

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 80 OF 2023

Girish Chodankar, son of Raya Chodankar, 53
years of age, Indian National, resident of
LAROM, E-1, Nilkanth Building Society, ... Petitioner
Cupangale, Gogol, Margao, Goa.

V e r s u s

1. The Speaker, Goa State Legislative Assembly
Porvorim, Goa.

2. Shri Michael V. Lobo, Member of
Legislative Assembly (Calangute
Constituency) Goa State Legislative Assembly,
Porvorim, Goa.

3. Shri Digambar Kamat, Member of
Legislative Assembly (Margao Constituency)
Goa State Legislative Assembly, Porvorim,
Goa.

4. Shri Aleixo Sequeira, Member of Legislative
Assembly (Nuvem Constituency) Goa State
Legislative Assembly, Porvorim, Goa.

5. Shri Sankalp Amonkar, Member of
Legislative Assembly (Mormugao
Constituency) Goa State Legislative Assembly,
Porvorim, Goa.

6. Smt. Delilah M. Lobo, Member of
Legislative Assembly (Siolim Constituency)
Goa State Legislative Assembly, Porvorim,
Goa.

7. Shri Kedar J. Naik, Member of Legislative
Assembly (Saligao Constituency) Goa State
Legislative Assembly, Porvorim, Goa.

8. Shri Rajesh Faldessai, Member of
Legislative Assembly (Cumbarjua
Constituency) Goa State Legislative Assembly,
Porvorim, Goa.

9. Shri Rodolfo L. Fernandes, Member of Legislative Assembly (St. Cruz Constituency) Goa State Legislative Assembly, Porvorim, Goa.

... Respondents.

Mr. Abhijeet Gosavi, Advocate with Mr. Guruprasad Naik and Ms. Krupa Naik, Advocates for the Petitioner.

Mr. Devidas Pangam, Advocate General with Mr. Deep Shiroadkar, Additional Government Advocate for the Respondent No.1.

Mr. Parag Rao, Advocate with Mr. Akhil Parrikar and Ms. Sowmya Drago, Advocates for the Respondent Nos. 2, 3 and 5 to 9.

Mr. S. S. Kantak, Senior Advocate with Mr. Preetam Talaulikar, Ms. Saicha Dessai, Mr. Simoes Kher Ceazer John and Ms. Neha Kholkar, Advocates for the Respondent No. 4.

CORAM: M. S. KARNIK & VALMIKI SA MENEZES, JJ.

RESERVED ON: 21st April, 2023

PRONOUNCED ON: 2nd May, 2023

JUDGMENT (Per M. S. Karnik, J.)

1. The judgment has been divided into the following sections to facilitate analysis:-

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2. The petitioner, who is a former President of the Goa Pradesh Congress Committee of Indian National Congress, has petitioned this Court under Articles 226 and 227 of the Constitution of India seeking a direction to the respondent no.1-Speaker Goa State Legislative Assembly to decide the disqualification petition filed by the petitioner against the respondent nos. 2 to 9, within time bound manner and more particularly within the period prescribed by law as laid down by the Supreme Court. The petitioner has placed heavy emphasis on the decision of the Hon'ble Supreme Court in **Keisham Meghachandra Singh vs. Hon'ble Speaker Manipur Legislative Assembly & ors.**¹, to contend that the disqualification petition must be decided within a period of three months of its filing.

3. The petitioner challenges the deliberate inaction or indecision on the part of the respondent no.1, which according to him, clearly amounts to failure to exercise the jurisdiction conferred under the Tenth Schedule of the Constitution.

FACTS :

4. Briefly stated, the facts are as follows :

¹ 2020 SCC OnLine SC 55

The petitioner is a former President of Goa Pradesh Congress Committee (GPCC, for short) of Indian National Congress, (INC, for short). The elections of the Goa State Assembly were held in the month of February, 2022. Respondent Nos. 2 to 9 contested on the nomination of the INC. Respondent Nos. 2 to 9 stood elected as members of Goa Legislative Assembly from their respective constituencies. The result of the election was declared on 10.03.2022. As per the statistics revealed by the Election Commission of India, the position of elected representatives stood as below :

a.	Bharatiya Janata Party ("BJP") :-	20
b.	Indian National Congress Party ("INC"):-	11
c.	Maharashtrawadi Gomantak Party ("MGP"):-	2
d.	Goa Forward Party ("GFP") :-	1
e.	Aam Aadmi Party ("AAP") :-	2
f.	Revolutionary Goans Party ("RGP") :-	1
g.	Independents :-	3

5. The Bharatiya Janata Party (BJP, for short), being the single largest party, was invited to form the Government by the Hon'ble Governor, State of Goa. The Government was formed by BJP under the leadership of Shri Pramod Sawant with support from the Maharashtrawadi Gomantak Party (MGP, for short) and Independent members.

6. On 14.09.2022, eight Members of Legislative Assembly (MLAs, for short) of the INC, namely, respondent nos. 2 to 9 purportedly claiming to form two-third of the Legislative party of the INC, decided to merge with BJP and, accordingly, addressed a communication to that effect to the respondent no.1-Hon'ble Speaker. The respondent no.1 took note of the merger of the Legislative party in the Goa Legislative Assembly into BJP and allotted the eight MLAs (respondent nos. 2 to 9) seats in the assembly along with the members of the BJP. A notification to that effect came to be issued.

7. According to the petitioner, the respondent nos. 2 to 9 have incurred disqualification under the Tenth Schedule of the Constitution of India; the BJP indulged in undemocratic and unconstitutional acts with the intent of holding on to power, which actions were contrary to all public and moral principles and against the mandate of the people of Goa; there is no valid merger in terms of paragraph 4 of the Tenth Schedule to the Constitution of India as there was no merger of the Original Political Party i.e. INC, as INC is duly recognized and continues to exist. It is the petitioner's case that there cannot be any valid claim of merger as contemplated under paragraph 4 of the Tenth Schedule as the two prerequisites for valid merger in terms of paragraph 4 of the Tenth Schedule, namely, the original political party should merge with another political party and

secondly, 2/3rd of such Legislative party must agree to such merger, are not satisfied. The petitioner contends that for there to be a valid merger of the political party, a merger can only be of a political party with any other political party. It is submitted that for there to be a meaningful interpretation of the provisions of the Tenth Schedule, the object which is to deter the defection, has been completely frustrated as a result of such recognition. The petitioner, therefore, filed a Disqualification Petition no. 3 of 2022 before the respondent no.1 on 10.11.2022.

SUBMISSIONS OF THE PETITIONER

8. It is the contention of the learned counsel for the petitioner that in terms of the mandate of the Tenth Schedule to the Constitution of India and the judgment of the Hon'ble Supreme Court in **Keisham Meghachandra Singh** (supra), the respondent no.1 is enjoined upon to decide such disqualification petition within a reasonable period of time and, in any case, within a period of three months. It is the failure on the part of the respondent no.1 to decide the disqualification petition filed by the petitioner that led to the filing of the present petition on 25.01.2023.

