

**\* THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN  
AND  
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**+ WRIT PETITION No.2698 OF 2019**

% Date: 17-07-2019

# R. Bhoopathi Reddy

... Petitioner

v.

\$ the Chairman, Telangana State Legislative Council, Hyderabad,  
and others.

... Respondents

! Counsel for the Petitioner : Sri Anand Kumar Kapoor

^ Counsel for respondent Nos.1 & 2 : Additional Advocate General  
Counsel for respondent Nos.3 & 4 : Sri Gandra Mohan Rao  
Counsel for respondent No.5 : Sri N. Harinath  
Counsel for respondent No.6 : Sri Avinash Desai, Standing  
Counsel for Election Commission of India  
Counsel for respondent No.7 : GP for Finance and Planning

< **GIST:**

> **HEAD NOTE:**

? **CASES REFERRED:**

1. 1975 Supp SCC 1
2. (2016) 5 SCC 1
3. AIR 1951 SC 332
4. (2010) 5 SCC 538
5. 1992 Supp.(2) SCC 651
6. (2015) 13 SCC 50
7. AIR 1955 SC 549
8. AIR 1964 648
9. 1996 (2) SCC 353
10. 1994 Supp. (2) SCC 641
11. AIR 1968 SC 1232
12. AIR 1951 SC 332
13. See G.V. Mavalankar, "The Office of Speaker", Journal of Parliamentary Information, April 1956, Vol. 2, No. 1, p. 33
14. See: HOP. Deb. Vol. IX (1954), CC 3447-48
15. See : Erskine May, Parliamentary Practice (20th edition) p. 234 and 235

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**ORDER:** (Per the Hon'ble the Chief Justice)

The petitioner, Mr. R. Bhoopathi Reddy, has challenged the legality of the order dated 16.01.2019, passed by the Chairman, Telangana Legislative Council ('the Council', for short), the respondent No. 1, whereby the petitioner was declared as disqualified as a Member of the Council, in terms of Para 2(1)(a) of the Tenth Schedule of the Constitution of India, and has been declared "to cease to be a Member of the Telangana Legislative Council ('M.L.C.', for short) with immediate effect".

Briefly, the facts of the case are that the petitioner had contested the biennial elections held on 12.12.2015, for the Council, from the constituency of Nizamabad Local Authorities. In the said election, he was declared as having been unanimously elected to the Council. However, during the course of his tenure, as a M.L.C., the respondents Nos. 3 and 4 submitted a disqualification petition under the Tenth Schedule of the Constitution of India, read with Rule 6 of the Members of the Telangana Legislative Council (Disqualification on Ground of Defection) Rules ('the Rules', for short) against the petitioner.

In the petition, the respondent Nos. 3 and 4 alleged that, although the petitioner was elected as a member of the Telangana Rashtra Samithi Party ('TRS Party', for short), he had indulged in anti-party activities. For, on 14.09.2018 he had joined the Indian National Congress Party ('INC Party', for short). He had also contested on behalf of the INC Party, in the pre-elections, from the

Nizamabad Rural Assembly Constituency for the Telangana State Legislative Assembly held on 07.12.2018.

Subsequently, on 18.12.2018 respondent No. 1 issued a notice to the petitioner wherein he was called to submit his comments within seven days. The petitioner submitted his counter. According to the petitioner, he was unanimously elected as M.L.C. from Nizamabad Local Authorities' Constituency. Thus, his election is not based on a party symbol. Moreover, the Election Symbols (Reservation and Allotment) Order, 1968 does not apply to such election. Further, he pleaded that the disqualification petition was based on newspaper clippings, media reports, and videos whose authenticity he challenged. He further pleaded that he had fought the election on the plank of the INC Party as a part of the strategy of the TRS Party. Hence, his association with the INC Party was not a "voluntary" one, but was due to the direction of the TRS Party itself. Moreover, since he had lost the election held for the State Legislative Assembly on 07.12.2018, it does not amount "to voluntarily giving up his membership" of the TRS Party. Hence, the petitioner claimed that he has neither acted against the interests of the TRS Party, nor earned any disqualification under Para 2(1)(a) of the Tenth Schedule to the Constitution of India. However, by order dated 16.01.2019, as mentioned hereinabove, the respondent No. 1 declared the petitioner as disqualified from being a M.L.C. and declared that "he ceases to be M.L.C. with immediate effect". Hence, this petition before this court.

Mr. Anand Kumar Kapoor, the learned counsel for the petitioner, has not just challenged the impugned order dated 16.01.2019, but has more so challenged the constitutional validity of

the Para 8 of the Tenth Schedule of Constitution of India, and the constitutional validity of Rule 7(4) of the Rules. While challenging the constitutional validity of Para 8 of the Tenth Schedule of Constitution of India, the learned counsel has raised the following contentions:-

Firstly, the Speaker/Chairman being the head of the Legislature exercises certain executive powers of the Legislature. Under Para 8 of the Tenth Schedule of the Constitution of India, the Speaker/Chairman of the Assembly or the Legislative Council is also bestowed with 'legislative powers'. For the power to enact the rules has been bestowed upon the Speaker/ Chairman. Meanwhile, under Para 6 of the Tenth Schedule of the Constitution of India quasi-judicial power is also bestowed upon the Speaker/Chairman. Hence, the same individual is vested with the three powers of the Executive, the Legislature and the Judiciary. This, according to the learned counsel, is violative of the fundamental doctrine of 'separation of powers' as envisaged by the Constitution of India. Hence, Para 8 of the Tenth Schedule of the Constitution of India, granting the power to make rules, is violative of the basic structure of the Constitution of India.

