. The writ petition, in question, shall also accordingly stand dismissed.

164. There shall be, however, no order as to costs.

(I. A. Ansari, J.)

Chakradhari Sharan Singh, J. : I agree.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/AFR

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