

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH  
(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF FEBRUARY  
TWO THOUSAND AND FIFTEEN  
PRESENT

**THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR**

**WRIT PETITION Nos.412 and 630 of 2015**

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**WP.No.412 of 2015:**

**BETWEEN**

Sri M.S. Prabhakara Rao.

**... PETITIONER**

**AND**

Sri K.R. Amos and others.

**...RESPONDENTS**

**WP.No.630 of 2015:**

**BETWEEN**

Sri Errabelli Dayakar Rao.

**... PETITIONER**

**AND**

Sri Talasani Srinivas Yadav and others.

**...RESPONDENTS**

**Counsel for the Petitioners: MR. RAVI SHANKAR JANDHYALAYA**

**Counsel for the Respondents: ADVOCATE GENERAL (TG)**

**The Court made the following:**

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**COMMON ORDER:**

Both these writ petitions seek identical relief and hence, were heard together. While WP.No.412 of 2015 is filed by a member of the Telangana Legislative Council and a Whip of the Congress Legislature Party, WP.No.630 of 2015 is filed by a member of the A.P. Legislative Assembly and leader of Telugu Desam Party. In WP.No.412 of 2015 it is alleged that respondents 2 to 5 are primary members of the Indian National Congress, which is a recognized political party and are elected to the Legislative Council in that capacity whereas in WP.No.630 of 2015 it is alleged that respondents 2 and 3 are primary members of the Telugu Desam Party, which is also a recognized political party, and are elected to the Legislative Assembly in that capacity. Respondent No.6 in WP.No.412 of 2015 is the Chairman of the Telangana State Legislative Council whereas respondent No.4 in WP.No.630 of 2015 is the Speaker of the A.P. Legislative Assembly.

2. Petitioners allege in both the writ petitions respectively that the party respondents herein have committed acts attracting their disqualification on the ground of defection, which clearly falls under Schedule 10 of the Constitution of India and that appropriate application seeking to declare them, as such, was filed before respondent No.6 and respondent No.4 respectively in each of these writ petitions. It is further alleged that notices on the said petitions were sent to the respondents in each of these writ petitions but, thereafter, neither counters are filed nor there is any progress with reference to adjudication of the said disqualification petitions. Petitioners allege that they made representation for early disposal of these petitions but there is no response.

3. Consequently, the present writ petitions are filed with the prayers that procedural facet, which defeats the substantial right, is required to be

interdicted by the process of judicial review by this Court and strong reliance is place upon the observations of the Supreme Court in **MAYAWATI v. MARKANDEYA CHAND**<sup>[1]</sup> and in particular para 103 thereof. Further directions are also sought against respondent No.6 and respondent No.4 respectively to decide the said pending disqualification petitions by the next date of hearing by conducting proceedings on day-to-day basis and in the event of the respective respondents not completing the said proceedings, withdraw the petitions to this Court and decide the same in view of the decision of the Supreme Court in **RAJENDRA SINGH RANA v. SWAMI PRASAD MAURYA**<sup>[2]</sup>. Interim relief is also sought for seeking suspension of the party respondents in each of the writ petitions from the respective houses.

4. When WP.No.630 of 2015 was listed on 21.01.2015, after hearing the learned counsel for the petitioner, I had passed the following order:

“Sri Ravi Shankar Jandhayala, learned counsel for the petitioner has placed reliance upon the judgment of the Hon’ble Supreme Court in {*Balachandra L Jarkiholi and others v. B.S. Yeddyurappa and others* [2011 Law Suit (SC) 549]} and also the judgment of Punjab and Haryana High Court in {*Kuldeep Bishmnoi v. Speaker, Haryana Vidhan Sabha and others* [2010 Law Suit (P&H) 3236]} and submits that the writ petition is maintainable and is not a bar under Clause 6 of Schedule 10 read with Article 212 of the Constitution of India.

Since the question of maintainability of the writ petition is required to be first adjudicated, issue notice to the learned Advocate General to assist the Court.”

Thereafter, I have heard the learned counsel for the petitioner in both the writ petitions as well as the learned Advocate General for Telangana, who appeared to assist the Court as per the request noted above.

5. Mr. Ravi Shankar Jandhyala, learned counsel for the petitioners, submitted that in terms of the power conferred on the Speaker, Rules have been framed by the Speaker called the Members of the Andhra Pradesh

Legislative Assembly (Disqualification on the ground of Defection) Rules, 1986 (for short 'the Rules'). The said Rules prescribe procedure required to be followed in considering the petitions under Schedule 10 of the Constitution of India. In particular, learned counsel for the petitioners made referred to Rules 7 and 8 of the Rules and contended that the said Rules provide for uniform procedure required to be adopted by the Speaker while considering the petitions.