Furthermore, according to the learned counsel, four aspects need to be examined by this Court. *Firstly*, the power of one organ of the State cannot be taken over by another organ. For, it will clearly violate the doctrine of "separation of power". *Secondly*, the power of a particular organ cannot be bestowed on an independent body, or a person. *Thirdly*, the power of a one branch cannot be abridged to the detriment of the branch granting such power. And *lastly*, a

branch of the State cannot abdicate its functions, which were entrusted by the Constitution to it. In order to buttress his first plea that the power of an organ cannot be taken away by another organ of the State, the learned counsel has relied on the case of **Indira Nehru Gandhi v. Shri Raj Narain**<sup>1</sup>. In order to buttress his second plea, that the power of a branch cannot be bestowed on any individual or an authority, the learned counsel has relied on the case of **Supreme Court Advocates-on-Record Association and Another v. Union of India**<sup>2</sup>. Relying on **In Re The Delhi Laws Act, 1912, The Ajmer-Merwara (Extension) v. The Part C States (Laws) Act, 1950**<sup>3</sup>, the learned counsel has further pleaded that a branch of the State cannot delegate its essential functions to another branch. For such a delegation would be violative of the principle of “separation of powers”. Relying on the case of **Bhim Singh v. Union of India**<sup>4</sup>, the learned counsel has pointed out that a test was laid down by the Hon’ble Supreme Court in order to see the violation of “separation of powers” doctrine. According to the test, although some overlapping of functions of different branches of the State is permissible, but if a different branch takes over “the essential functions” of the other branch leading to a lapse in constitutional accountability, such a delegation of power is unconstitutional. According to the learned counsel, since the power to legislate is an essential function of the Legislature, by delegating the power to make the rules, the Parliament, in fact, has handed over its “essential functions” to the Speaker/Chairman i.e. to an individual. Therefore, Para 8 of the

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<sup>1</sup> 1975 Supp SCC 1

<sup>2</sup> (2016) 5 SCC 1

<sup>3</sup> AIR 1951 SC 332

<sup>4</sup> (2010) 5 SCC 538

Tenth Schedule of the Constitution of India is clearly unconstitutional.

Secondly, the Para 8 of the Tenth Schedule of the Constitution of India deprives the Parliament and the State Legislature of its power to make the rules *qua* the disqualification of a member of the Legislative Assembly/Council. Therefore, it changes “the identity of the Constitution”. Thus, Para 8 of the Tenth Schedule of the Constitution is unconstitutional.

Thirdly, Article 368 of the Constitution of India prescribes the procedure to be adopted by the Parliament while amending the Constitution of India. The proviso attached to Article 368 (2) of the Constitution of India requires that if an amendment seeks to make any change in Chapter-I, Part XI (the Chapter dealing with the legislation relationship, covering Article 245 to 255 of the Constitution of India), then the amendment necessarily has to be ratified by the legislatures of not less than one-half of the States by resolution to that effect passed by those legislatures before the Bill making provision for such amendment is presented to the President for assent. According to the learned counsel, once the rule making power is granted to the Speaker/Chairman, the Parliament, or the state legislature is deprived of its power to make the rules. Therefore, Para 8 of the Tenth Schedule of the Constitution of India while bestowing such a power upon the Speaker/Chairman, changes the contents of Article 245 and 246 of the Constitution of India. Therefore, under proviso to Article 368 (2) of the Constitution of India, the said Para had to be necessarily ratified by the legislatures of not less than one-half of the States. However, the same has never

been done. Therefore, as observed by the Hon'ble Supreme Court in the case of **Kihoto Hollohan v. Zachillhu and others**<sup>5</sup>, since Para 7 of the Tenth Schedule of the Constitution of India was not ratified by half of the state legislatures, it was held to be unconstitutional. Similarly, Para 8 of the Tenth Schedule of the Constitution of India should be declared as unconstitutional.

Fourthly, the rule-making power so conferred is unbridled and unfettered, as no limits have been placed on the said power. Thus, the Para 8 of the Tenth Schedule of the Constitution of India is unconstitutional.

Challenging the constitutional validity of Rule 7(4) of the Rules, the learned counsel has pleaded that a vast and unfettered power has been given to the Speaker/Chairman. For an absolute discretion has been bestowed upon the Speaker/Chairman to decide in which case he will deal with the petition, and in which case the petition shall be dealt by the Committee. According to the learned counsel, such an unbridled power cannot be bestowed as it may lead to an arbitrary exercise of the power.

Secondly, Rule 7(4) of the Rules is contrary to Para 6 of the Tenth Schedule of the Constitution. While Para 6 of the Tenth Schedule bestows the power to disqualify a member upon the Speaker/Chairman, it does not bestow the said power upon the Committee. Meanwhile, Rule 7(4) of the Rules gives an added discretionary power to the Speaker/Chairman to decide whether to hear the disqualification petition by himself, or to refer the

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<sup>5</sup> 1992 Supp.(2) SCC 651

disqualification petition to a Committee. Hence, Rule 7 (4) of the Rules is contrary to Para 6 of the Tenth Schedule of the Constitution. Since the subordinate legislation is contrary to the parental Act, the subordinate legislation is, obviously, unconstitutional.

Thirdly, despite the fact that the petitioner had requested the Speaker to refer his disqualification petition to the Committee, the petition was never referred to the Committee under Rule 7 (4) of the Rules; instead, the petition was allowed by the respondent No. 1. Hence, the respondent No. 1 has committed a great illegality.

While challenging the impugned order dated 16.01.2019, the learned counsel has vehemently pleaded that no opportunity of cross-examining the witnesses, or to lead evidence on behalf of the petitioner was given to the petitioner. The petitioner had filed his counter to the notice on 11.01.2019; on 12.01.2019 the matter was reserved by respondent No. 1; without acknowledging the documents submitted by the petitioner, the respondent No. 1 has allowed the disqualification petition by order dated 16.01.2019. Therefore, the petitioner's rights under the principles of natural justice have been violated blatantly by the respondent No. 1. Therefore, the impugned order dated 16.01.2019 is legally unsustainable.

Lastly, although the respondent Nos. 3 and 4 have alleged that the petitioner had contested the Nizamabad Rural Assembly Constituency in the State Legislature Assembly Elections held on 07.12.2018 on behalf of the INC Party, but the petitioner had given a cogent reason for doing so. According to the petitioner, he had contested the election on INC Party ticket, as the TRS Party had strategized that some of its members should join the INC Party so as

to become fully aware of the planning and strategies of the INC Party. Further, if there were a chance that the Assembly may be a hung one, the former members of TRS Party would come back within the folds of the TRS Party, and even try to lure INC Party members into the TRS Party. Since it was part of a strategy, the petitioner's joining the INC Party cannot be said to be "a voluntary one". Therefore, the Chairman is unjustified in concluding that the petitioner has "voluntarily given up his association with the TRS Party".