9. Learned Counsel for the petitioner placed on record brief written submissions, which covers the oral arguments made by

learned counsel for the petitioner. The written submissions are reproduced as under :

“The Petitioner, who the ex-president of the Goa Pradesh Congress Committee of Indian National Congress has filed the present petition under Article 191(2) read with Tenth Schedule of Constitution of India, seeking issuance of writ of mandamus and/or direction to the Respondent No.1 (the Hon’ble Speaker of the Goa Legislative Assembly) to decide the disqualification petition filed by the Petitioner against respondent No. 2 to 9 herein, within time bound manner more particularly interms of time frame laid down by the Hon’ble Supreme Court in the matter of *Keshaim Meghachandra Singh v/s Hon’ble Speaker, Manipur Legislative Assembly & Anr.* 2020 SCC Online SC 55.

1. It is most respectfully submitted that the Respondent No.1 has failed to adhere to the timeline fixed by the Hon’ble Supreme Court in deciding disqualification petition. It is apparent from the conduct of the respondent No.1 that there is a deliberate inaction or indecision on the part of the Respondent No.1, which clearly amounts to failure to exercise the jurisdiction conferred under the Tenth Schedule and is contrary to the law laid down by the Hon’ble Supreme Court in ***Keshaim Meghachandra Singh (supra)***. Further, the deliberate inaction/indecision on the part of the Respondent No.1 is clearly arbitrarily and unreasonable and consequently violative of Article 14 of Constitution of India.

2. The Petitioner has filed the disqualification petition against respondent No.2 to 9 since they have incurred disqualification under Article 191(2) read with Tenth Schedule of the Constitution of India. The disqualification petition is an attempt to fight against the evil of defection which is destroying the fundamental of our democracy, which is the basic structure of the Constitution. The disqualification

petition is to fight against the acts of mandate of the voters being sold away by the defectors and to ensure that the defectors get disqualified as provided under the Constitution. It is apparent from the conduct of the Respondent No.1 that there is a deliberate delay to take decision on the disqualification petition so as to protect the respondent No. 2 to 9 herein.

3. The relevant date for adjudication of the subject matter are reproduced herein below:-

DATES	EVENT
14.02.2022	Election for the VIII th Legislative Assembly for the State of Goa (2022-2027) was conducted on 14.02.2022.
10.03.2022	Election results of the election were declared for total 40 seats on 10.03.2022 which were as follows: a) BJP – 20, b) INC – 11, c) MGP – 02, d) GFP -01, e) AAP – 02, f) RGP – 01, g) Independent – 03. The Respondent No. 2 to 9 had contested and stood elected to the VIII th Legislative Assembly on the candidature of Indian National Congress. (<i>refer page no. 29</i>)
12.07.2022	Disqualification Petition bearing No. 1/2022 filed by Mr. Amit Patkar, President of Goa Pradesh Congress Committee (“GPCC”) against Respondent No. 2 and 3 for attempting to orchestrate defection within the INC party.
14.09.2022	Respondent No. 2 to 9 defected from INC and joined BJP. Respondent No. 2 to 9 claiming to be 2/3 rd members of the Legislative Party addressed a communication to the Speaker claiming that the Legislative Party was merged with the BJP and consequently there is a merger in terms of Para 4 of the Tenth Schedule.

	Thereafter, Respondent No. 2 to 9 are shown as members affiliated to the BJP. It is the case of the Petitioner that this action amounts to defection and Respondent No. 2 to 9 have incurred disqualification under Tenth Schedule as they have voluntarily given up the membership of Original Party (<i>refer page no. 42</i>)
30.09.2022	The Petitioner filed an Application under RTI seeking all the documents in respects of purported claims of merger made by the Respondent No.2 to 9.
28.10.2022	The office of Goa Legislature Secretariat provided the documents sought under RTI (<i>Refer Page 31</i>).
08.11.2022	One Mr. Domnic Noronha had filed disqualification petition against the Respondent No.2 to 9 in respect of their acts of defection on 14.09.2022.
11.11.2022	Petitioner filed disqualification petition against Respondent No.2 to 9 (<i>Refer page No.101</i>) which came to be registered as Disqualification Petition No.3/2022.
01.12.2022	Since nothing was heard from the office of the Speaker regarding the disqualification petition, the Petitioner herein filed an application seeking expeditious disposal of the disqualification petition whilst pointing out that the time frame laid down by the Supreme Court in <i>Keisham Meghachandra Singh v/s. Hon'ble Speaker Manipur Legislative Assembly & Ors.</i> 2020 SCC Online SC 55 for deciding the disqualification petition is three months and not taking decision on disqualification petition virtually amounts to defeating the very purpose of the Tenth Schedule. (<i>Refer page No.236</i>)

09.12.2022	Mr. Amit Patkar, President GPCC filed disqualification petition against Respondent No.2 to 9 in respect of defection done on 14.09.2022.
25.01.2023	The present petition is filed.
10.02.2023	This Hon'ble Court issued notices to the Respondent <i>vide</i> Order dated 10.02.2023. The said Order clearly recorded that the petition was filed seeking direction to Respondent No.1 to decide disqualification petition filed by the Petitioner against Respondent No.2 to 9 in a time bound manner and more particularly within the period prescribed by law as laid down by the Supreme Court in the case of <i>Keshaim Meghachandra SinH (supra)</i> .
24.02.2023	The Respondent No.1 filed its reply to the Petition <i>inter alia</i> raising the following objections:- a) That the Speaker is a constitutional functionary and consequently this Hon'ble court cannot issue direction to the Speaker to decide the Petition in a time bound manner. b) Since the issue as to whether the court can issue direction to the Speaker to decide in a time bound manner is pending reference before the larger bench in terms of reference in the matter of <i>S. A. Sampath Kumar v/s Kale Yadaiah & ors.</i>, this Hon'ble Court should await the outcome of such reference; c) That there is other disqualification petitions namely Disqualification Petition No.1 to 4 pending before the Speaker. d) That in the petition which was filed by the Petitioner before the Hon'ble supreme

	Court which was in respect of defection during the VIIth Legislative Assembly no specific order was passed by the Supreme Court directing the Speaker to decide. The other Respondent have filed their replies which is on this similar lines as that of Respondent No.1
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POWER OF COURT TO DIRECT SPEAKER

4. It is most respectfully submitted that this Hon'ble Court exercising power under Article 226 & 227 is certainly entitled to issue directions to the Respondent No.1 to decide the disqualification petition in a time bound manner. It is submitted that this Hon'ble Court can direct the Respondent No.1 to decide disqualification petition in time bound manner for the following reasons:-

a. Firstly, the Speaker while adjudicating dispute under Tenth Schedule of the Constitution functions as a quasi-judicial tribunal and consequently this Hon'ble Court is certainly entitled to direct him when there is a failure to exercise the jurisdiction vested on him by para 6 of the Tenth Schedule and/or when there is deliberate inaction and/or indecision on the part of the Speaker to exercise such jurisdiction. The Hon'ble Supreme Court has consistently held that the Speaker while exercising powers under Xth Schedule acts as a tribunal (refer Judgment in case ***Kihoto Hollohan v/s. Zahillhu & Ors.*** 1992 Supp (2) SCC 651 – para No 24, 93 to 200, 109 to 111; ***Shrimant Balasaheb Patil v/s. Speaker Karnataka Legislative Assembly & ors.*** 2020 (2) SCC 595 – para No 60, 63 & 190.1; ***Keisham Meghachandra Singh V/s. Hon'ble Speaker Manipur Legislative Assembly & Ors.*** 2020 SCC Online SC 55 – para No 29 ;)

b. Secondly, the Hon'ble Supreme Court in the judgment of ***Keisham Meghachandra Singh (supra)*** has not only held that the Court can issue direction to the Speaker to decide in a time bound manner, but infact has laid down that absent exceptional circumstances, outerlimit of **three months** from date of filing of disqualification petition is a timeline within which the disqualification petition should be decided by the Speaker if the constitutional objective of disqualifying person who has infected the Tenth Schedule is to be adhered to. The Hon'ble Supreme Court has fixed the aforesaid time line keeping in mind *interalia* that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for the single day.

