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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision : 24th July, 2019

+ LPA 450/2019 & CM APPL. 31445-31447/2019

+ LPA 452/2019 & CM APPL. 31544-31546/2019

COL DEVINDER KUMAR SEHRAWAT

ANIL KUMAR BAJPAI

..... Appellants

Through: Mr.Purushaindra Kaurav, Sr.
Adv. with Mr.Piyush Beriwal,
Mr.Shoumendu Mukharji,
Mr.Satya Ranjan Swain,
Ms.Anuradha Mishra, Mr.Vijay
Joshi, Mr.Sushil Kumar
Pandey, Mr.Himanshu Pathak ,
Mr.Amit Gupta and Mr.Sahaj
Garg, Advs.

versus

**THE SPEAKER LEGISLATIVE ASSEMBLY, GOVT OF
NCT OF DELHI & ANR**

..... Respondents

Through: Mr.Sudhir Nandrajog, Sr. Adv.
for R-1 with Mr.Sameer
Vashisht, ASC in item-47
Mr.Sameer Vashisht, ASC for
R-1 with Mr.Manish Vashisht,
Ms. Manashwy Jha and Ms.
Urvi Kapoor, Advs. in item-48

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

24.07.2019

D.N. PATEL, CHIEF JUSTICE (ORAL)

1. These two Letters Patent Appeals have been preferred

challenging an order/judgment passed by the learned Single Judge in W.P.(C) 7272/2019 and in W.P.(C) 7273/2019. *Vide* a common order/judgment dated 8th July, 2019, these writ petitions have been dismissed. Hence, these two Letters Patent Appeals have been preferred by the appellants (original petitioners).

2. Several contentions have been raised by the learned counsel appearing for the appellants, including that the learned Speaker, who is Respondent No. 1, should recuse himself from the hearing of the disqualification application preferred by Respondent No. 2.

3. Respondent No. 2 has preferred a disqualification application, for these two appellants (original petitioners), under Schedule X to the Constitution of India, to be read with Article 191(2) thereof, mainly on the ground that these appellants have voluntarily given up their membership of the 'Aam Aadmi Party', popularly known as 'AAP'.

4. These two appellants (original petitioners) have joined the 'Bharatiya Janta Party' (BJP), hence, an application has been moved by Respondent No. 2 for their disqualification.

5. The application for disqualification was preferred on 10th June, 2019, to adjudicate the petition preferred by Respondent No. 2. Notice was issued on 17th June, 2019, inviting reasons from these two appellants as to why the said application for disqualification is not to be aroused.

6. The appellant (of LPA 450/2019) preferred a writ petition under Article 32 of the Constitution of India bearing no. W.P.(C) 812/2019, before the Hon'ble Supreme Court of India.

7. This writ petition was disposed of as withdrawn by the order dated 28th June, 2019 as under:

“ After some hearing learned counsel for the petitioner seeks permission to withdraw the present writ petition and states that if aggrieved by an adverse order, he may take recourse to judicial remedy, as per law.

We merely recorded the statement and not made any comments or observations.

Consequently, the Writ petition is dismissed as withdrawn.

Pending application, if any, also stand disposed of.”

8. Thereafter, these two appellants (original petitioners) moved an application on 3rd July, 2019 for the recusal of the learned Speaker, which is at Annexure A-4 to the memo of the LPA 450/2019, wherein several objections were raised about the conduct of the Hon'ble Speaker, his close intimacy with the 'Aam Aadmi Party' (AAP), his participation in election campaigns, dharna, etc. Moreover, it is submitted by the counsel appearing for the appellants (original petitioners) that the learned Speaker should have recused himself from hearing the disqualification application preferred by Respondent No. 2 (under Schedule X to the Constitution of India).

9. It is also submitted by the counsel for the appellants that simultaneously, an application for cross-examination of the complainant as well as of the editor, of various newspapers was also given. On 4th July, 2019, the hearing had taken place before the learned Speaker about the objections raised by the appellants, which is at Annexure A-4 to the memo of the LPA 450/2019, for his recusal. Before this application was finally decided, another application for cross-examination was made by these two appellants for cross-examination of the complainant, as well as of the editors of various newspapers.

10. At this stage, the counsel appearing for Respondent No. 2 submitted that the application for cross-examination was given simultaneously with the application for recusal.

