IN THE HIGH COURT OF MANIPUR

AT IMPHAL

1. **M.C.(W.P.(C)) No. 82 of 2020**
(Ref:-W.P.(C) No. 226 of 2020)
IN THE MATTER OF
Khumukcham Joykishan Singh ***...Applicant/Petitioner***
Vs.
The Hon'ble Speaker, MLA & 2 ors. ***…Respondents***

With

2. **M.C.(W.P.(C)) No. 83 of 2020**
(Ref:-W.P.(C) No. 225 of 2020)
IN THE MATTER OF
Surajkumar Okram ***...Applicant/Petitioner***
Vs.
The Hon'ble Speaker, MLA & 2 ors. ***…Respondents***

With

3. **M.C.(W.P.(C)) No. 84 of 2020**
(Ref:-W.P.(C) No. 224 of 2020)
IN THE MATTER OF
Kangujam Ranjit Singh ***...Applicant/Petitioner***
Vs.
The Hon'ble Speaker, MLA & 2 ors. ***…Respondents***

With

4. **M.C.(W.P.(C)) No. 85 of 2020**
(Ref:-W.P.(C) No. 223 of 2020)
IN THE MATTER OF
Keisham Meghachandra Singh ***...Applicant/Petitioner***
Vs.
Manipur Legislative Assembly & 2 ors. ***…Respondents***

With

5. **M.C.(W.P.(C)) No. 86 of 2020**
(Ref:-W.P.(C) No. 222 of 2020)
IN THE MATTER OF
DD Thaisii ***...Applicant/Petitioner***
Vs.
The Hon'ble Speaker, MLA & 2 ors. ***…Respondents***

With

6. **M.C.(W.P.(C)) No. 87 of 2020**
(Ref:-W.P.(C) No. 221 of 2020)
IN THE MATTER OF
Okram Henry Singh ***...Applicant/Petitioner***
Vs.
The Hon'ble Speaker, MLA & 2 ors. ***…Respondents***

With

7. M.C.(W.P.(C)) No. 88 of 2020
(Ref:-W.P.(C) No. 220 of 2020)
IN THE MATTER OF
Konthoujam Govindas ***...Applicant/Petitioner***
Vs.
The Hon'ble Speaker, MLA & 2 ors. ***…Respondents***

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

For the applicants /petitioners	::	Shri Kapil Sibal, Sr. Advocate with Shri S.G. Hasnain, Sr. Advocate & Shri N. Ibotombi, Sr. Advocate
For the respondents	::	Shri Kh. Tarunkumar, Advocate & Shri H.S. Paonam, Sr. Advocate
Date of reserved	::	05-06-2020
Date of order	::	**08-06-2020**

O R D E R

[1] Heard Shri Kapil Sibal, learned Senior Advocate with S.G Hasnain, learned Senior Advocate and Shri N. Ibotombi, learned Sr. Advocate appearing for the applicants in all the applications; Shri Kh. Tarunkumar, learned Advocate appearing for the Speaker and Shri H.S. Paonam, learned Senior Advocate appearing for the private respondents in all the applications.

[2] The above applications have been filed by applicants/ petitioners praying, inter-alia, for restraining the private respondents from entering into the premises of the Manipur Legislative Assembly. Since all the applications are identical, the same are being disposed of by this common order.

[3] It has been submitted by Shri Kapil Sibal, Senior Advocate appearing for the applicants/ petitioners that although the applications were filed before the Hon'ble Speaker as back as on 08-11-2018, notices were issued only on 10-07-2019; that despite a number of opportunities being granted to the private respondents herein, no replies were filed by them and only on 03-02-2020 and that too, after the judgment being delivered by the Hon'ble Supreme Court in **Keisham Meghachandra Singh Vs. The Hon'ble Speaker, Manipur Legislative Assembly & ors., CA No.547 of 2020 etc.**, the preliminary objections were filed; that the Hon'ble Speaker being a party respondent in Shri K. Meghachandra Singh (supra), knew very well that he was bound by the judgment of the Hon'ble Supreme Court and the petitions ought to have been decided by him within three months as directed; that the failure on the part of the Hon'ble Speaker to decide the petitions within three months from the date on which the judgment was intimated to him, is nothing but legally malafide as observed in **Kihoto Hollohan Vs. Zachillhu, (1992) Supp (2) SCC 651** and that a preliminary objection similar to the one raised herein, has already been rejected by the Hon'ble Speaker himself in Shri K. Meghachandra Singh (supra). On the other hand, Shri Kh. Tarunkumar Singh, the learned Advocate appearing for the Speaker has submitted that since the office of the Manipur Legislative Assembly has issued a notification dated 03-06-2020 informing that the order on the issue relating to preliminary objections, will be pronounced by the Speaker on 06-06-2020, the hearing of the present applications may be deferred to await the