On the other hand, Mr. N. Harinath, the learned counsel for the respondent No. 5, Union of India, has raised the following counter-contentions:-

Firstly, there is always a presumption in favour of the constitutionality of a provision. Relying on the case of **PGF Ltd. v. Union of India**<sup>6</sup>, the learned counsel has pleaded that the Court in the first instance should examine whether there is a *prima facie* strong ground made out in order to examine the *vires* of a provision in the writ petition. The Court should also know as to whether the grounds of challenge based on the facts pleaded, and the implication of provision relied on, has any nexus apart from the ground of challenge made. Therefore, academic questions, which may arise, but have no nexus with the facts pleaded should be avoided by the Court. According to the learned counsel, though petitioner has challenged the constitutional validity of Para 8 of the Tenth Schedule of the Constitution of India, but the petitioner has failed to meet these parameters prescribed by the Apex Court.

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<sup>6</sup> (2015) 13 SCC 50

Secondly, the petitioner is aggrieved by the impugned order dated 16.01.2019, whereby the petitioner has been declared as disqualified as a M.L.C. The said order was passed under Para 6 of the Tenth Schedule of the Constitution of India. Yet, the petitioner is challenging the constitutional validity of Para 8 of the Tenth Schedule of the Constitution of India which empowers the Chairman or the Speaker of the House with the rule making power. Hence, the Constitutional challenge of Para 8 of the Tenth Schedule of the Constitution of India is totally unconnected with the impugned order. Thus, the exercise of examining the vires of Para 8 of the Constitution of India is an academic exercise to be performed by this Court. Therefore, this Court need not go into the constitutionality of Para 8 of the Tenth Schedule of the Constitution of India, or even into the constitutional validity of Rule 7(4) of the Rules.

Thirdly, relying on the case of **Rai Sahib Ram Jawaya Kapur v. State of Punjab**<sup>7</sup> and on the case of **Indira Nehru Gandhi** (supra), the learned counsel has pleaded that the concept of “separation of power” in India is not as rigid as in the United State of America, or in Australia. In fact, the Indian Constitution contains a broad demarcation of powers, which have been conferred on the three branches of the State. But having regard to the complex nature of governmental functions, certain degree of overlapping is inevitable. Therefore, the learned counsel for the petitioner is unjustified in claiming that there is a strict and absolute separation of power in the Indian Constitution. He is further unjustified in claiming that

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<sup>7</sup> AIR 1955 SC 549

bestowing of power of one organ unto the other, will upset the delicate balance of separation of powers.

Furthermore, while relying on the case of **Jayantilal Amrit Lal Shodhan v. F.N. Rana**<sup>8</sup>, the learned counsel has further pleaded that under the Constitution, the Executive is permitted to exercise both functions, which are Legislative or Judicial. Therefore, the powers to frame rules, regulations and notifications, which are essentially legislative in character, have been entrusted to the Executive. At times, even the judicial power is also entrusted to the Executive. Hence, an individual can legally be clothed with the powers of the Executive, the Legislature, and of the Judiciary. Therefore, even the power to promulgate the delegated legislation does not violate the concept of “separation of powers”. Similarly, if the judicial power to disqualify a legislator and the legislative power to promulgate rules are bestowed upon the same individual, namely the Speaker/Chairman, for the smooth functioning of the Tenth Schedule of the Constitution of India, even then the doctrine of “separation of powers” is not violated.

Fourthly, since there are overlapping powers between different branches, it is a misnomer that the power of a particular branch cannot be bestowed on another branch. In the case of **Bhim Singh** (supra), while recognizing that the Constitution does not prohibit overlap of functions, the Hon’ble Supreme Court laid down the test for seeing if there is any violation of separation of powers, namely “*a law would be violative of separation of powers, not if it results in some overlap of functions of different branches of the State, but if it takes*

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<sup>8</sup> AIR 1964 648

*over an essential function of the other branch leading to lapse of constitutional accountability*". According to the learned counsel, by providing an enabling provision bestowing the power to promulgate rules, "the essential function" of the legislature is not being handed over to the Speaker or the Chairman.

Fifthly, according to Para 8(2) of the Tenth Schedule of the Constitution of India, the Rules made by the Chairman or the Speaker of a House have to be laid before the House for its approval. Since the House has the power to modify or to disapprove the Rules, the essential function of legislation continues to be in the hands of the House. Therefore, the legislature has not abridged its own power to legislate to its own detriment.

Sixthly, while endowing a rule-making power to the Chairman, or the Speaker of the House, the legislature has not abdicated its function. For, "the essential function" of amending the Constitution continues to be in the hands of the Parliament; the essential function to approve or disapprove of the rule made by the Chairman or the Speaker of the House continues to be in the hands of the House itself. Since "the essential functions" of legislation, or of forming legislative policy continues to be in the hands of the Parliament, or the State Legislation, Para 8 of the Tenth Schedule of the Constitution of India is constitutionally valid.

Seventhly, Para 8 of the Tenth Schedule of the Constitution of India does not change "the identity of the Constitution". For, both the Parliament, or the state legislature continue to retain its essential function of legislation. Therefore, Para 8 of the Tenth Schedule of the

Constitution does not adversely “affect the identity of the Constitution”.

Eighthly, the very wordings of Para 8 of the Tenth Schedule of the Constitution clearly indicate that the power bestowed under Para 8(1) of the Tenth Schedule of the Constitution is subject to the approval of the House. Moreover, the power to make rules has to be exercised *“for the purpose of giving effect to the provisions of the Schedule and for giving effect to different aspects, which may be covered by the rules promulgated by the Chairman/Speaker of the House”*. Therefore, it is not that an unfettered power has been bestowed upon the Chairman/Speaker of the House. The power to make rules is cribbed, cabined and confined within the four-corners of the Tenth Schedule of the Constitution of India, in particular, and within the limits of the Constitution itself, in general.

Lastly, merely by granting the rule-making power to the Speaker/Chairman under Para 8 of the Tenth Schedule of the Constitution of India, it does not deprive the Parliament of its power to amend the Constitution. Therefore, Para 8 of the Tenth Schedule of the Constitution of India does not bring about any change in Chapter- I of Part XI of the Constitution of India. Since Para 8 of the Tenth Schedule of the Constitution of India does not bring any change to the said Chapter in Part XI, the requirement of Article 368 (2) proviso need not be fulfilled. Hence, there was no need for Para 8 or for the Tenth Schedule of the Constitution of India to be ratified by the legislature of not less than one-half of the States. Therefore, the contention raised by the learned counsel for the petitioner is misplaced.