c. Thirdly, the deliberate in action/indecisiveness on the part of the Respondent No.1 has an inbuilt/implied 'decision', i.e decision to remain indecisive or not to take action. Such implied decision to remain indecisive is to benefit the respondents who have incurred disqualification. Such indecision/inaction is shrouded with arbitrariness and unreasonableness and consequently violative of Article 14 of Constitution of India. It is submitted that when this Hon'ble Court directs to take a decision in a time bound manner what in effect this Hon'ble Court does is to correct the arbitrariness and/or unreasonableness of the Authorities.

PENDENCY OF REFERENCE ON THE ISSUE

5. The submission of the respondents that this Hon'ble Court should not proceed to give direction to the Speaker to decide the disqualification petition on account of pendency of reference on the issue made to the larger bench in ***S. A. Sampath Kumar v/s Kale Yadaiah and Ors.*** is clearly without any merit inasmuch as it is well settled position of law that mere pendency of a reference does not bring everything to stand still and the law which hold the field is required to be followed. (refer ***State of Maharashtra & anr. v. Sarva Shramik Sangh Sangli & others (2013)***)

16 SCC 16; M. S. Bhati v/s. National Insurance Company Ltd. (2019) 12 SCC 248; P. Sudhakar Rao & others v. U. Govinda Rao & Others. (2013) 8 SCC 693; Manager National Insurance Ltd. v/s. Sanju P. Paul & Anr. (2013) 2 SCC 41). The law holding the field in the present case is that the Court can certainly issue direction to the Speaker to decide the disqualification petition in time bound manner. (refer the judgment **Speaker, Haryana Vidhan Sabha v/s. Kuldeep Bishnoi and Ors.** (2015) 12 SCC 381 and **Speaker, Orissa Legislative assembly v/s. Utkal Keshari Parida** (2013) 11 SCC 794).

6. Further, most importantly three judges bench of the Hon'ble Supreme Court in the case of **Keshaim Meghachandra (Supra)**, which judgment is subsequent to the reference, taking into consideration, all the relevant judgments including the order of reference in **S.A. Sampath Kumar** (supra) have categorically held that the Court can issue direction to the Speaker to decide disqualification petition and further fixed timeline for deciding such disqualification petitions. The three judges bench has categorically held that there is no need to await the reference since the same issue was addressed by five judges bench judgment in **Rajendra Singh Rana's** case. It may be relevant to note that the three judges bench records that the five judges bench judgment in **Rajendra Singh Rana's** case was not brought to the notice of the Division Bench which made reference in **S. A. Sampath Kumar (Supra)**. Also the author of the judgment in **Keshaim Meghachandra (supra)** was part of the division bench which made the reference.

7. It is most respectfully submitted that three judges bench judgment in **Keshaim Meghachandra (Supra)** is binding on this Hon'ble Court and is required to be followed. It is respectfully submitted that the position of law prior to

the reference in **S. A. Sampath Kumar** and after the reference as the per the law laid down in **Keshaim Megachandra (Supra)** is that this Hon'ble Court can direct the Speaker to decide the disqualification petition in time bound manner.

PENDENCY OF OTHER PROCEEDINGS

8. The submission made by the respondent *qua* the pendency of other Petitions before the Respondent No.1 and so also some proceedings before the Hon'ble Supreme Court is nothing but an attempt to confuse this Hon'ble Court and an excuse to cover up the failure on the part of the respondent No.1 to adhere to the timeline laid down by the Hon'ble Supreme Court in respect of decisions in disqualification petition.

DISQUALIFICATION PETITION No. 1/2022

9. In respect of disqualification petition No.1/22 i.e. filed by Mr. Amit Patkar against two of the respondents herein namely Respondent No.2 and 3, it is submitted that submissions made by the Respondent No.1 to suggest that no direction should be given to the Speaker to decide the disqualification petition of the Petitioner since the outcome in the disqualification No.1/2022 would have some relevance to the outcome of the petition of the Petitioner is completely fallacious and the same is clearly an afterthought. Firstly, the cause of action for filing disqualification petition No.1/22 was an attempt made by the Respondent No.2 and 3 to orchestrate defection in the INC party in month of July, 2022, which is completely different from the cause of action in the petition filed by the Petitioner herein (which action of Respondent No.2 to 9 having defected from the INC to BJP on 14.09.2022). Secondly, the fact that the submission is clearly an afterthought is evident from the fact that this submissions finds no place in the detailed reply filed by the respondent in the present matter. Thirdly, the

disqualification petition 2/2022 which is filed by one Mr. Domnic Noronha (which is in respect of the same cause of action as that of the petitioner herein) is taken up for hearing by the Respondent No.1. Lastly, if the conduct of the proceedings is seen in disqualification petition No.1/2022 also it is clear that the submission made are the self-serving submissions and even the progress of proceedings in Disqualification Petition No.1/22 is clear indicator that the only agenda appears to somehow protract the proceedings. The details about the proceedings in disqualification Petition 1/2022 are as follows:-

Date	Particulars
12.07.2022	Disqualification Petition filed by Mr. Amit Patkar, President of GPCC seeking disqualification of Respondent No.2 and 3 on the premise that by virtue of their conduct i.e. attempting to orchestrate defection in INC Party have incurred disqualification under the Tenth Schedule.
16.12.2022	First hearing in the matter took place wherein Respondents sought time of five weeks to file their reply which was duly granted.
13.02.2023	The Respondent No.2 and 3 filed application raising issue of maintainability of disqualification petition on the ground that only member of the House can file disqualification petition and since Mr. Amit Patkar was not member of the house, the disqualification petition should be dismissed.
06/03/23	The matter adjourned as the Presiding officer was not available.
13.03.2023	The matter adjourned as Respondent No.2 and 3 sought time in the matter.
17.03.2023	Arguments heard partly on the

	application of maintainability filed by the Respondent No.2 and 3.
23.03.2023	Time sought by respondent.
05.04.2023	Presiding officer not available and accordingly next date of hearing fixed on 24.04.2023.

10. It is clear from the above that firstly, Disqualification petition No.1/202 2 is completely differently different cause of action and will have no relevance to the subject matter of the disqualification petition filed by the Petitioner.