Reliance is also placed on Rule 7(iii)(b) where such a member to whom notice is issued is required to respond within seven days of the notice of the petition or within such further time as the Speaker may for sufficient cause allow and submit his comments in writing to the Speaker. Learned counsel alleges that in spite of the said Rules, in the case on hand, though the Speaker had issued notices thereof there is hardly any progress in any of the petitions and in spite of the request of the petitioners, no information regarding the further progress is forthcoming.

6. Learned counsel for the petitioners has placed strong reliance upon various decisions of the Supreme Court viz:

**KIHOTO HOLLOHAN v. ZACHILLUHU**<sup>[3]</sup>; **RAVI S. NAIK v. UNION OF INDIA**<sup>[4]</sup>; **JAGJIT SINGH v. STATE OF HARYANA**<sup>[5]</sup>; **BALCHANDRA L. JARKIHOI v. B.S. YEDDYURAPPA**<sup>[6]</sup>; **MAHACHANDRA PRASAD SINGH (DR) v. CHAIRMAN, BIHAR LEGISLATIVE COUNCIL**<sup>[7]</sup>; **RAGHUBIR SINGH v. STATE OF BIHAR**<sup>[8]</sup> and **MANEKA GANDHI v. UNION OF INDIA**<sup>[9]</sup>.

In addition to the above, learned counsel for the petitioners also placed strong reliance upon a decision of a learned single Judge of High Court of Punjab and Haryana in **KULDEEP BISHNOI v. SPEAKER, HARYANA VIDHAN SABHA**<sup>[10]</sup>.

7. Based on the ratio of the aforesaid decisions, learned counsel for the petitioners would urge that in matters arising out of Schedule 10 of the Constitution of India whenever the petitions for disqualifications are filed before the Speaker of the Assembly/Chairman of the Legislative Council, the power of judicial review of this Court can always be invoked to ensure that procedure followed in consideration of such petitions does not defeat the substantive rights of the political parties in seeking disqualification of such members against whom petitions are filed. Learned counsel for the petitioners would emphasize on the fact that on account of the total inaction on the part of the Speaker/Chairman in taking up and deciding the said petitions, the rights of the petitioners representing the political parties are seriously affected and by virtue of the inaction the substantive legal right available to the political party under Schedule 10 of the Constitution of India is being defeated. Learned counsel has also placed strong reliance upon paras 102 and 103 of the decision of the Supreme Court in **MAYAWATI's** case (1 supra) and for the sake of convenience those paras are extracted hereunder:

“**102.** One of the contentions urged under this head is that Speaker has by unduly delaying the proceedings acted perversely. Though learned senior counsel stated expressly in the course of his arguments that he is not alleging bias or personal mala fides against the Speaker, in the written submissions given by him, it is stated as follows:

"The Hon'ble Speaker by not deciding the petitions expeditiously and by allowing the BJP time to garner support for the purposes of the defence of the respondents under paragraph 3 has acted contrary to the constitutional mandate".

The said submission is not permissible in view of the statement expressly made and referred to above. In any event, merely because there is a delay in concluding the hearing, the order cannot be said to be perverse. The Speaker has framed the question properly as to whether a split, as alleged by the respondents, had taken place on 21.10.97 and whether it was supported by acceptable evidence. This Court in exercise of its power of limited judicial review has only to see whether the findings arrived at by the Speaker are perverse in the sense in which the expression "perversity" has been understood by this court in several decisions. I am unable to accept that as a matter of law, delay in the completion of proceedings would by itself vitiate the order passed by him.

**103.** But I wish to add that it is absolutely necessary for every Speaker to fix a time schedule in the relevant rules for disposal of the proceedings for disqualification of MLAs or MPs.

In my opinion all such proceedings shall be concluded and orders should be passed within a period of three weeks from the date on which the petitions are taken on file.

8. Learned Advocate General, on the other hand, submitted that both the writ petitions are not maintainable and are liable to be dismissed on that ground and in support of his contentions, learned Advocate General has placed strong reliance upon the decision of the Constitution Bench of the Supreme Court in **KIHOTO HOLLOHAN's** case (3 supra) and laid emphasis on paras 109, 110 and 111 thereof. Learned Advocate General submitted that as held by the Constitution Bench, the judicial review is available only as against the orders passed by the Speaker/Chairman to the extent of infirmities based on Constitutional mandate, malafides, non-compliance of rules of natural justice and perversity and except such limited judicial review, the order of the Speaker/Chairman is immune and cannot be called in question. Learned Advocate General laid particular stress on sub-clause 2 of para 6 of Schedule 10 of the Constitution of India, which provides that all proceedings in relation to any question as to disqualification of a member shall be deemed to be proceedings in Parliament within the meaning of Article 122 or as the case may be, proceedings in the Legislature of a State within the meaning of Article 212 of the Constitution of India.