While dealing with the challenge to the constitutionality of Rule 7 (4) of the Rules, the learned counsel submits that the learned counsel for the petitioner has misinterpreted Rule 7 of the Rules. Rule 7, in fact, prescribes the procedure for dealing with a disqualification petition, once the same has been received by the Chairman. The learned counsel is unjustified in claiming that the issue of “disqualification of a legislator” is to be determined either by the Chairman, or by Committee. In fact, Rule 7(4) of the Rules clearly states that after considering the comments made by the legislator, whose qualification is questioned, the Chairman may either proceed to determine the question of disqualification, or may refer the petition to the Committee for making a “preliminary enquiry”, and for submitting its report to him. Therefore, the role of the Committee is merely to carry out a preliminary enquiry i.e., a fact finding enquiry. Hence, the Committee does not have the power to disqualify a legislator.

Furthermore, since the Committee does not have the power to disqualify a member, the learned counsel for the petitioner is unjustified in claiming that Rule 7(4) of the Rules is contrary to Para 6 of the Tenth Schedule of the Constitution of India.

Moreover, since Rule 7(4) of the Rules bestows a discretionary power upon the Chairman to seek a report from the Committee, or not to seek a report from the Committee, the petitioner cannot claim that he has a right to request the Chairman to refer his case to the Committee. Hence, even if his request has been declined by the Chairman, it does not invalidate Rule 7(4) of the Rules. Hence, the constitutional challenge with regard to Para 8 of the Tenth Schedule

of the Constitution, and with regard to the Rule 7(4) of the Rules, is highly misplaced.

Similarly, Mr. G. Mohan Rao, the learned counsel for the respondent Nos. 3 and 4, on the other hand, has raised the following pleas against the petitioner:-

Firstly, even if the petitioner was elected unanimously in the election held on 05.01.2016, but even then he was nominated by the TRS Party on the day that he was elected to the Council.

Secondly, although its term was to continue till May, 2019, the Telangana Legislative Assembly was dissolved on 06.09.2018. After the dissolution of the Legislative Assembly, the elections were scheduled to be held on 07.12.2018. But instead of standing for the election from the TRS Party, in the election scheduled to be held on 07.12.2018, the petitioner contested the election on behalf of the INC Party from the Nizamabad Rural Constituency. Furthermore, in the case of **G. Viswanadhan v. Hon'ble Speaker, T.N. Legislative Assembly**<sup>9</sup>, the Hon'ble Supreme Court has observed that "when a Legislator joins another political party, he will be treated as having voluntarily given up his membership of the party by which he was set up as a candidate for the original election".

Thirdly, even in his reply, the petitioner has admitted the fact that he had contested the election held on 07.12.2018 from the INC Party for the Nizamabad Rural Constituency.

Fourthly, the explanation given by the petitioner for contesting the election from the INC Party is clearly untenable. For, although

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<sup>9</sup> 1996 (2) SCC 353

he claims that it was a strategy of the TRS Party to plant its members in the INC Party, the petitioner has not submitted any proof of such a strategy, either before the learned Chairman, or even before this Court. Moreover, neither in his reply to the notice, nor in his counter filed before this Court, does he mention the name of any party leader, who had formulated such a strategy, or discussed such a strategy at any meeting, or at any party forum. Therefore, the explanation offered by the petitioner is merely an after-thought for saving his skin.

Fifthly, the petitioner is not justified in claiming that sufficient opportunity of hearing was not given to the petitioner. For, by notice dated 18.12.2018, the learned Chairman had granted seven days time to the petitioner for submitting his comments. But instead of submitting his comments, the petitioner prayed for a month's time to file his comments. Considering his request, the learned Chairman granted him one week's time. Thus, he was required to submit his comments positively by 03.01.2019. Having received his comments, by letter dated 04.01.2019 the learned Chairman directed the petitioner to appear before him on 11.01.2019 at 12:30 p.m. However, on 11.01.2019, the petitioner did not appear personally before the learned Chairman; he appeared only through his counsel. Therefore, the learned Chairman adjourned the proceedings till the next date i.e. 12.01.2019. On 12.01.2019, the petitioner's counsel did appear before the learned Chairman; the learned Chairman heard him from 11:30 a.m. onwards. Subsequently, the learned Chairman reserved his orders. The impugned order was passed on 16.01.2019. Therefore, the petitioner was given sufficient time to appear, was given sufficient opportunities, and his counsel was duly heard on

12.01.2019. Therefore, the learned counsel for the petitioner is unjustified in claiming that the petitioner's rights under the principles of natural justice have been violated by the learned Chairman.

Furthermore, even in the case of **Ravi S. Naik v. Union of India**<sup>10</sup>, the legislator was issued a notice on 11.12.1990, and the impugned order of disqualification was passed on 13.12.1990. Thus merely after three days, the impugned order was passed. Even then, the Hon'ble Supreme Court had concluded that the principles of natural justice were not violated in the said case. The present case is squarely covered by the case of **Ravi S. Naik** (supra).

Lastly, once the petitioner has admitted that he had contested the election held on 07.12.2018 on the ticket of the INC Party, there was no need to give an opportunity of hearing to the petitioner for cross-examining the reporters or the media persons, who had flashed the said news. For, admission is the best evidence. Thus, to give an opportunity of hearing, after an admission is made is to merely perform a ceremony. Hence, the learned counsel has supported the impugned order.

Mr. J. Ramachandra Rao, the learned Additional Advocate General for the respondent Nos. 1 and 2 has echoed the arguments raised by Mr. G. Mohan Rao. Therefore, his arguments are not being narrated herein.

Heard the learned counsel for the parties, perused the impugned order, and considered the case law cited at the Bar.

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<sup>10</sup> 1994 Supp. (2) SCC 641

The plethora of arguments raised by Mr. Anand Kumar Kapoor may appear to be very impressive at the first flash. But upon critical examination, they lose their strength and legal validity.

Obviously, the petitioner is aggrieved mainly by the impugned order dated 16-01-2019. But while challenging the same, the petitioner has also challenged the constitutional vires of Rule 7 of the Rules, which contains the procedure to be adopted by the Speaker/ Chairman after receiving the defection petition, and of Para 8 of the Tenth Schedule of the Constitution, which contains the rule making power of the Speaker/ Chairman. Although the learned Counsel for respondent Nos. 3 and 4 has termed the challenge as being “academic”, but it is a holistic attack both on law and facts. Hence, the challenge cannot be said to be merely “academic”. Further, once the constitutional validity of a provision is questioned, generally the court should answer the question. The court should not brush the legal issues under the carpet by dubbing the legal issues as merely “academic”. Thus, the contention raised by the learned counsel for respondent Nos. 3 and 4 is unacceptable.

