

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

WP(C).No. 28870 of 2015 (G)

PETITIONER(S):

**P.C.GEORGE, M.L A., AGED 64 YEARS,
S/O.CHACKO, 101-POONJAR, KERALA LEGISLATIVE ASSEMBLY,
RESIDING AT PLATHOTTATHIL HOUSE,
ERATTUPETTAH-2, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.G.RENJITH
SMT.ASWINI SANKAR R.S.
SMT.S.PARVATHI**

RESPONDENT(S):

- 1. THE HON'BLE SPEAKER,
KERALA LEGISLATIVE ASSEMBLY,
THIRUVANANTHAPURAM-695001.**
- 2. ADVOCATE THOMAS UNNIYADAN,
KERALA GOVERNMENT CHIEF WHIP,
THIRUVANANTHAPURAM-695001.**

**R1 BY ADVOCATE GENERAL SRI.K.P.DANDAPANI
R2 BY ADVS. SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.AJAY BEN JOSE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS

- P1: COPY OF THE RULES PUBLISHED IN THE KERALA GAZETTE EXTRA NO.688 DATED 29/7/186 (NO.7232/TABLE 1/86/LEG DATED 29/7/1986)
- P2: COPY OF THE LETTER NO.4010/TABLE 1/2015 DATED 24/7/15
- P3: COPY OF THE PETITION DATED 21/7/15 SUBMITTED BY THE R2 BEFORE THE HON'BLE SPEAKER
- P4: COPY OF LETTER DATED 3/6/15 TO THE HON'BLE SPEAKER BY P.C.GEORGE ALONG WITH THE REPLIES AND COVERING LETTER (ANNEXURE (A))
- P5: COPY OF POSTER OF P.C.GEORGE WITH ACDF CANDIDATE K.DAS (ANNEXURE (B))
- P6: COPY OF TIMES OF INDIA NEWSPAPER REPORT DATED 27/4/15 (ANNEXURE (D))
- P7: COPY OF INDIAN EXPRESS NEWSPAPER REPORT DATED 27/4/15 (ANNEXURE (E))
- P8: COPY OF MATHRUBHUMI NEWSPAPER REPORT DTD.31/3/15 (ANNEXURE (F))
- P9: COPY OF MALAYALA MANORAMA NEWSPAPER REPORT DTD.31/3/15 (ANNEXURE (G))
- P10: COPY OF MANGALAM NEWSPAPER REPORT DTD.27/3/15 (ANNEXURE (H))
- P11: COPY OF DESHABHIMANI NEWSPAPER REPORT DTD.9/4/15 (ANNEXURE (I))
- P12: COPY OF MATHRUBHUMI NEWSPAPER REPORT DTD.14/4/15 (ANNEXURE (J))
- P13: COPY OF MATHRUBHUMI NEWSPAPER REPORT DTD.27/3/15 (ANNEXURE (K))
- P14: COPY OF MANGALAM NEWSPAPER REPORT DTD.15/4/15 (ANNEXURE (L))
- P15: COPY OF MADHYAMAM NEWSPAPER REPORT DTD.18/4/15 (ANNEXURE (M))
- P16: COPY OF JANMABHOOMI NEWSPAPER REPORT DTD.27/4/15 (ANNEXURE (N))
- P17: COPY OF DESHABHIMANI NEWSPAPER REPORT DTD.16/6/15 (ANNEXURE (O))
- P18: COPY OF WRIT PETITION FILED BY P.C.GEORGE IN THE HIGH COURT OF KERALA WPC.13113 OF 2015 (ANNEXURE (P))
- P19: COPY OF PETITION FILED BY P.C.GEORGE BEFORE THE CENTRAL ELECTION COMMISSION(ANNEXURE (Q))

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WP(C).No. 28870 of 2015 (G)