9. Learned Advocate General has further pointed out that under Article 212 of the Constitution of India, so far as State Legislature is concerned, 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. Thus, reading the provisions together, learned Advocate General would submit that the scope of judicial review is very limited in terms of the mandate of the Constitutional Bench decision, referred to above. Accordingly, learned Advocate General submitted that when the Speaker is seized of the

disqualification petitions, no such direction, as sought for by the petitioners, can be granted under Article 226 of the Constitution of India.

10. Learned Advocate General also submitted that reliance placed by the learned counsel for the petitioners on certain paras of the decision of the Supreme Court in **MAYAWATI's case (1 supra)** is a minority view and as such, cannot be said to be the ratio of the said decision. Learned Advocate General also submitted that the prayer of the petitioners to withdraw the petitions from the Speaker and to be tried by this Court is contrary to the mandate of the Constitution of India, which required that it is the Speaker alone, who should decide the petitions under Schedule 10 of the Constitution of India.

Learned Advocate General also brought to the notice of this Court a decision of the Supreme Court in **SPEAKER, HARYANA VIDHAN SABHA v. KULDEEP BISHNOI**<sup>[11]</sup> where the decision cited by the learned counsel for the petitioners was under consideration by the Supreme Court in appeal and it was held in para 45 as under:

“45. ... In that regard, we are of the view that since the decision of the Speaker on a petition under paragraph 4 of the Tenth Schedule concerns only a question of merger on which the Speaker is not entitled to adjudicate, the High Court could not have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution. ... Accordingly, restraining the Speaker from taking any decision under paragraph 6 of the Tenth Schedule is, in our view, beyond the jurisdiction of the High Court, since the Constitution itself has vested the Speaker with the power to take a decision under paragraph 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order.

(emphasis supplied)

11. Learned Advocate General also referred to a Division Bench decision of this Court in **MANDADI SATYANARAYANA REDDY v. A.P. LEGISLATIVE ASSEMBLY**<sup>[12]</sup> wherein the Division Bench considered an appeal together with an application for interim relief against the order of the

Speaker disqualifying a member of the A.P. Legislative Assembly under Schedule 10 of the Constitution of India. The Division Bench held, after noticing the ratio of the decision of the Constitution Bench judgment in **KIHOTO HOLLOHAN's** case (3 supra) that while exercising power of judicial review against an order passed by the Speaker, normally no interim relief should be granted and consequently, ad interim relief earlier granted was vacated.

12. In view of these rival contentions, the maintainability of these writ petitions is required to be decided in the forefront and after duly considering the contentions on either side and after examining the ratio of various decision cited, as referred to above, in my view, both the writ petitions are not maintainable and are liable to be dismissed. The reasons in support of the said conclusion are set out below.

13. For the sake of convenience, relevant portion of Schedule 10 of the Constitution of India is extracted hereunder:

**“6. Decision on questions as to disqualification on ground of defection.-**

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

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of the House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in his behalf and his decision shall be final.

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

Article 212 of the Constitution of India provides as follows:

**“212. Courts not to inquire into proceedings of the Legislature.-**

(1) The validity of any proceedings in the Legislature of a State shall

not be called in question on the ground of any alleged irregularity of procedure.

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

Rule 8 (1) of the A.P. Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986:

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

(a) dismiss the petition, or

(b) declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule, and cause copies of the order to be delivered or forwarded to the Petitioner, the member in relation to whom the petition has been made and to the Leader of the Legislature party, if any, concerned.

14. The Constitutional validity of Schedule 10 of the Constitution of India introduced by the Constitution (Fifty-Second Amendment) Act, 1985, was assailed before the Supreme Court. The Supreme Court in **KIHOTO HOLLOHAN’s** case (3 supra) upheld the Constitutional validity of Schedule 10 except para 7. So far as is relevant for the present case on hand, the following paras of the said decision are necessary to be reproduced, as hereunder:

“**109.** In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under paragraph 6, the scope of judicial review under Articles [136](#), [226](#) and [227](#) of the Constitution in respect of an order passed by the Speaker/Chairman under paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

**110.** In view of the limited scope of judicial review that is available on account of the finality clause in paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a *quia timet* action would not be permissible.

Nor would interference be permissible at an interlocutory stage of the proceedings ...

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

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

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

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles [122\(1\)](#) and [212\(1\)](#) of the Constitution as understood and explained in Keshav Singh's Case Spl. Ref. No. 1, [1965] 1 SCR 413, to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the Legislature of a State" confines the scope of the fiction accordingly.