Mr. Kapoor, the learned counsel for the petitioner, has strenuously argued that the doctrine of “separation of power” as contained in the Constitution of India is an extremely rigid, inflexible and compartmentalised. The power of one branch cannot be permitted to diffuse into the other branch. However, such an argument ignores certain landmark judgments of the Hon’ble Supreme Court on the issue of separation of powers as contained in our Constitution. As far back as in 1964, in the case of **Jayantilal Amrit Lal Shodhan** (supra), the Hon’ble Supreme Court had clearly

proclaimed that “the constitution has not made an absolute or rigid division of functions between the three agencies of the State. To the executive, exercise of functions legislative or judicial are often entrusted. For instance, power to frame rules, regulations and notifications which are essentially legislative in character is frequently entrusted to the executive. Similarly, judicial authority is also entrusted by legislation to the executive authority”. The Hon’ble Supreme Court also observed that “in the complexity of problems which modern government have to face and the plethora of parliamentary business to which it inevitably leads, it becomes necessary that the executive should often exercise powers of subordinate legislation”. It further opined that “it is indeed possible to characterise with precision that an agency of the State is executive, legislative or judicial, but it cannot be predicated that a particular function exercised by any individual agency is necessarily of the character which the agency bears”.

Likewise, in the case of **Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi**<sup>11</sup>, the Apex Court observed that “considering the complexity of modern life, it is recognised on all hands that legislature cannot possibly have time to legislate in every minute detail. That is why it has been recognised that it is open to the legislature to delegate to subordinate authorities the power to make ancillary rules for the purpose of carrying out the intention of the legislature indicated in the law which gives power to frame such ancillary rules”.

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<sup>11</sup> AIR 1968 SC 1232

A similar view has also been expressed by the Apex Court in the case of **Bhim Singh** (supra). In the said case, while relying on the case of **Rai Sahib Ram Jawaya Kapur** (supra), the Hon'ble Supreme Court has opined that *“the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature”*.

In the case of **Indira Nehru Gandhi** (supra), the Apex Court has observed as under:

*The American Constitution provides for a rigid separation of governmental powers into three basic divisions – the executive, legislative and judicial. It is an essential principle of that Constitution that powers entrusted to one department should not be exercised by any other department. The Australian Constitution follows the same pattern of distribution of powers. Unlike these Constitutions, the Indian Constitution does not expressly vest the three kinds of power in three different organs of the State. But the principle of separation of powers is not a magic formula for keeping the three organs of the State within the strict confines of their functions. As observed by Cardozo. J., in his dissenting opinion in Panama Refining Company v. Ryan, (1934) 293 US 388, 440 the principle of separation of powers “is not a doctrinaire concept to be made use of with pedantic rigour. There must be sensible approximation, there must be elasticity of adjustment in response to the practical necessities of Govt. which cannot foresee today the developments of tomorrow in their nearly infinite variety.*

Thus, obviously, the doctrine of separation of powers, which assigns different powers, and assigns different areas of functioning to

the each branch of the State is not as rigidly demarcated in the Indian Constitution as in the American one. Hence, overlapping is not only permissible, but, many a times, necessary.

The issue as to how much as the legislative power can be delegated to another organ was answered in the case of **In re Art. 143, Constitution of India, ETC.**<sup>12</sup>. His Lordship, Hon'ble Mr. Justice B.K. Mukherjea held that "*the Legislature cannot part with its essential legislative function which consists in declaring its policy and making it a binding rule of conduct. A surrender of this essential function would amount to abdication of legislative powers in the eye of law*". The Court also observed that "*it is the discretion of the legislature whether to delegate its powers or not. Since the discretion vests with the legislature in determining whether there is necessity for delegation or not, the exercise of such a discretion is not to be disturbed by the Court, except in clear cases of abuse*". In the same case, Hon'ble Mr. Justice Fazl Ali observed as under:

*Delegated legislation using the expression in the popular sense has become a present-day necessity, and it has come to stay – it is both inevitable and indispensable. The legislature has now to make so many laws that it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self-contained and complete Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessary, so as to permit constant adaptation to unknown future conditions without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegated authority to consult interests likely to be affected by a particular law, make actual experiments when necessary, and utilize the results of its*

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<sup>12</sup> AIR 1951 SC 332

*investigations and experiments in the best way possible. There may also arise emergencies and urgent situations requiring prompt action and the entrustment of large powers to authorities who have to deal with the various situations as they arise.*

His Lordship further opined as under:

*The complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions.*

Therefore, delegated legislation is part of the expansive power of the State, and forms an integral part of the overlapping of the different branches of the State. Moreover, the clothing of the same individual with the executive, legislative in judicial power, if the necessity so arises, does not violate the principles of separation of powers. Hence, the contention raised by the learned counsel for the petitioner that Para 8 of the Tenth Schedule of the Constitution of India violates the doctrine of “separation of powers” is unacceptable.

The question before this Court is whether by bestowing the rule-making power on the Chairman, “the essential function of legislature” has been delegated or not? Before answering the said question, it would be fruitful to read Para 8 of the Tenth Schedule of the Constitution of India, which is as under:

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

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

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

*time within which and the authority to whom such report shall be furnished;*

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

*(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.*

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

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

Of course, Mr. Kapoor, has pleaded that by delegating the rule-making power to the Chairman, both the Parliament and the State Legislature are deprived of their power to legislate with regard to disqualification of legislators, but the said argument is highly misplaced. For, under Article 368 of the Constitution of India, the Parliament continues to have the power to amend even the Tenth Schedule of the Constitution of India. Moreover, under Para 8(2) of the Tenth Schedule of the Constitution of India, the rules made by the Chairman necessarily have to be laid before the House for its approval. The House has the power to disapprove, or to modify, or to nullify the rules framed by the Chairman. Therefore, the House continues to have the power to re-write the rules. Hence, the

essential legislative function continues to be in the hands of both the Parliament, and the State legislature.