- P20: COPY OF ORDER OF THE SPEAKER DISQUALIFYING SRI.R.BALAKRISHNA PILLAI IN 1990 (ANNEXURE R)**
- P21: COPY OF MATHRUBHUMI NEWSPAPER REPORT DATED 10/6/15 (ANNEXURE (S))**
- P22: COPY OF THE PRELIMINARY OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE SPEAKER**
- P23: COPY OF THE LETTER DATED 26/8/15 OF THE SPEAKER**
- P24: COPY OF NOTES OF ARGUMENTS SUBMITTED BY THE PETITIONER BEFORE THE SPEAKER ON DATE 15/9/15**
- P25: COPY OF THE ORDER OF THE SPEAKER DATED 17/9/15**
- P26: COPY OF THE LETTER SUBMITTED BY THE PETITIONER BEFORE THE SPEAKER SEEKING AN ENQUIRY.**

/ TRUE COPY /

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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**W.P.(C).No.28870/2015**  
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Dated this the 25th Day of September, 2015

J U D G M E N T

The petitioner, a Member of the Kerala Legislative Assembly has filed this writ petition challenging the order of the Speaker of the Assembly overruling the objections raised by him against the maintainability of the petition filed by the second respondent to disqualify the petitioner as a Member of the House. The impugned order is produced as Ext.P25.

2. The Tenth Schedule of the Constitution of India provides provisions relating to “disqualification on the ground of defection”. Para.8 of the Schedule mandates framing of Rules by the Chairman or the Speaker of the House. Based on the above mandate, Rules have been framed by the Speaker of the Kerala Legislative Assembly. These Rules are called the Kerala Legislative Assembly (Disqualification on ground of defection) Rules, 1985 (for short, the “Rules”).

3. The Rule 6 of the Rules provides as follows:

“6. References to be by Petitions

(1) No reference of any question no reference of any question as to whether a member has become subject to

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disqualification under tenth schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this Rules.

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

.....”

Invoking the above Rule, the second respondent, another member of the House filed a petition to disqualify the petitioner. Ext.P3 is the said petition.

4. The petitioner raised preliminary objection regarding the maintainability of the petition, alleging that the petition filed by the second respondent does not comply with mandatory requirements as contemplated under Rules 6(6) and 6(7) of the Rules which read as follows:

“(6) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

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

The petitioner contended that the petition and Annexures, by virtue of the above Rules shall contain verification by the second respondent and except petition and Annexure-(a), all other Annexures do not contain the verification. Admittedly, apart from Annexure-(a), the second respondent has also produced Annexures-(b) to (t). Therefore, petitioner contended

that the petition has to be dismissed by the Speaker by invoking power under Rule 7(2) of the Rules. Rule 7(2) reads as follows:

“7(2) If the petition does not comply with the requirements of rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly.”

5. The petitioner submits that his preliminary objection is maintainable as it is mandatory for the Speaker to have a satisfaction about the compliance of the requirements as provided under Rule 6 before proceeding further. Rule 7(1) provides that the Speaker shall entertain such satisfaction. Rule 7(1) reads as follows:

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

6. When the matter came up for admission, the second respondent appeared through the learned Senior Counsel Shri S.Sreekumar, even though, no notice was issued to him. The learned Advocate General also appeared for the first respondent-Speaker. In view of the fact that the Speaker has scheduled hearing on 23/09/2015 and 26/09/2015, this Court allowed all the Counsel to address this Court at the length and breadth. Therefore, this matter is being disposed at the admission stage itself.

7. Though, the Registry initially noted that this writ petition is not maintainable on account of the bar under Article 212 of the Constitution this Court directed the Registry to number the writ petition, subject to decision regarding maintainability on judicial side.

8. There is no much dispute at the Bar regarding maintainability of the writ petition. Therefore, the issue is now confined to the scope of judicial review on the decision of Speaker produced as Ext.P25.