outcome thereof. The order dated 18-03-2020 was passed by the Hon'ble Supreme Court exercising its power conferred under Article 142 of the Constitution of India and since such power is not conferred on the High Court, no order restraining the private respondents from entering into the premises of the Manipur Legislative Assembly, can be passed by this Court. Relying upon the decision rendered by the Hon'ble Supreme Court in **Speaker, Haryana Vidhan Sabha Vs. Kuldeep Bishnoi & ors., (2015) 12 SCC 381**, it has been submitted by him that this Court is not empowered to pass such an interim order. Any order passed by this Court allowing the present applications, may tantamount to disqualifying the private respondents for all practical purposes. In line with and in support of his submissions, it has been submitted by Shri H.S Paonam, Senior Advocate appearing for the private respondents that the orders passed by the Speaker granting opportunities, on some occasions, to the private respondents for filing objections were not questioned by anyone before the appropriate forum. The order dated 18-03-2020 was passed by the Hon'ble Supreme Court keeping in mind the extra-ordinary circumstances which are not there in the present cases and moreover, there is no ground at all on the basis of which the prayers made in the applications can be granted by this Court. In view of the law laid down in **Kihoto Hollohan Vs. Zachillhu** (supra), this Court cannot grant the relief as prayed for by the applicants. The present applications are absolutely misconceived and are liable to be rejected by this Court. In his reply, it has been submitted by Shri Kapil Sibal that the decision rendered in Kihoto Hollohan Vs. Zachillhu

(supra) has been referred to and interpreted by the Hon'ble Supreme Court in Shri K. Meghachandra Singh (supra) that it did not interdict judicial review in aid of the Speaker arriving at a prompt decision as to disqualification under the Tenth Schedule.

[4] The submissions of the learned counsels appearing for the respondents can be broadly categorized into two-one, in view of the laws laid down by the Hon'ble Supreme Court in **Kuldeep Bishnoi** (supra) and **Kihoto Hollohan** (supra), this Court is not competent to pass interim orders under the powers of judicial review under Article 226 and 227 of the Constitution of India, when the disqualification proceedings are pending before the Speaker and two, the power which is conferred upon the Hon'ble Supreme Court under Article 142 to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, is not conferred on the High Court and therefore, this Court cannot exercise it. As regards the first submission, it is true that it has been held by the Hon'ble Supreme Court in **Kuldeep Bishnoi** (supra) that the High Court is not competent to pass interim orders under the power of judicial review under Article 226 and 227 of the Constitution, when the disqualification proceedings are pending before the Speaker. But in **Kihoto Hollohan** (supra), an exception has been carved out that the scope of judicial review is confined to violation of the constitutional mandates, malafides, non-compliance with the rules of natural justice and perversity. It may be noted that in Shri K. Meghachandra Singh (supra), the Hon'ble Supreme Court vide its judgment and order dated 21-01-2020

examined and explained the above decisions in regard to judicial review, when the Speaker failed to decide the petition for disqualification, the relevant paragraphs of which read as under:

> ***"11.*** *We would have acceded to Mrs. Madhavi Divan's plea that in view of this order of a Division Bench of this Court, the hearing of this case ought to be deferred until the pronouncement by a Five Judge Bench of this Court on the issues raised in the present petition. However, we find that this very issue was addressed by a Five Judge Bench judgment in Rajendra Singh Rana (supra) and has already been answered. Unfortunately, the decision contained in the aforesaid judgment was not brought to the notice of the Division Bench which referred the matter to Five Hon'ble Judges of this Court, though Rajendra Singh Rana (supra) was sought to be distinguished in Kuldeep Bishnoi (supra), which was brought to the notice of the Division Bench of this Court.*
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> ***22.*** *It is clear from a reading of the judgment in Rajendra Singh Rana (supra) and, in particular, the underlined portions of paragraphs 40 and 41 that the very question referred by the Two Judge Bench in S.A. Sampath Kumar (supra) has clearly been answered stating that a failure to exercise jurisdiction vested in a Speaker cannot be covered by the shield contained in paragraph 6 of the Tenth Schedule, and that when a Speaker refrains from deciding a petition within a reasonable time, there was clearly an error which attracted jurisdiction of the High Court in exercise of the power of judicial review.*
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> ***23.*** *Indeed, the same result would ensue on a proper reading of Kihoto Hollohan (supra). Paragraphs 110 and 111 of the said*