Further, the legislative policy of disqualifying a legislator for voluntarily giving up his membership of a political party, or for his defying the Whip of a political party is well defined in the Tenth Schedule of the Constitution of India. Furthermore, the rule-making power has been bestowed on the Chairman or the Speaker of the House while limiting their powers “*to giving effect to the provisions of the Schedule*”, in particular, and for certain procedural aspects, in general, which has been mentioned in “Para-I (a),(b),(c) and (d) of the Constitution”. Thus, obviously, the rules to be framed by the Chairman are cribbed, cabined and confined by the legislative policy and by the parameters of the Para 8 of the Tenth Schedule itself. Hence, the learned counsel for the petitioner is unjustified in claiming that the Parliament has abandoned its essential legislative function.

Once it is conceded that there is over-lapping in the functioning of the different branches of the State, the four aspects raised by Mr. Kapoor, mentioned hereinabove, fall apart like a house of cards. Needless to say, a limited power of an organ of the State can be entrusted to another organ of the State. Moreover, the power of a particular branch can be conferred , to a limited extent, on an independent body. Therefore, the learned counsel for the petitioner is unjustified in claiming that the power of one organ of the State cannot be taken over by another, and the power of a particular organ cannot be bestowed on an independent body. As mentioned hereinabove, the only rider is that “essential functions of the Legislature” cannot be bestowed on another branch of the State. But

by empowering the Speaker/Chairman with the power to make rules, Para 8 of the Tenth Schedule of the Constitution of India does not entail giving up of “essential legislative function”.

Of course, Mr. Kapoor is justified in pleading that one branch cannot delegate its power to another branch to the extent that it becomes detrimental to itself. Moreover, a branch of a State cannot abdicate its functions which are entrusted by the Constitution to it. However, as pointed out herein below, since the Parliament and the State Legislature continue to enjoy their respective essential function, the power of the Parliament and the State Legislature have not been abridged to their own detriment. Hence, the argument of the learned counsel that by bestowing the rule-making power upon the Chairman, the Parliament or the State Legislature has abridged its own power to its own detriment is unsustainable.

Further, since only a limited power for making the rule is being entrusted to the Speaker/Chairman, the Parliament or the State legislature has not abdicated its functions. Therefore, the contentions raised by the learned counsel on these points are clearly unacceptable.

Likewise, since the Para 8 of the Tenth Schedule of the Constitution does not deprive the Parliament, or the State Legislature of the essential legislative functions, the said Para does not tamper with “the constitutional identity”. Therefore, the contention raised by the learned counsel that Para 8 of the Tenth Schedule of the Constitution of India does adversely affect “the constitutional identity”, is a misplaced argument.

Similarly, and for the reasons mentioned above, the learned counsel for the petitioner is unjustified in claiming that since Para 8 of the Tenth Schedule of the Constitution of India deprives the Parliament and the State Legislature of its legislative function, Para 8 of the Tenth Schedule of the Constitution of India necessarily falls under proviso to Article 368 (2) of the Constitution of India. Since Para 8 of the Tenth Schedule of the Constitution of India does not bring about any change in Chapter-I of Part XI of the Constitution of India, as the legislative power continues to be with the Parliament and the State legislature, there is no need for Para 8 of the Tenth Schedule to be ratified by the legislatures of not less than one-half of the States, as pleaded by the learned counsel. Therefore, the learned counsel is unjustified in claiming that since the said Para has not been ratified by one-half or more than one-half of the State legislatures, the Para 8 of the Tenth Schedule of the Constitution of India is an unconstitutional one.

Mr. Kapoor has also contended that Para 8 of the Tenth Schedule of the Constitution of India bestows an unfettered power upon the Speaker/ Chairman. However, such an argument is belied by fact that Para 8 (2) of the Tenth Schedule of the Constitution itself mandates that the rules “*shall be laid before the House for its approval*”. Hence, the use of the power is limited; the power is also controlled by the House. Hence, the Speaker/ Chairman cannot act like a bull in a China town. Thus, the contention raised by the learned counsel is untenable.

**Rule 7 of the Rules is as under:**

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

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

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

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

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

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

(5) *The Speaker shall, as soon as may be after referring a petition to the Committee under sub-rule (4), intimate the petitioner accordingly and make an announcement with respect to such reference in the House or, if the House is not then in session, cause the information as to the reference, to be published in the Bulletin.*

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

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

(8) *The provisions of sub-rules (1) to (7) shall apply with respect to a petition in relation to the Speaker as they apply with respect to a Petition in relation to any other member and for this purpose, reference*

*to the Speaker in these sub-rules shall be construed as including references to the member elected by the House under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule.”*

A bare perusal of the provision clearly reveals that it prescribes the procedure to be followed by the Speaker after he receives the disqualification petition from the complainant. The Speaker is firstly required to examine if the disqualification petition fulfils the requirements of Rule 6 of the Tenth Schedule of the Constitution of India or not. If the disqualification petition does not fulfil the conditions of Rule 6 of the Tenth Schedule of the Constitution of India, then under sub-rule (2), the Speaker “*shall dismiss the petition and intimate the petitioner accordingly*”.

Secondly, in case the petition does fulfil the requirements of Rule 6 of the Tenth Schedule of the Constitution of India, then the Speaker shall proceed further by forwarding the copies of the petition to the member in relation to whom the petition has been made. And in case the member belongs to the Legislature party, and the petition has not been filed by the leader thereof, the copies of the petition shall be sent to such leader as well. The leader is required to send his comments within seven days, or within such time as may be extended by the Speaker.

Thirdly, Rule 7(4) of the Tenth Schedule of the Constitution of India further prescribes that once the Speaker has received the comments, he shall consider the same. Thereafter, the Speaker has two options before him: either to proceed to determine the question of disqualification, or if he is satisfied that “*having regard to the nature and circumstances of the case that it is necessary or expedient to so*

*to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him.”*

Fourthly, sub-rule (5) of Rule 7 of the Rules further requires the Speaker to intimate the petitioner about referring the petition for preliminary inquiry to the Committee. Under sub-rule (6) of Rule 7 of the Rules, once the Speaker has received the report of the Committee, *“he shall proceed to determine the question”* with regard to the disqualification of the member.