PROCEEDINGS BEFORE THE HON'BLE SUPREME COURT

11. The submissions made by the Respondent No.1 regarding the pendency of the matters before the Supreme Court and arguments advanced that the Speaker have not taken decision on account of the pendency of the same is nothing but an attempt to create confusion in the matter and the pendency of those proceedings (which relates to VIIth Legislative Assembly) have no direct relation with the subject matter of the present petition. The details about the proceedings which relates to VIIth Legislative Assembly are narrated herein below:-

Dates	Events
11.03.2017	Election for 7 th Goa Legislative Assembly was held on 11.03.2017 and the results were as Follows: a. BJP -13 b. INC -17 c. MGP -03 d. GFP -03 e. NCP -01 f. Independent -03 BJP lead coalition formed the Government.
10.07.2019	10 MLA who stood elected on candidature of INC defected to BJP by calming merger under

	para 4 of the X th Schedule.
08.08.2019	Petitioner filed Disqualification Petition against 10 MLA, the same came to be registered as Disqualification Petition 3 of 2019.
01.06.2020	Since there was a delay on the part of the Speaker to decide the Disqualification Petition, the Petitioner filed a Petition under Article 32 of the Constitution before the Hon'ble Supreme Court which came to be registered as Writ Petition (Civil) 525 of 2020, wherein interalia a direction was sought to direct the Speaker to decide Disqualification Petition in a time bound manner.
10.02.2021	The Learned Solicitor General of India appearing for the Speaker made statement that the Disqualification Petition will be listed before the Speaker of the Goa legislative Assembly on 26.02.2021 for disposal. Accordingly, the Disqualification Petition was taken up for hearing and disposal on 26.02.2021.
20.04.2021	The Speaker of the Goa legislative Assembly passed an Order dismissing the Disqualification Petition.
01.06.2021	The Petitioner filed Writ Petition before this Hon'ble High Court challenging the Order of the Speaker dated 20.04.2021, which petition came to be registered as Writ Petition no. 1228 of 2021.
24.02.2022	The Hon'ble High Court was pleased to dismiss the Writ Petition vide Judgment and Order dated 24.02.2022.

09.03.2022	Petitioner preferred a SLP against the Judgment and Order dated 24.02.2022 which came to be registered as SLP (Civil) 5305 of 2022
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12.The details hereinabove makes a amply clear that the proceedings before the Hon'ble Supreme Court which relates to VIIth Legislative Assembly cannot be used by the Respondent No.1 to delay the decision on present disqualification petition .

DISQUALIFICATION PETITION No.2/2022, 3/2022 & 4/2022

13.The disqualification petition No.2/2022, 3/2022 & 4/2022 relates to the same cause of action i.e. defection done by Respondent No.2 to 9 herein on 14.09.2022. Out of the three petitions only one petition i.e. Disqualification Petition No.2/2022 has been taken for hearing by the Respondent No.1.

14.In the above conspectus, it is most humbly prayed that the Respondent No.1 be directed to take decision on the disqualification petition filed by the Petitioner against Respondent No.2 to 9 in time bound manner, more particularly in terms of timeline laid down by the Hon'ble Supreme Court in the case of ***Keshaim Meghachandra (supra).***"

10. Learned Counsel relied upon the following judgments in support of his submissions :

- 1 Keisham Medhachandra Singh vs. Hon'ble Speaker Manipur Legislative Assembly & Ors. - 2020 SCC Online SC 55**
- 2 Order of the Supreme Court of India dated 08.11.2016 in the matter of S. A. Sampath Kumar vs. Kale Yadaiah & Ors. Special Leave to Appeal (C)**

Nos. 33677/2015

- 3 Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi & Ors. - (2015) 12 SCC 381**
- 4 Speaker, Orissa Legislative Assembly vs. Utkal Keshari Parida - (2013) 11 SCC 794**
- 5 Rajendra Singh Rana & Ors. vs. Swami Prasad Mourya & Ors. - (2007) 4 SCC 270**
- 6 Kihoto Hollohan vs. Zachillu & Ors. - 1992 Supp (2) SCC 651**
- 7 State of Maharashtra & anr. vs. Sarva Shramik Sangh, Sangli & Ors. - (2013) 16 SCC 16**
- 8 M. S. Bhati vs. National Insurance Company Ltd. - (2019) 12 SCC 248**
- 9 P. Sudhakar Rao & Ors., vs. U. Govinda Rao & Ors. - (2013) 8 SCC 693**
- 10 Manager National Insurance Ltd. vs. Sanju P. Paul & anr. - (2013) 2 SCC 41**
- 11 Shrimanth Balasaheb Patil vs. Karnataka Legislative Assembly & Ors. - (2020) 2 SCC 595**
- 12 Public Services Tribunal Bar Association vs. State of U.P. & anr. - (2003) 4 SCC 104**
- 13 Samaj Parivartan Samudaya & Ors. vs. State of Karnataka & Ors. - MANU/SC/0425/2012**
- 14 Asha vs. Pt. B. D. Sharma University of Health Sciences & Ors. - MANU/SC/0542/2012**
- 15 Mohini Jain (Miss) vs. State of Karnataka & Ors. - (1992) 3 SCC 666**
- 16 Panjuml Hassomal Advani vs. Harpal Singh Abnashi Singh - 1974 SCC Online Bom 84**

SUBMISSIONS OF THE RESPONDENTS

11. On the other hand, an affidavit on behalf of the respondent no.1 in response to the petition was duly filed by Secretary, Goa Legislative Secretariat on 24.02.2023. A preliminary objection of the maintainability of the writ petition seeking a mandamus to the respondent no.1 is raised. Learned Advocate General apart from the oral submissions, placing reliance on the affidavit in reply, submitted that the Speaker is a constitutional functionary and the Constitution of India confers high status on the Speaker. According to him, a writ petition seeking mandamus to the Speaker would not be maintainable. Relying on the decision of the Hon'ble Supreme Court in the case of **Kihoto Holahan vs. Zachillu**², it is submitted that the Supreme Court has *inter alia* held that in view of the limited scope of the judicial review available, as also considering the constitutional intendment and status of the repository of the adjudicatory power (Speaker-Chairman) judicial review cannot be available at a stage prior to the making of a decision by the Speaker-Chairman and *quia timet* action would not be permissible.

² 1992 Supp (2) SCC 651

12. Reliance is placed on the decision of the Hon'ble Supreme Court in **S. A. Sampath Kumar vs. Kale Yadaiah & ors.**,³ to urge what the Supreme Court observed “*it needs to be authoritatively decided by a Bench of five Judges of this Court, as to whether the High Court, exercising power under Article 226 of the Constitution, can direct a Speaker of a legislative assembly (acting in quasi judicial capacity under the Tenth Schedule) to decide a disqualification petition within a certain time frame, and whether such a direction would not fall foul of the quia timet action doctrine mentioned in paragraph 110 of **Kihoto Hollohan's** (supra) case.*” Learned Advocate General submitted that the order in **S. A. Sampath Kumar** (supra) holds the field and the question formulated therein awaits an authoritative pronouncement by the Constitution Bench and as such there is no finding on the question whether such directions the petitioner seeks can be granted.