9. The learned Senior Counsel Shri K.Ramakumar would urge that the disqualification of a Member of House is a serious issue relating to representation in a democracy. He would argue that the Speaker is bound by the Rules framed by him. It is argued that when Rules are framed, that particular act has to be done in that particular manner, the Speaker cannot deviate from the Rules. He highlighted importance of the requirement of verification in a petition for disqualification. It is argued that a petition under Rule 6 shall be equated with the election petition challenging election under Representation of the People Act, 1951. The learned Senior Counsel submitted that except petition and Annexure-(a), no other Annexures contain verification. Therefore, petition has to be rejected *in limine* by the Speaker. The learned Senior Counsel also relied on the judgments of the Hon'ble Supreme Court in **D.Sudhakar (2) and others v. D.N.Jeevaraju**

and Others [(2012) 2 SCC 708], Balchandra L.Jarkiholi and Others v. B.S.Yeddyurappa and Others [(2011) 7 SCC 1], Jagjit Singh v. State of Haryana and others [(2006) 11 SCC 1], Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and others [(2007) 3 SCC 184], Dr.Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council and Others [2004 (8) SCC 747] and the judgment of the Gujarat High Court in **Devabhai Parbatbhai Avadia and Others vs. P.D.Waghela, Competent Authority, Gujarat Tourism Corpn. Ltd. and Others [2008 KHC 7686].**

10. *Per contra* Shri S.Sreekumar, learned Senior Counsel appearing for the second respondent would argue that the petition as well as Annexures contain verification. It is submitted that in the copies given to the petitioner, except in the petition and Annexure-(a), it do not contain verification, owing to the mistake committed by the second respondent. It is argued that if at all such a defect exists, it is only a curable procedural irregularity and not a violation of Constitutional mandate. The learned Senior Counsel would submit that the disqualification petition has no adversary *lis* and therefore, strict procedure need not be adhered to. It is further submitted that the Rules are framed to facilitate the Speaker to discharge his function and not to frustrate the procedures adopted by the Speaker. Therefore, satisfaction of the Speaker alone is the criteria so long

as substantial compliance of the Rules is followed. He also relied on the judgment of the Hon'ble Supreme Court in **Ravi S.Naik v. Union of India and others [1994 Supp.(2) SCC 641]**, **Speaker, Orissa Legislative Assembly v. Utkal Keshari Parida [(2013) 11 SCC 794]** and **Shri Kihota Hollohon v. Mr.Zachilhu and others [1992 Supp.(2) SCC 651]**.

11. The learned Advocate General would submit that the petition filed before the Speaker, along with Annexures, satisfy all the requisite formalities as per the Rules. It is further submitted that it is not a requisite of law that copies furnished to the petitioner shall also contain verification.

12. It appears that subsequent to the raising of the objection and after concluding the hearing, the petitioner has raised yet another objection before the Speaker on 16/09/2015. The fresh complaint is that the original of some of the Annexures have been pasted with the verification. The said objection is produced as Ext.P26. It is obvious that the Speaker has not adverted to Ext.P26 while taking a decision as per Ext.P25. The above objection appears to be pending consideration before the Speaker. Therefore, the only question is with respect to the decision now taken by the Speaker as per Ext.P25. The Speaker by the elaborate impugned order, has considered all the objections of the petitioner. In para.26 of Ext.P25, the Speaker concluded as follows:

“26) Other annexures produced by the petitioner are news paper and CDs. All these annexures has been signed and verified by the petitioner. Therefore, for the above stated reasons, I find that petition and annexures are signed and verified by petitioner and it complies with the requirements of rule 6 hence, the objection raised by the respondent is not sustainable and dismissed. Points 1 and 2 are so found.”

It is apparent from the finding of the Speaker that he is satisfied with the compliance of the requirements.