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

Thus, a bare perusal of sub-rule (4) read with sub-Rule (7) clearly reveals that the role of the Committee is to hold a preliminary inquiry into the facts of the case. Therefore, Mr. Kapoor is unjustified in claiming that Rule 7(4) of the Rules bestows an equal power upon the Committee to declare a member as disqualified. Such a power, obviously, does not exist with the Committee. In fact, according to sub-rule (4) of Rule 7 of the Rules, having carried out a fact finding inquiry, the Committee is expected to merely submit its report to the

Speaker. Thus, the contention raised by Mr. Kapoor is belied by sub-rule (4) of Rule 7 of the Rules.

Moreover, since the Committee is not endowed with the power to disqualify a member, Rule 7(4) of the Rules is not contrary to Para 6 of the Tenth Schedule of the Constitution of India. Hence, Mr. Kapoor is unjustified in claiming that Rule 7 (4) is contrary to the parental Act, namely Para 6 of the Tenth Schedule of the Constitution of India. In fact, the said provision merely furthers the purpose of Para 6 of the Tenth Schedule of the Constitution of India. Hence, Rule 7(4) of the Rules is in consonance with Para 6 of the Tenth Schedule of the Constitution of India. Therefore, the contention raised by Mr. Kapoor is clearly unacceptable.

Further, since Rule 7(4) of the Rules bestows a discretionary power upon the Speaker/ Chairman to either refer the petition to the Committee for a preliminary inquiry or not, the petitioner is unjustified in claiming that he has a right to have his petition referred to the Committee. Thus, merely because the petitioner had requested that the petition be referred to the Committee, and the request was declined, merely on this ground the impugned order dated 16-01-2019 cannot be faulted.

Furthermore, Mr. Kapoor is mistaken when he claims that unfettered discretionary power has been given to the Speaker to either refer the petition to the Committee or not to do so. A bare perusal of Rule 7(4) of the Rules clearly reveals that *“having regard to the nature and circumstances of the case”, the Speaker “has to be satisfied” “that it is necessary or expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a*

*report to him.*” The provision clearly requires the Speaker to be “*satisfied*” after considering “*the nature and circumstances of the case*” and after being satisfied that “*it is necessary or expedient so to do*”. The satisfaction must be reflected in the reference made to the Committee. Thus, the power to refer the petition to the Committee cannot be exercised in a whimsical or capricious manner. Hence, the power to refer the petition for a preliminary inquiry to the Committee has been circumscribed. Thus, it is not an unfettered power. Therefore, the argument of Mr. Kapoor with regard to unbridled power being conferred on the Speaker under Rule 7 (4) of the Rules is untenable.

According to Mr. Kapoor, an independent adjudicatory machinery for resolution of electoral dispute is an essential element of democracy, which is the basic feature of the Indian Constitutionalism. However, this basic feature is being violated by bestowing the adjudicatory function upon the learned Speaker/Chairman. Therefore, Rule 7 of the Rules is unconstitutional.

However, a similar contention was raised before the Hon’ble Supreme Court in the case of **Kihoto Hollohan** (supra). While dealing with the said argument, the Hon’ble Supreme Court observed as under:

*The question is, whether the investiture of the determinative jurisdiction in the Speaker would by itself stand vitiated as denying the idea of an independent adjudicatory authority. We are afraid the criticism that the provision incurs the vice of unconstitutionality ignores the high status and importance of the office of the Speaker in a Parliamentary democracy. The office of the speaker is held in the highest respect and esteem in Parliamentary traditions. The evolution of the institution of Parliamentary democracy has as its pivot the institution of the Speaker. The Speaker holds a high, important and ceremonial*

office. All questions of the well being of the House are matters of Speaker's concern'. The Speaker is said to be the very embodiment of propriety and impartiality. He performs wide ranging functions including the performance of important functions of a judicial character.

Mavalankar, who was himself a distinguished occupant of that high office, says:<sup>13</sup>

"In parliamentary democracy, the office of the Speaker is held in very high esteem and respect. There are many reasons for this. Some of them are purely historical and some are inherent in the concept of parliamentary democracy and the powers and duties of the Speaker. Once a person is elected Speaker, he is expected to be above parties, above politics. In other words, he belongs to all the members or belongs to none. He holds the scales of justice evenly irrespective of party or person, though no one expects that he will do absolute justice in all matters; because, as a human being he has his human drawbacks and shortcomings. However, everybody knows that he will intentionally do no injustice or show partiality. "Such a person is naturally held in respect by all."

Pundit Nehru referring to the office of the Speaker said :<sup>14</sup>

"....The speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's freedom and liberty. Therefore, it is right that that should be an honoured position, a free position and should be occupied always by men of outstanding ability and impartiality.

Referring to the Speaker, Erskine may says : <sup>15</sup>

"The Chief characteristics attaching to the office of Speaker in the House of Commons are authority and impartiality. As a symbol of his authority he is accompanied by the Royal Mace which is borne before him when entering and leaving the chamber and upon state occasions by the Sergeant at Arms attending the House of commons, and is placed upon the table when he is in the chair. In debate all speeches are addressed to him and he calls upon Members to speak - a choice which is not open

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<sup>13</sup> See G.V. Mavalankar, "The Office of Speaker", Journal of Parliamentary Information, April 1956, Vol. 2, No. 1, p. 33

<sup>14</sup> See: HOP. Deb. Vol. IX (1954), CC 3447-48

<sup>15</sup> See : Erskine May, Parliamentary Practice (20th edition) p. 234 and 235

*to dispute. When he rises to preserve order or to give a ruling on a doubtful point he must always be heard in silence and no Member may stand when the Speaker is on his feet. Reflections upon the character or actions of the Speaker may be punished as breaches of privilege. His action cannot be criticized incidentally in debate or upon any form of proceeding except a substantive motion. His authority in the chair is fortified by many special powers which are referred to below. Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised....."*

M.N. Kaul and S.L. Shakdher in 'Practice and procedure of Parliament' (4th Edition, p. 104) says :

*"The all important conventional and ceremonial head of Lok Sabha is the Speaker. Within the walls of the House his authority is supreme. This authority is based on the Speaker's absolute and unvarying impartiality - the main feature of the office, the law of its life. The obligation of impartiality appears in the constitutional provision which ordains that the Speaker is entitled to vote only in the case of equality of votes. Moreover, his impartiality within the House is secured by the fact that he remains above all considerations of party or political career, and to that effect he may also resign from the party to which he belonged."*

*It would, indeed, be unfair to the high traditions of that great office to say that the investiture, in it of this Jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the High office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. The Robes of the Speaker to change and elevate the man inside.*

*Accordingly, the contention that the vesting of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such a constitutional functionaries should not be considered exceptionable."*

Therefore, in the light of the opinion expressed by the Apex Court, the contention raised by the learned counsel is clearly unsustainable.