13. Learned Advocate General further made extensive submissions as regards the decision of the Hon'ble Supreme Court in **Keisham Meghachandra Singh** (supra), which referred to the decision of **Rajendra Singh Rana & Ors. vs. Swami Prasad Maurya & Ors.**⁴. It is urged that in the peculiar fact situation in **Keisham Meghachandra Singh** (supra) that the Hon'ble Supreme Court

³ 2016 SCC 1 OnLine 1875

⁴ (2007) 4 SCC 270

directed the disqualification petition to be decided within three months. Learned Advocate General urged that in **Rajendra Singh Rana** (supra), the Hon'ble Supreme Court did not deal with the issue 'whether the High Court could direct the Speaker to decide a disqualification petition within a particular time frame.' According to learned Advocate General, **Rajendra Singh Rana** (supra) was a matter where there was an order of the Speaker which was under challenge and was amenable to judicial review within the limited parameters laid down in **Kihoto Holahan** (supra). It is pointed out that though the Hon'ble Supreme Court has held that in **Keisham Meghachandra Singh** (supra), that a mandamus can be issued against the Speaker, nonetheless, it would be appropriate for this Court to await the authoritative pronouncement of the Constitution Bench in view of the observations in **S. S. Sampath Kumar** (supra). According to the learned Advocate General, the decision of the Hon'ble Supreme Court in **Kihoto Holahan** (supra), holds the field.

14. Learned Advocate General then invited our attention to Writ Petition (Civil) Petition No. 525/2020 filed by the Petitioner raising the very same issue as in the present case. It is submitted that no direction was issued to the Speaker despite the decision in **Keisham Meghachandra Singh** (supra) being cited, though the disqualification petition was pending for around nine months. In his

submission, the question formulated by the Hon'ble Supreme Court in **S. A. Sampath Kumar** (supra) for an authoritative pronouncement by a Constitution Bench is not yet settled. The Constitution Bench in **Kihoto Holahan** (supra) holds the filed and continues to prevail notwithstanding the view taken by the Hon'ble Supreme Court in **Keisham Meghachandra Singh** (supra) moreso because the Hon'ble Supreme Court itself has observed in **S. A. Sampath Kumar** (supra) that an authoritative pronouncement by a Bench of five Judges would be required. Learned Advocate General hence urged that the judicial review would not be available at a stage prior to the making of a decision by the Speaker and a *quia timet* action would not be permissible. It is therefore urged that issuance of writ to the respondent no.1, who is a constitutional functionary, to decide the disqualification petition within a stipulated time frame, may not be possible.

15. Our attention is invited by the learned Advocate General to the disqualification petition pertaining to the 7th Goa Legislative Assembly filed by the petitioner, which came to be decided by the Speaker by an order dated 20.04.2021 holding that there was a merger in terms of the Tenth Schedule. The order dated 20.04.2021 of the Speaker-respondent no.1, was challenged in this Court by the petitioner. It is pointed out that by a judgment dated 24.02.2022, this Court upheld

the decision of the respondent no.1 and dismissed the writ petition filed by the petitioner. The judgment of this Court was challenged by the petitioner by filing SLP (C) No. 5305/2022 before the Hon'ble Supreme Court. Notice was issued returnable on 15.11.2022. The matter was then listed on 06.12.2022 when the petitioner sought adjournment. It is pointed out that the Hon'ble Supreme Court adjourned the matter by directing that the matter be put up after one year. Learned Advocate General submitted that the Petitioner has filed the present disqualification petition before the respondent no.1 on the very same issue which has been settled by this Court and the matter is now pending consideration before the Hon'ble Supreme Court. It is submitted that since the matter is pending before the Hon'ble Supreme Court, the petitioner cannot insist on disposing the disqualification petition within a stipulated time frame. It is submitted that, on one hand, the petitioner is not pursuing the matter before the Supreme Court and, on the other hand, is insisting that the disqualification petition pending before the respondent no.1 should be decided at the earliest. It is urged that in these circumstances, the approach of the petitioner must dissuade this Court from entertaining the present writ petition.

16. It is then submitted by the learned Advocate General that though according to the petitioner the respondent nos. 2 to 9 incurred

disqualification on 14.09.2022, the petitioner filed a disqualification petition after about two months on 11.11.2022. It is his submission that when the petitioner himself has been casual in initiating the proceedings, such a petitioner cannot insist that the disqualification petition should be decided within the stipulated time frame. Learned Advocate General pointed out that Shri Amit Patkar, President of the political party to which the petitioner belongs, and/or of which the petitioner was earlier the President filed Disqualification Petition No. 1 of 2022 in July 2022. Thereafter, one Dominic John Noronha filed Disqualification Petition No. 2 of 2022 in relation to the facts that transpired on 14.09.2022. Learned Advocate General submits that in relation to Disqualification Petition No. 1 of 2022, the proceedings are ongoing before the respondent no.1. The proceedings in Disqualification Petition No. 2 of 2022 filed by Dominic John Noronha on 08.11.2022 have commenced and the matter is being heard. It is submitted that in relation to the same events, the petitioner filed Disqualification Petition No. 3 of 2022 on 11.11.2022. The learned Advocate General criticized the practice of filing multiple petitions on the same subject matter when there is already a petition on the same subject. According to the learned Advocate General, the petition suffers from material suppression of facts as the petitioner did not disclose about these disqualification petitions filed before the

respondent no.1 or the factum of the petitioner filing the previous petition in this Court.

17. Learned Advocate General submitted that other matters on the very same issue are already being heard by the Speaker. It is the categorical stand of the respondent no.1 that though the questions referred to herein above are raised, the same should not in any way be construed that the Speaker intends not to decide or deliberately delay to decide the disqualification petitions. In Paragraph 27 of the affidavit in reply, a categorical statement has been made that the respondent no.1 has already taken up the other matters and will hear the matters expeditiously. Referring to the additional affidavit dated 13.04.2023 filed on behalf of the respondent no.1, it is contended that the point raised in Disqualification Petition No. 1 of 2022 is different as it does not involve the point of merger. It is stated that the arguments of the maintainability of the petition have been partly heard and the matter is now fixed on 24.04.2023 for further arguments. It is further stated that while hearing the matter, it has been noticed that if the Disqualification Petition No. 1 of 2022 is allowed, the same will have a direct bearing on the other disqualification petitions and the other members will be disqualified for want of the 2/3rd members. In such circumstances, the respondent no.1 says that it is found appropriate to first decide Disqualification

Petition no. 1 of 2022. Learned Advocate General submitted that it is not as if there is only one disqualification petition which the respondent no.1 has to decide. There are as many as four disqualification petitions filed. The respondent no.1 has thought it fit to first decide Disqualification Petition No. 1 of 2022 which will have a direct bearing on the other disqualification petitions. It is submitted that such a discretion to prioritise the hearing rests with the Speaker and, in the present case, it cannot be said that such a discretion in the matter of prioritising or stipulating a sequence in which the disqualification petitions will be heard, cannot be said to be arbitrary or perverse. Learned Advocate General urged that even assuming without admitting, a mandamus can be issued in terms of **Keisham Meghachandra Singh's** (supra), the present is a case where exceptional circumstances exists and there is a good reason why an outer limit of three months should not be prescribed for deciding the disqualification petitions.

18. The affidavit in replies are filed on behalf of respondent nos. 2 to 9, who are duly represented by Senior Advocate Shri Kantak and learned Advocate Shri Parag Rao. The submissions of Shri Kantak and Shri Rao, are on similar lines as those advanced by the learned Advocate General.