13. The Speaker has not entered any finding that the Annexures produced do not contain verification. It is to be noted that there is no procedure as such required which mandates the Speaker to hear preliminary objection. However, the Speaker has chosen to hear the petitioner's preliminary objection. The Speaker has not yet decided on the disqualification petition. Therefore, the examination of the issues involved by invoking powers of judicial review is very limited. This Court is not sitting as an Appellate Authority or exercising supervisory jurisdiction over the Speaker's power. The judicial review could be exercised only when a finding of fact is made on any extraneous consideration beyond the jurisdiction of the Authority to impinge upon the right of the Member. The judicial review need not cover any mistake in the decision making process. When the Speaker made a finding of fact based on available records, this

Court need not interfere with such a decision, unless, such finding attains finality to examine any extraneous consideration of the finding of fact. As noted above, this Court is not the Appellate Authority to sit upon every decision of the Speaker on different stages of the decision making process.

14. The various decisions cited by either side may not have much relevance for the obvious reason that the present challenge is made on finding of facts. The decision of the Gujarat High Court in **Devabhai Parbatbhai Avadia's** case [2008 KHC 7686] cited by the learned Senior Counsel for the petitioner would have a relevance only when the facts raised by the petitioner in his objections are admitted to be in existence. Here, the facts otherwise would show that by the satisfaction entered by the Speaker that the original petition as well as Annexures contain verification. Therefore, the only question that need to be adverted is, for want of verification in the copies furnished to the petitioner, whether it would vitiate the proceedings of disqualification. It is apposite to refer the decision in **Ravi S.Naik's** case [1994 Supp.(2) SCC 641] wherein, in para.19 it was held as follows:

“The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the

Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in Kihoto Hollohan case [1992 Supp. (2) SCC 651]. Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in Kihoto Hollohan case [1992 Supp.(2) SCC 651] is confined to breaches of the constitutional mandates, mala fides, noncompliance with Rules of Natural Justice and perversity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in Kihoto Hollohan case [1992 Supp.(2) SCC 651].”

15. In **Dr.Mahachandra Prasad Singh's** case [2004 (8) SCC 747] at para.16 it was held as follows:

“16. Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said Rule and sub-rule (6) of the same Rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The heading of Rule 7 is 'PROCEDURE'. Sub- rule (1) of this Rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said Rule and sub-rule (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rule being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot

make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7

otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires.”

Thus, in the light of the above law of the Apex Court, this Court is of the view that even if, in the copies furnished to the petitioner, verifications are not there, it shall not result in dismissal of the petition.

16.However, the decision now made by the Speaker can be varied or reviewed by the Speaker at the final stage, depending upon the outcome of any inquiry to be made on Ext.P26. In Ext.P26, the petitioner alleges that the original of some of the Annexures have been pasted with the verifications subsequently. When a Member of House makes such a serious allegation, this Court believe that the Speaker will inquire into it. It is not in the domain of this Court to direct Speaker to conduct an inquiry. The Speaker being the guardian of Temple of democracy, is expected to allay any allegations by interpolation of the documents produced before him. Since the Speaker has no occasion to consider the impact of Ext.P26 in the

impugned order, the scope and impact of Ext.P26 need not be adverted to by this Court. Certainly, the allegations in Ext.P26 are of grave nature. It can have an impact upon the maintainability of the petition, if the allegations are found true. If the originals do not contain verification, certainly, the Speaker has to take a decision in terms of Rule 7(2) of the Rules as to the maintainability of such petition. Non-conformity with the Rules and defect in the requirement are two different aspects in legal parameters. If a particular Rule mandates a legal requirement, there must be a legal requirement to entertain a petition. This Court is not expressing anything on this aspect as the same is pending consideration before the Speaker. Therefore, based on the inquiry, the Speaker is free to take a decision regarding maintainability of the petition and the Speaker is not bound by his earlier decision, if the allegations in Ext.P26 are found true. Thus, with the above observation, this Court find that there is no merit to interfere with the decision of the Speaker made in Ext.P25. Accordingly, the writ petition is dismissed. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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