judgment when read together would make it clear that what the finality clause in paragraph 6 of the Tenth Schedule protects is the exclusive jurisdiction that vests in the Speaker to decide disqualification petitions so that nothing should come in the way of deciding such petitions. The exception that is made is also of importance in that interlocutory interference with decisions of the Speaker can only be qua interlocutory disqualifications or suspensions, which may have grave, immediate, and irreversible repercussions. Indeed, the Court made it clear that judicial review is not available at a stage prior to the making of a decision by the Speaker either by a way of quia timet action or by other interlocutory orders.

28. *A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in paragraph 110 of* ***Kihoto Hollohan*** *(supra) are quia timet actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. Paragraphs 110 and 111 of* ***Kihoto Hollohan*** *(supra) do not, therefore, in any manner, interdict judicial review in aid of the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a Tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period. What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification*

petitions filed before the Speaker must be decided if the constitutional objective of disqualifying persons who have infracted the Tenth Schedule is to be adhered to. This period has been fixed keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is 5 years and the fact that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for a single day, as found in ***Rajendra Singh Rana*** *(supra), if they have infracted the provisions of the Tenth Schedule."*

It is not in dispute that a Division Bench of the Hon'ble Supreme Court, vide its order dated 08-11-2016 passed in **S.A Sampath Kumar Vs. Kale Yadaih & ors, SLP (C) No.33677 of 2015,** referred to a Constitution Bench of five Judges a question as to whether the High Court, exercising power under Article 226 of the Constitution, can direct a Speaker of a Legislative Assembly to decide a disqualification petition within a certain time. But all that the Hon'ble Supreme Court held in Shri K. Meghachandra Singh (supra), is that at the time of referring the question, the decision contained in the judgment rendered in **Rajendra Singh Rana Vs. Swamy Prasad Maurya, (2007) 4 SCC 270** was not brought to the notice of the Division Bench, when only the decision rendered in Kuldeep Bishnoi (supra) which sought to distinguish Rajendra Singh Rana (supra) was brought to its notice. The Hon'ble Supreme Court in Shri K. Meghachandra Singh (supra) held that the question referred by the Division Bench had already been answered in Rajendra Singh Rana (supra) stating that *a failure to exercise jurisdiction vested in a Speaker cannot be covered by the shield contained in paragraph 6 of the Tenth*

Schedule and that when a Speaker refrains from deciding a petition within a reasonable time, there was clearly an error which attracted jurisdiction of the High Court in exercise of the power of judicial review. It is thus seen that the High Court has the jurisdiction to exercise its power of judicial review, while the petition for disqualification is pending before the Speaker provided he has failed to decide it within a reasonable time. This power of judicial review certainly includes the power of passing interim orders and in other words, the High Court, in exercise of its power under Article 226 of the Constitution, can pass interim orders for the ends of justice. It is well known that in terms of Article 141 of the Constitution, the High Courts are bound by the law declared by the Hon'ble Supreme Court and in particular, the decision rendered by the Hon'ble Supreme Court of five Judges in Rajendra Singh Rana (supra), unless and until it is overruled by a larger bench of the Hon'ble Supreme Court. On top of that, this Court is indubitably bound by the judgment delivered by the Hon'ble Supreme Court in Shri K. Meghachandra Singh (supra) which has set aside the judgment and order passed by this Court. So far as the second submission is concerned, this Court is not oblivious of the fact that Article 142 does not confer any power on the High Court and therefore, the question of exercising power under Article 142 by this Court will not arise at all. However, it may be noted that as has been observed hereinabove, the High Court is empowered under Article 226 of the Constitution to pass interim orders in matters relating to non-disposal of the petition for disqualification by the Speaker within a reasonable time. Another

submission which the learned counsel appearing for the Speaker has emphasized during the course of hearing, is that the hearing of the applications may be deferred to await the outcome of the order to be passed by the Speaker on 06-06-2020. His submission has no merit for the reason that mere passing an order on the issue relating to maintainability of the petition will not suffice and such order cannot be said to have disposed of the petition.