CONSIDERATIONS

19. Heard learned Counsel. Perused the memo of the petition, the exhibits, the affidavit in replies and the rejoinder filed.

20. Let us first consider the objection of the respondents to the maintainability of the present writ petition. The submission of the respondents is that the Speaker is a constitutional functionary and the Constitution of India confers high status on the Speaker and, therefore, the writ petitions seeking a mandamus to the Speaker, as prayed for in the petition, would not be maintainable. It is necessary to refer to the relevant provisions of the Constitution before we proceed to deal with the preliminary objection raised by the respondents. The respondent nos. 2 to 9 are the members of the Legislative Assembly of the State of Goa. Article 191 is a provision dealing with disqualifications for membership. Relevant for the present petition is clause (2) of Article 191, which provides that “*a person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.*” The Tenth Schedule of the Constitution contains provisions as to disqualification on the ground of defection. Clause 2(1)(a) of the Tenth Schedule provides that subject to the provisions of paragraphs 4 and 5, a member of a House belonging to

any political party, shall be disqualified for being a member of the house if he has voluntarily given up his membership of such political party. Paragraphs 4 and 6 of the Tenth Schedule need to be re-produced reading thus :

“Paragraph 4 - Disqualification on ground of defection not to apply in case of merger.—(1) A member of a House shall not be disqualified under subparagraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

...

Paragraph 6 : Decision on questions as to disqualification on ground of defection.—

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of

the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

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

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

21. Relying upon the decision of the Supreme Court in the case of **Kihoto Hollohan** (supra), much emphasis is placed by learned Counsel for respondents on paragraphs 109 to 119, to submit as regards the limited scope of judicial review under Article 226 and 227 of the Constitution and that 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 keeping with the great traditions of that high office. Paragraphs 109 to 119, reads 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, malafides, 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.

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

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

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

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in *Keshav Singh case* to protect the validity of proceedings from mere

irregularities of procedure. The deeming provision, having regard to the words 'be deemed to be proceedings in Parliament' or 'proceedings in the legislature of a State' confines the scope of the fiction accordingly.

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

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

Re Contention (G)

112. The argument is that an independent adjudicatory machinery for resolution of electoral disputes is an essential incident of democracy, which is a basic feature of Indian constitutionalism. It is urged that investiture of the power of resolving such disputes in the Speaker or the Chairman does not answer this test of an independent, impartial quality of the adjudicatory machinery. It is, therefore, urged that Paragraph 6(1) of the Tenth Schedule is violative of a basic feature.

113. It is also urged that a Speaker, under the Indian Parliamentary tradition is not required to resign his membership of the political party on whose strength he gets elected and that inevitably the decision of the Speaker is not free from the tugs and pulls of political polarisations. It is urged that the Speaker who has not resigned his membership of the political party cannot be impartial and, at all events his functioning will not be free from reasonable likelihood of bias.

114. The Tenth Schedule breaks away from the constitutional pattern for resolution of disqualifications envisaged in Articles 103 and 192 of the Constitution which vest jurisdiction in this behalf in the President or the Governor acting according to the opinion of Election Commission. The disqualifications for defection could very well have been included in Article 102(1) or 191(1) as a ground, additional to the already existing grounds under clauses (a) to (e) in which event, the same dispute resolution machinery would have dealt with the disqualifications for defections also. But the Tenth Schedule, apparently, attempted a different experiment in respect of this particular ground of disqualification.

115. 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.

116. Mavalankar, who was himself a distinguished occupant of that high office, says:

"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.”

117. Pandit Nehru referring to the office of the Speaker said:

“... 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:

“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 Serjeant-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 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 criticised 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 edn., 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 his office, the law of its life. This 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.”

118. 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 do change and elevate the man inside.

119. 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 constitutional functionaries should not be considered exceptionable.”

22. Learned counsel for the respondents were at pains to distinguish the decision relied upon by learned counsel for the petitioner in the case of **Keisham Meghachandra Singh** (supra). The sum and substance of the submission is that the decision in **Rajendra Singh Rana** (supra) nowhere lays down a principle that a mandamus can be issued in the exercise of writ jurisdiction of this Court to the Speaker to take an expeditious decision on the disqualification petition pending before the Speaker. Our attention is invited to paragraph 22 of the decision in **Keisham Meghachandra Singh** (supra), which reads thus :

“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.”

23. Learned counsel for the Respondents' attempt was to persuade us that the decision in **Rajendra Singh Rana** (supra) nowhere lays down the principle as propounded in paragraph 22 in **Keisham Meghachandra Singh** (supra). The submission is that the decision

in **Keisham Meghachandra Singh** (supra) proceeds on a misreading of the judgment of **Rajendra Singh Rana** (supra) and therefore **Keisham Meghachandra Singh** should not be followed. Further, relying upon the order of the Supreme Court in **S. A. Sampath Kumar** (supra), it is submitted that the question whether the High Court exercising power under Article 226 of the Constitution can direct a Speaker of Legislative Assembly acting in quasi judicial capacity under the Tenth Schedule to decide a disqualification petition within a certain time frame, and whether such a direction would not fall foul of the *quia timet* action doctrine mentioned in **Kihoto Hollohan's** (supra) case, has been placed before the Hon'ble Chief Justice of India to constitute a constitutional bench to decide this question as expeditiously as possible. It is therefore submitted that, firstly, **Rajendra Singh Rana** (supra) has not authoritatively decided whether the High Court exercising power under Article 226 can direct a Speaker of the Legislative Assembly to decide a disqualification petition within a certain time; and, secondly, once the Supreme Court has referred the matter to the appropriate bench to decide this question authoritatively, which decision is yet awaited, the decision in **Keisham Meghachandra Singh** (supra) will have to be confined to the peculiar facts in that case where the Speaker was just not taking any steps to decide the disqualification petition despite the term of the Legislative Assembly almost coming to an end.

24. We are afraid that it is not possible for us to accede to this submission of learned counsel for the respondents. The decision in **Keisham Meghachandra Singh** (supra) is binding on us. Their Lordships after specifically referring to the decisions in **Rajendra Singh Rana** (supra), **S. A. Sampath Kumar** (supra) and **Kihoto Hollohan** (supra) observed in paragraphs 22 to 32 as under :

“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.

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.

24. A *quia timet* action has been described in Black's Law Dictionary as follows:

“Quia Timet. Because he fears or apprehends. In equity practice, the technical name of a bill filed by a party who seeks the aid of a court of equity, *because he fears* some future probable injury to his rights or interests, and relief granted must depend on circumstances.”

25. The leading judgment referred to insofar as *quia timet* actions are concerned is the judgment in *Fletcher v. Bealey* (1884) 28 Ch. D. 688. In this case, a *quia timet* action was asked for to interdict the tort of nuisance in order to prevent noxious liquid from flowing into a river. Pearson, J. after referring to earlier judgments on *quia timet* action then held at page 698:

“I do not think, therefore, that I shall be very far wrong if I lay it down that there are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed, the damage will be suffered, I think it must be shewn that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the Plaintiff to protect himself against it if relief is denied to him in a *quia timet* action.”