11. Be as it may, but the fact remains that such cross-examination was already offered by the learned Speaker of the complainant as well as of the editors of various newspapers. There was also a cross-examination by these two appellants on 20th July, 2019.

12. Meanwhile, these two writ petitions bearing nos. W.P.(C) 7272/2019 and W.P.(C) 7273/2019 have been preferred before this Court.

13. The only question raised in these Letters Patent Appeals are about the fact that the recusal application given by these two

appellants, ought to have been decided by the learned Speaker first, and instead of doing that, the learned Speaker wants to proceed with the disqualification petition, preferred by Respondent No. 2.

14. We are not in agreement with this contention canvassed by the learned counsel appearing for the appellant, mainly for the reasons that –

- (a) looking to the provisions of Schedule X to the Constitution of India, the learned Speaker has all the powers, jurisdiction and authority to decide a petition preferred for disqualification of the members of the House,
- (b) it is not obligatory on the part of the learned Speaker to decide in a piecemeal manner, that is, firstly, the preliminary objections raised by the members of the House against whom the disqualification applications have been preferred,
- (c) it is the prerogative of the learned Speaker to decide all the issues which are raised, whether they are preliminary or not, at a time, so that the issue of disqualification raised under Schedule X to the Constitution of India can be finally decided,
- (d) it appears that sometimes, in the court of law, varieties of preliminary objections are being raised and there are a catena of decisions about what is to be decided, and that too when. Since we are dealing with the proceedings in the House itself, it is for the learned Speaker to decide the disqualification application,

(e) we leave this issue to be decided by the learned Speaker whether he will decide the preliminary issue first and thereafter, the main disqualification petition, or to decide the preliminary issues along with the disqualification petition. The procedure to be followed in the House shall be at the discretion of the adjudicatory authority – the learned Speaker of the House, more particularly, when nothing, to the contrary, has been mentioned in Schedule X to the Constitution of India,

(f) We see no reason to impose any mathematical formula for the learned Speaker of the House specifying that he must first decide the preliminary issue raised by the members against whom the disqualification application/petition has been preferred,

(g) The learned Speaker of the House can adjudicate such type of multifarious litigation in his own wisdom and experience, which may be based upon the precedents of the House,

(h) It has been held by the Hon'ble the Supreme Court in ***Kihoto Hollohan vs Zachillhu 1992 SCC Supl. (2) 651***, in paragraph nos. 109 and 110, which read thus:

“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, and 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. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence.”

(Emphasis Supplied)

15. The learned Counsel appearing for the appellant has relied upon several decisions on the point of preliminary objections to be decided first and also upon the decision reported in **(2015) 12 SCC 381, (2015) 12 SCC 381, (2016) 5, SCC 808**. Looking at the peculiar facts of the present case as stated hereinabove, it is a prerogative power of the learned Speaker of the House to decide the preliminary objection and the disqualification petition together, and it is also a prerogative power of the learned Speaker of the House to evolve his own procedure to conduct the proscience in the House. None of the decisions, as relied upon, are helpful to the appellants.

16. In view of the aforesaid facts, reasons and judicial

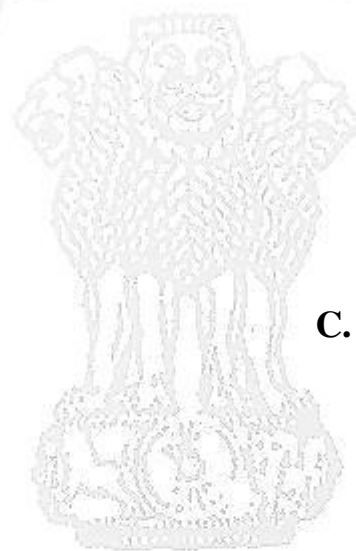
pronouncements, we see no reason to entertain both these Letters Patent Appeals as no error has been committed by the Hon'ble learned Single Judge while deciding the writ petitions bearing nos. W.P.(C) 7272/2019 and W.P.(C) 7273/2019, *vide* order/judgment dated 8th July, 2019.

17. Hence these Letters Patents Appeals are hereby dismissed. All miscellaneous applications are also disposed of in view of the order passed in these appeals.

CHIEF JUSTICE

C. HARI SHANKAR, J.

JULY 24, 2019/bh



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