[5] Facts and circumstances of the above writ petitions are not exactly the same with that of Shri **K. Meghachandra Singh** (supra) but are almost identical for the reason that the failure on the part of the Hon'ble Speaker to decide the petitions within a reasonable time as mandated by Article 21 of the Constitution of India, is common in both the cases. The allegation that the private respondents in both the cases have voluntarily given up their membership, is also common. In other words, the facts and circumstances are common in so far as the issue relating to grant interim relief is concerned. In Shri K. Meghachandra Singh (supra), the election for the 11th Manipur Legislative Assembly was conducted in Mach, 2017 wherein Shri Th. Shyamkumar Singh was nominated and set up by the Congress Party and was duly elected as such. But he was sworn in as a Minister in the Government led by BJP. As many as thirteen applications were filed before the Hon'ble Speaker, for the disqualification of Shri Th. Shyamkumar Singh, who failed to decide the same within a reasonable time. Being aggrieved by the inaction on the part of the Hon'ble Speaker, a writ petition being WP(C) No.353 of 2017 was filed before this Court which

was ordered to be listed so as to await the outcome of the cases pending before the Hon'ble Supreme Court. After waiting till January, 2018, a writ petition being **WP(C) No.17 of 2018** came to be filed praying for declaring him as having incurred disqualification for being a member of the Manipur Legislative Assembly. After having heard the learned counsels appearing for the parties therein and considered their submissions, this Court disposed of it vide its judgment and order dated 23-07-2019 wherein this Court made various observations, one of which being that the Hon'ble Speaker ought to have decided the petitions within a reasonable time which he failed miserably but this Court declined to grant any relief in the writ petition. In the appeals preferred by the petitioner therein before the Supreme Court by way of special leave which was duly granted, the Hon'ble Supreme Court vide its judgment and dated 21-01-2020 did not interfere with the observations made by this Court but the judgment and order passed by this Court was set aside. The fact that the judgment and order passed by this Court was set aside by the Hon'ble Supreme Court, has clearly demonstrated that this Court did commit an error in declining to grant any relief in the writ petition and in other words, this Court in exercise of power conferred under Article 226 of the Constitution could have directed the Hon'ble Speaker to decide the petitions in a stipulated time. The relief that was granted by the Hon'ble Supreme Court therein, was that the Hon'ble Speaker should decide the disqualification petitions pending before him within a period of four weeks from the date on which the judgment was intimated to him.

[6] It is an undeniable fact that the Hon'ble Speaker has failed to decide the petitions filed by the petitioners before him within a reasonable time. The petitions were admittedly filed on 08.11.2018 but the same have not, in fact, been disposed of by the Hon'ble Speaker till date. In Shri K. Meghachandra Singh (supra), the Hon'ble Supreme Court, while partly allowing the Civil Appeals arising out of SLP (C) No.18659 of 2019 vide its judgment and order dated 21-01-2020, directed the Hon'ble Speaker to decide the petitions within four weeks from the date on which it was intimated to him. Since the Hon'ble Speaker failed to decide the same within the time as directed, the Hon'ble Supreme Court passed an order dated 18-03-2020 directing that Shri Th. Shyamkumar Singh be restrained from entering the Manipur Legislative Assembly until further order. It may be noted that the Hon'ble Supreme Court has also observed that *what is reasonable will depend on the facts of each case but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed, is the outer limit within which the petition must be decided by the Speaker.* The Hon'ble Speaker, Manipur Legislative Assembly being a party respondent therein, was fully aware of the said observation and since he was bound by it, he ought to have decided the petitions within three months from the day on which the judgment and order was intimated to him. The Hon'ble Speaker appears to be not aggrieved by the judgment and there is no material on record to show that the Speaker did file an application for clarification or a review petition for reviewing the judgment and order in respect of the said

observation. The Hon'ble Speaker acting as the Tribunal, ought to act fairly and reasonably but he has utterly failed to do so. The Hon'ble Speaker appears to have no respect for the provisions of the Constitution of India including Article 14 which strikes at the root of arbitrariness, malafide etc. and the decisions of the Hon'ble Supreme Court as well. The reason as to why the petitions were not disposed of by him within four months from the date of the judgment being intimated to him, leave alone more than one and half years from the date of filing the petitions is not made known to public, because of which it has been submitted by the learned senior counsel appearing for the applicants that the failure on the part of the Speaker to decide the petitions, is nothing but legally malafide which is one of the grounds contained in the exception carved out in Kohito Hollohan (supra) with respect to judicial review.