26. This statement of the law has subsequently been followed by recent English decisions reported as *London Borough of Islington v. Margaret Elliott* [2012] EWCA Civ. 56 (See paragraph 30) and *Vastint Leeds BV v. Persons Unknown* [2018] EWHC 2456 (Ch.) in which a *quia timet* injunction was described in the following terms:

“26. Gee describes a quia timet injunction in the following terms [Gee, Commercial Injunctions, 6th ed (2016) at [2-035]]:

“A quia timet (since he fears) injunction is an injunction granted where no actionable wrong has been committed, to prevent the occurrence of an actionable wrong, or to prevent repetition of an actionable wrong.”

27. The decision in *Fletcher* (supra) was referred to in approval in paragraph 30 of the aforesaid judgment.

28. The decision in *Fletcher* (supra) was also referred to by this Court in *Kuldip Singh v. Subhash Chander Jain* (2000) 4 SCC 50 as follows:

“6. A *quia timet* action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process. In *Fletcher v. Bealey*, [(1885) 28 Ch D 688 : 54 LJ Ch 424 : 52 LT 541], Mr. Justice Pearson explained the law as to actions *quia timet* as follows:

“There are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action”.

29. 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 infringed 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 infringed the provisions of the Tenth Schedule.

30. In the years that have followed the enactment of the Tenth Schedule in 1985, this Court's experience of decisions made by Speakers generally leads us to believe that the fears of the minority judgment in *Kihoto Hollohan* (supra) have actually come home to roost. Verma, J. had held:

“181. The Speaker being an authority within the House and his tenure being dependent on the will of the majority therein, likelihood of suspicion of bias

could not be ruled out. The question as to disqualification of a Member has adjudicatory disposition and, therefore, requires the decision to be rendered in consonance with the scheme for adjudication of disputes. Rule of law has in it firmly entrenched, natural justice, of which, rule against bias is a necessary concomitant; and basic postulates of rule against bias are : *nemo judex in causa sua* — ‘A Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased’; and ‘it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.’ This appears to be the underlying principle adopted by the framers of the Constitution in not designating the Speaker as the authority to decide election disputes and questions as to disqualification of members under Articles 103, 192 and 329 and opting for an independent authority outside the House. The framers of the Constitution had in this manner kept the office of the Speaker away from this controversy. There is nothing unusual in this scheme if we bear in mind that the final authority for removal of a Judge of the Supreme Court and High Court is outside the judiciary in the Parliament under Article 124(4). On the same principle the authority to decide the question of disqualification of a Member of Legislature is outside the House as envisaged by Articles 103 and 192.

182. In the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such dispute with no provision for any appeal or revision against the Speaker's decision to any independent outside authority. This departure in the Tenth Schedule is a reverse trend and violates a basic feature of the Constitution since the Speaker cannot be treated as an authority contemplated for being entrusted with this function by the basic postulates of the Constitution, notwithstanding the great dignity attaching to that office with the attribute of impartiality.”

31. It is time that Parliament have a rethink on whether disqualification petitions ought to be entrusted to a Speaker as a quasi-judicial authority when such Speaker continues to belong to a particular political party either de jure or de facto. Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as arbiter of

disputes concerning disqualification which arise under the Tenth Schedule with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other outside independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the provisions contained in the Tenth Schedule, which are so vital in the proper functioning of our democracy.

32. It is not possible to accede to Shri Sibal's submission that this Court issue a writ of *quo warranto* quashing the appointment of the Respondent No. 3 as a minister of a cabinet led by a BJP government. Mrs. Madhavi Divan is right in stating that a disqualification under the Tenth Schedule from being an MLA and consequently minister must first be decided by the exclusive authority in this behalf, namely, the Speaker of the Manipur Legislative Assembly. It is also not possible to accede to the argument of Shri Sibal that the disqualification petition be decided by this Court in these appeals given the inaction of the Speaker. It cannot be said that the facts in the present case are similar to the facts in *Rajinder Singh Rana* (supra). In the present case, the life of the legislative assembly comes to an end only in March, 2022 unlike in *Rajinder Singh Rana* (supra) where, but for this Court deciding the disqualification petition in effect, no relief could have been given to the petitioner in that case as the life of the legislative assembly was about to come to an end. The only relief that can be given in these appeals is that the Speaker of the Manipur Legislative Assembly be directed to decide the disqualification petitions pending before him within a period of four weeks from the date on which this judgment is intimated to him. In case no decision is forthcoming even after a period of four weeks, it will be open to any party to the proceedings to apply to this Court for further directions/reliefs in the matter.” (Emphasis ours)

25. As indicated earlier, an endeavor was made by learned counsel for the respondents to distinguish **Keisham Meghachandra Singh's** (supra) on facts urging that the Supreme Court issued the directions as the Speaker was not acting at all and that there was a gross negligence on the part of the Speaker. We are not impressed with these submissions. In paragraph 29 of **Keisham Meghachandra Singh** (supra), Their Lordships in no uncertain terms held that the Speaker acting in quasi judicial capacity under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period. It is further held that what is reasonable in 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 infringed the Tenth Schedule is to be adhered to. We have to be mindful that this period is fixed keeping in mind 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 if they have infringed the provisions of the Tenth Schedule.

26. The Supreme Court in paragraph 22 of **Keisham Meghachandra Singh** (supra) has observed 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 is clearly an error which attracts jurisdiction of the High Court in exercise of the power of judicial review. We have no hesitation in rejecting the preliminary objection of the respondents in the light of the decision of the Supreme Court that this Court under Article 226 of the Constitution of India in exercise of its powers of judicial review can issue a writ of mandamus to decide disqualification petitions.

27. The next question that we have to consider is whether the respondents have placed on record exceptional circumstances which can be said to be good reasons to dissuade us from issuing a direction to decide the disqualification petition of the petitioner within a time bound manner or fixing the outer limit of three months.

28. The Supreme Court in **Keisham Meghachandra Singh** (supra) has held that 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 must be decided. To decide whether there are any exceptional circumstances for which there are good reasons made out by the respondent no.1, a repeat reference to few facts will be material for the purpose of ease of continuity.

29. The election for the 8th Goa State Legislative Assembly was conducted on 14.02.2022. The election result was declared on 10.03.2022. Respondent nos. 2 to 9 contested and stood elected to the Eighth Legislative Assembly on the candidature of Indian National Congress. On 12.07.2022, Disqualification Petition bearing No. 1/2022 was filed by Mr. Amit Patkar, President of GPCC against respondent nos. 2 and 3 for attempting to orchestrate defect within the INC party. It is the submission that respondent nos. 2 and 3 voluntarily gave up their membership of INC by their conduct. On 14.09.2022, respondent nos. 2 to 9 defected from INC and joined BJP. Respondent nos. 2 to 9 constituted 2/3rd members of the legislative party which merged with the BJP and consequently claimed that there is a merger in terms of paragraph 4 of the Tenth Schedule. According to the petitioner, this action amounts to defection and respondent nos. 2 to 9 have incurred disqualification under the Tenth Schedule.