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

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

(emphasis supplied)

Thus, before the Speaker/Chairman renders his decision, the judicial review is clearly impermissible in view of the mandate under the Constitution and the decision referred to above.

15. The Rules framed by the Speaker, on which the learned counsel for the petitioners placed reliance, cannot be, therefore, equated to a status

higher than the mandate of the Constitution of India and mere deviation or breach in the Rules of procedure would not entitle a judicial review against the pending proceedings before the Speaker/Chairman.

16. Almost all the decisions relied upon by the learned counsel for the petitioners refer to the decision in **KIHOTO HOLLOHAN's** case (3 supra) and in the case of **RAVI S. NAIK's** case (4 supra) it was specifically held by the Supreme Court in para 18 as under:

“18. ... We are unable to accept the said contention of Shri Sen. 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's case (supra). 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's case (supra) is confined to breaches of the constitutional mandates, mala fides, non-compliance 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 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].”

Learned counsel for the petitioners also relied upon the decision in **MANEKA GANDHI's** case (9 supra) to contend that fair play in action is required to be maintained. Even such a contention was also considered by the Supreme Court in **RAVI S. NAIK's** case (4 supra) in para 20, which is extracted hereunder:

“20. Principles of natural justice have an important place in modern

Administrative Law. They have been defined to mean "fair play in action." (See: *Smt. Maneka Gandhi v. Union of India* [1978] 1 SSC 248, Bhagwati, J.).

As laid down by this Court "they constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men" *Union of India v. Tulsī Ram* [1985] 3 SCC 398. An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case."

17. While learned counsel for the petitioners placed strong reliance upon para 103, extracted above, of the decision of the Supreme Court in **MAYAWATI's** case (1 supra), as rightly pointed out by the learned Advocate General, the said paras form part of dissenting opinion of one of the learned Judges. Further, even the dissenting opinion held that the delay in completion of proceedings would not by itself vitiate any orders passed by the Speaker/Chairman. Para 103 of the decision, referred to above, on which strong reliance is placed by the learned counsel for the petitioners and in fact, a prayer is made on that basis, cannot be equated to the ratio of the said decision. The decision in **JAGJIT SINGH's** case (5 supra) concerned with challenge to the order of the Speaker disqualifying the petitioner from being member of the Assembly and the issue involved in these writ petitions did not fall for consideration. Similarly, **BALCHANDRA L. JARKIHOI's** case

(6 supra) also involved orders passed by the Speaker of the Karnataka Assembly. In **RAJENDRA SINGH RANA's** case (2 supra) also, the order of the Speaker disqualifying 13 MLA's was in question. However, this case is relied upon to show that the Supreme Court itself had considered

the question of disqualification and adjudicated therein and as such, the said decision is relied upon in support of the prayer made in the writ petitions that this Court would withdraw the petitions from the Speaker and decide them. However, it has to be borne in mind that the Supreme Court adopted the said course on the peculiar facts of that case, which is categorically stated in para 44 of the judgment. The said situation does not exist in the case on hand so as to warrant exercise of any such power. **MAHACHANDRA PRASAD SINGH (DR)'s** case (7 supra) was also directed against the order of the Chairman of the Bihar Legislative Council disqualifying a member of the Council. **RAGHUBIR SINGH's** case (8 supra) was a case dealing with preventive detention and in that context, it was held that under Article 21 of the Constitution of India, speedy investigation and trial is one of the facets of Article 21 of the Constitution of India.

Almost all the aforesaid decision referred to **KIHOTO HOLLOHAN's** case (3 supra) and none of the said cases relate to invocation of jurisdiction of this Court under Article 226 of the Constitution of India at pre-decisional stage. I am, therefore, unable to accede to the contentions of the learned counsel for the petitioners.

The writ petitions are, therefore, dismissed as not maintainable.

As a sequel, the miscellaneous applications, if any, shall also stand dismissed. There shall be no order as to costs.

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VILAS V. AFZULPURKAR, J

February 10, 2015  
DSK

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[\[1\]](#) (1998) 7 SCC 517

[\[2\]](#) (2007) 4 SCC 270

[\[3\]](#) 1992 SUPP (2) SCC 651

[\[4\]](#) 1994 SUPP (2) SCC 641

[\[5\]](#) (2006) 11 SCC 1

- [\[6\]](#) (2011) 7 SCC 1
- [\[7\]](#) (2004) 8 SCC 747
- [\[8\]](#) (1986) 4 SCC 481
- [\[9\]](#) (1978) 1 SCC 248
- [\[10\]](#) 2010 LAW SUIT (P&H) 3236
- [\[11\]](#) 2012 LAW SUIT (SC) 636 = AIR 2013 SC 120
- [\[12\]](#) 2009 (6) ALD 8 (DB)