[7] As has been observed hereinabove, the facts and circumstances of the present cases are almost identical with that of Shri K. Meghachandra Singh (supra). In the present cases, the petitions were filed before the Speaker on 08-11-2018 and were not decided by him within a reasonable time as mandated in Article 14 of the Constitution of India. The meaning of the expression "**reasonable time**" was considered by the Hon'ble Supreme Court which was of the opinion that it would depend on the facts of each case but it could mean a period of four months in the context of disqualification of a member of the Legislative Assembly except the exceptional circumstances for which there is good reason. Despite the outer limit having been fixed by the Hon'ble Supreme Court for disposal of

the petition for disqualification, the Hon'ble Speaker did not bother at all. Being the Tribunal, the Hon'ble Speaker ought to have applied his mind taking into account the urgency and importance of the issue involved herein in view of the outer limit fixed by the Hon'ble Supreme Court, when a period of more than one and half year had already lapsed from the date of filing the petitions. The whole controversy has, in fact, arisen due to the failure on the part of the Speaker to decide the petitions within a reasonable time. Had any decision been taken by the Speaker on the petitions within a reasonable time, the controversy could have been obviated at the right time and undesirable interference by the Court would not have arisen at all. The Hon'ble Speaker can be said to be solely responsible for it. It is the Hon'ble Speaker who has attracted the attention of the Court on account of his failure to discharge his duties in accordance with law. The main allegation made in the petitions, in short, is that the private respondents have voluntarily given up their membership, for which they are liable to be disqualified under the provisions of the Tenth Schedule for being a member of the Manipur Legislative Assembly. The inaction on the part of the Speaker or for that matter, non-disposal of the petitions by the Speaker within a reasonable time has allowed the continuance of the alleged infraction of the provisions of the Tenth Schedule by the private respondents. A timely disposal of the petitions could have resolved the issue, either way, relating to alleged infraction of the provisions of the Tenth Schedule. The disposal of the petition for disqualification within a reasonable time is a must and indispensable for

the reason that if the petition is rejected by the Speaker, the matter comes to an end if not pursued further by the aggrieved party and in the event of the petition being allowed by him, it will definitely entail disqualification of the MLA. In such an eventuality, the question that arises, is as to what will happen to the salary already drawn by the MLA from the day on which the reasonable time has lapsed and if not recovered from him, it will incur a loss to public exchequer. In order to prevent such an eventuality, the petition for disqualification needs to be decided by the Speaker at the earliest possible or within three months as has now been fixed by the Hon'ble Supreme Court. Considering the aforesaid peculiar facts and circumstances of the case, this Court is of the view that there is no reason as to why the applicants shall be denied a relief similar to the one that has been granted by the Hon'ble Supreme Court vide its order dated 18-03-2020 in Shri K. Meghachandra Singh (supra). Moreover, in view of the identical facts and circumstances of the present case with that of Shri K. Meghachandra Singh (supra), this Court is left with no option but to grant relief in favour of the applicants. It is now less than two years for the term of the Manipur Legislative Assembly coming to an end. If the Hon'ble Speaker fails to decide the petitions at the earliest possible, the term of the Manipur Legislative Assembly may come to an end earlier than the disposal of the petitions and in that event, the petitions will be rendered infructuous and the purpose of filing them will stand defeated. It may further be noted that this order will not, in any manner, prevent the Hon'ble Speaker from making a decision on the petitions and rather, it will be in aid

of the Speaker arriving at a prompt decision as to the disqualification under the provisions of the Tenth Schedule. It is made clear that this Court has not expressed any opinion on the merits of the petitions pending before the Hon'ble Speaker.

[8] In view of the aforesaid and for the reasons stated hereinabove, the instant applications stand allowed partly to the extent of prayer (i) thereof with the direction that unless and until the petitions are decided and disposed of finally by the Hon'ble Speaker, Manipur Legislative Assembly, the private respondents namely Shri Sanasam Bira Singh, MLA; Shri Ginsuanhau, MLA; Shri Oinam Lukhoi Singh, MLA; Shri Ngamthang Haokip, MLA; Shri Yengkhom Surchandra Singh, MLA; Shri Kshetrimayum Bira Singh, MLA and Shri Paonam Brojen Singh, MLA are restrained from entering the Manipur Legislative Assembly, Imphal. The Hon'ble Speaker, Manipur Legislative Assembly is directed to ensure compliance of this order by all concerned.

Copies of this order shall be sent to the counsels appearing for the parties through their WhatsApp/ e-mail.

JUDGE

Dhakeshori

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.06.08 12:04:40 +05'30'