The learned counsel for the petitioner has challenged the impugned order dated 16.01.2019 on the ground of violation of principles of natural justice. Therefore, the issues before this Court are: *firstly* in the peculiar facts of the case, whether an opportunity of hearing had to be given to the petitioner or not? *Secondly* whether an opportunity of hearing was duly given to the petitioner? And *thirdly* whether sufficient opportunity of hearing was given or not?

Undoubtedly, the petitioner himself had admitted that he did contest the election, scheduled to be held on 07.12.2018, on a ticket issued by the INC Party. In the case of **G. Viswanadhan** (supra) the Apex Court has already held that “*when a Legislator joins another political party, he has to be treated as having voluntarily given up his membership of the party by which, he was set up as a candidate for the original election*”. In the present case, the petitioner fought the original election on 12.12.2015 under the support of TRS Party. However, in the election held on 07.12.2018, he fought the election, as mentioned above, on behalf of the INC Party. Thus, obviously, he had “voluntarily given up his membership” of the TRS Party. Once such an admission is made by the petitioner, the giving of an opportunity of hearing would be merely a formality, a ceremony to be performed. In catena of cases, the Hon’ble Supreme Court has opined that where the giving of an opportunity of hearing would merely be a ceremony to be performed, such an opportunity need not be given to the concerned person. Hence, the petitioner need not have been given an opportunity of hearing.

But nonetheless, the petitioner was given an opportunity of hearing. For, according to the record, by notice dated 18.12.2018, he was granted seven days' time for filing his comments. But, instead of filing his comments, the petitioner prayed for one month's time for filing his reply. Subsequently, the learned Chairman granted him one week's time for filing his reply. Thus, he was granted time till 03.01.2019 to file his reply. The reply was duly filed by the petitioner. By letter dated 04.01.2019, the petitioner was informed to appear before the learned Chairman on 11.01.2019. Although the petitioner did not appear personally, he was represented by his counsel. According to the learned Chairman, the case was adjourned till 12.01.2019. On 12.01.2019 the learned counsel for the petitioner was duly heard. It is only after hearing the learned counsel for the petitioner that the order was reserved by the learned Chairman. The impugned order was pronounced on 16.01.2019. Therefore, not only an opportunity of hearing was given, but also a sufficient opportunity of hearing was given to the petitioner. Hence, the learned counsel for the petitioner is unjustified in claiming that the petitioner's rights under the principles of natural justice have been violated.

The petitioner has pleaded the defense that he did not "voluntarily joined the INC Party" as it was part of a strategy of the TRS Party. This defense was pleaded by the petitioner before the learned Chairman, as well as before this Court. However, even before this Court, the petitioner has not given any details of the facts as to who formulated this strategy, where it was formulated, and where such a strategy was discussed within the TRS Party. Thus, the defense is devoid of any concrete details. Hence, the defense is merely an after-thought in order to save his skin from being

disqualified as an M.L.C. Therefore, the defense cannot be accepted as a valid one. Thus, the learned Chairman was certainly justified in disqualifying the petitioner under Para 2(1)(a) of the Tenth Schedule of the Constitution of India.

For the reasons stated above, this Court declares Para 8 of the Tenth Schedule of the Constitution of India to be constitutionally valid. Similarly, Rule 7 (4) of the Rules is held to be constitutional. Furthermore, this Court does not find any illegality in the impugned order dated 16.01.2019. It is, hereby, confirmed. Thus, the writ petition is devoid of merit. Consequently, it is, hereby, dismissed.

Miscellaneous petitions, pending if any, shall stand dismissed.  
No order as to costs.

**RAGHVENDRA SINGH CHAUHAN, CJ**

**Dr. SHAMEEM AKTHER, J**

Date: 17.07.2019

TSR

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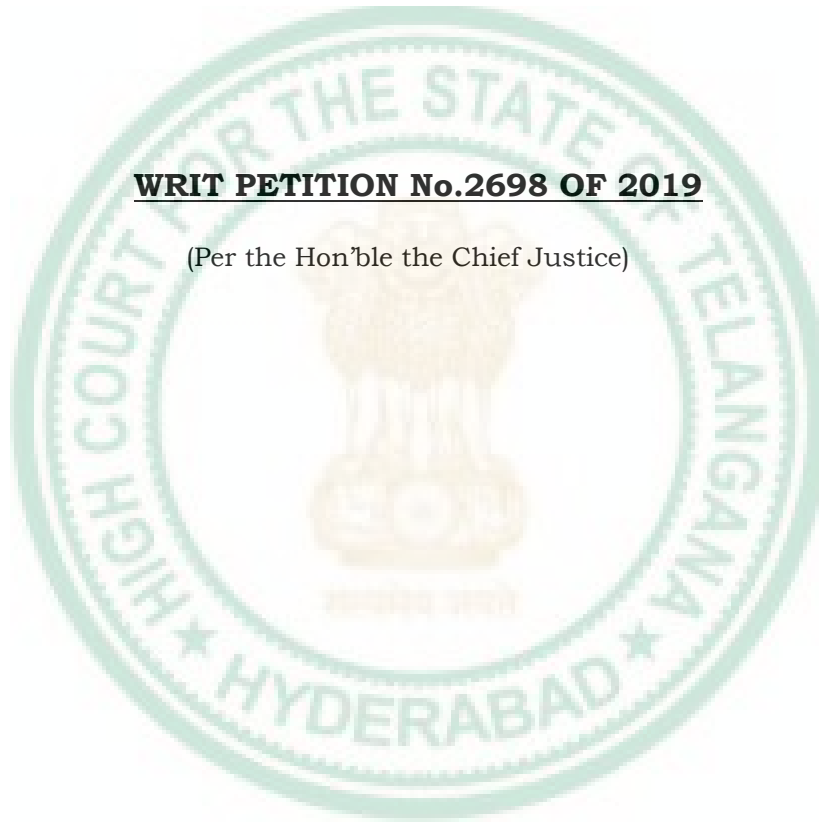
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**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN  
AND  
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**WRIT PETITION No.2698 OF 2019**

(Per the Hon'ble the Chief Justice)



Date: -JULY-2019

Pln/Tsr