On 08.11.2022, one Mr. Domnic Noronha had filed Disqualification Petition No. 2 of 2022 against the Respondent No.2 to 9 in respect of their acts of defection on 14.09.2022. The petitioner filed Disqualification Petition No. 3 of 2022 against respondent nos. 2 to 9. On 09.12.2022, Mr. Amit Patkar, President, GPCC filed Disqualification Petition no. 4 of 2022 against Respondent nos. 2 to 9 in respect of defection done on 14.09.2022. It is the stand of the respondent no.1 that the decision in Disqualification Petition No. 1 of 2022 will have a bearing on the other petitions. According to the respondent no.1, if the Disqualification Petition No. 1 of 2022 is allowed and the respondent nos. 2 and 3 are disqualified, respondent nos. 4 to 9 would not then constitute 2/3 members required for merger in terms of the Tenth Schedule and consequently the respondent nos. 4 to 9 would stand disqualified. It is for this reason the respondent no. 1 is proceeding expeditiously with the hearing of Disqualification Petition No. 1 of 2022.

30. Before issuing any directions, we have to be conscious of the observations in **Kihoto Hollohan** (supra) that *“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." We referred to these observations for reminding us that due weightage will have to be given to the reasons spelt out in the affidavit filed by the respondent no.1. The reasons cannot be brushed aside lightly unless the same are perverse or shocks our conscience having regard to the high important and ceremonial office the Speaker holds.

31. The learned Advocate General submitted that this Court in Writ Petition No. 1228 of 2021 filed by the same petitioner, decided the very same issue which arises in Disqualification Petition no. 1 of 2022. The writ petition was dismissed by this Court. The decision is reported in **Girish Chodankar vs. The Speaker, Goa Legislative Assembly**⁵. The petitioner has challenged the said judgment by filing SLP (Civil) 5305 of 2022 before the Supreme Court. Relying upon the decision of the Hon'ble Supreme Court in the case of **Chhavi Mehrotra vs. Director General, Health Services**⁶, which held that the High Court ought not to have exercised jurisdiction under Article 226 where the matter was clearly seized of by the Supreme Court, it is urged by learned Advocate General that till

⁵ 2022 SCC OnLine Bom 377

⁶ 1995 Supp (3) SCC 434

such time, the issue is decided by the Hon'ble Supreme Court, the present petition should not be decided. We are not in agreement with the learned Advocate General. The proceedings pending before the Hon'ble Supreme Court are pertaining to a decision of the disqualification petition filed in respect of the earlier term (7th) of the Legislative Assembly. The present disqualification petition may be involving the same issue, but pertains to fresh elections. i.e. the 8th Legislative Assembly. The issue decided by this Court is pending consideration before the Supreme Court. The scope of the present petition is limited to the question whether directions can be issued to the respondent no.1 to decide the disqualification petitions arising pursuant to the fresh elections, expeditiously. It is for the respondent no.1 to take appropriate decision in the first instance on the disqualification petition. In our humble opinion, the decision cited in **Chhavi Mehrotra** (supra) is distinguishable on facts.

32. Reference then needs to be made to the decision of this Court in the case of **M. Gopalakrishnan & Ors. vs. Pasumpon Muthuramalingam & anr.**⁷ decided by the Supreme Court on 11.03.2022. The relevant observations reads thus :

“Looking to the nature of the order passed by the High Court, we are not inclined to grant leave to appeal in this matter but feel impelled to observe that ordinarily, before

⁷ SLP (Cr1.) Diary No(s). 30839/2021 decided on 11.03.2022

passing any such order for expeditious proceedings in a particular case (which might appear to be rather of innocuous nature), it would be appropriate for the higher Court to appreciate that any such order for one case, without cogent and extremely compelling reasons, might upset the calendar and schedule of the subordinate Court; might result in assigning an unwarranted priority to that particular case over and above other cases pending in that Court; and progression of such other cases might suffer for no reason and none of the faults of the litigants involved therein.”

33. In the present case, so far the procedure to be adopted by the respondent no.1 is concerned, it is undoubtedly the prerogative of the respondent no.1 to do so in accordance with law. However, regard must be had that the disqualification petitions have to be decided expeditiously. To this end, it is obviously for the respondent no.1 to fix the calendar and the schedule of hearing.

34. A stand is taken by the respondent no.1 that Disqualification Petition No. 1 of 2022 is different from the other disqualification petitions and the one filed by the petitioner as the same does not involve the point of merger. It is the stand of the respondent no.1 that if Disqualification Petition no. 1 of 2022 is allowed, the same will have a direct bearing on the other disqualification petitions and the other members will be disqualified for want of the 2/3rd number. The respondent no. 1 therefore submits that it is appropriate to first

decide Disqualification Petition No. 1 of 2022. It also needs to be noticed that in exercise of the powers conferred in paragraph 8 of the Tenth Schedule to the Constitution read with Section 14-A of the Government of Union Territories Act, 1963, the Speaker of Goa, Daman and Diu Legislative Assembly has made the Rules, namely, “Members of Goa, Daman and Diu Legislative Assembly, (Disqualification on Ground of Defection) Rules 1986, (hereinafter 'Rules' for short). Clause (1) of Rule 6 of the Rules provides that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this rule. Rule 7 provides for a detailed procedure on receipt of a petition for disqualification under clause (5) of rule 6. Rule 7 reads thus :

“ 7. Procedure.- (1) On receipt of a petition under rule 6, the Speaker shall consider whether the petition complies with the requirement of that rule.

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

(3) If the petition complies with the requirement 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 the 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) and (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 those sub-rules shall be construed as including references to the member elected by the House under the provision to sub-paragraph (1) of paragraph 6 of the Tenth Schedule.”

35. Rule 8, provides for decision on petitions. It is thus seen that the Rules provide for an elaborate procedure as to how the disqualification petitions are to be dealt with and the same have to be decided after affording a reasonable opportunity to such member to represent his case and to be heard in person.

36. The respondent no.1 is of the opinion that Disqualification Petition No. 1 of 2022 should be decided first as it will have a direct bearing on the other petitions. There are as many as four disqualification petitions filed and pending before the respondent no.1. The respondent no.1 has categorically stated that the arguments on the maintainability of the Disqualification Petition No. 1 of 2022 are being heard. We also find from the affidavit filed by the

respondent no.1 that a stand is taken that though principally a fundamental constitutional question in view of the decision in **Kihoto Hollohan** (supra) is raised, the same should not in any way be construed to mean that the respondent no.1 intends not to decide or deliberately give the decision on the Disqualification Petitions. It is the stand that the respondent no.1 has already taken up the other matters and will hear the matters expeditiously. The respondent no.1 says that the constitutional issue is raised only to contend that it may not be possible to issue directions to the Speaker to issue directions within a stipulated time period. We do respect the discretion of the Speaker-respondent no.1 to prioritise the disqualification petitions which have been filed. There is a justification provided for deciding Disqualification Petition No. 1 of 2022 in the first instance. We do not find that such an approach is perverse or arbitrary. As observed by the Hon'ble Supreme Court, the Speaker is said to be the very embodiment of propriety and impartiality and, therefore, we do hope and trust that the respondent no.1 will hear the matters expeditiously as per the stand taken in paragraph 27 of the affidavit in reply.

37. Taking an over all view of the matter, we are of the opinion that in the light of the law laid down by the Supreme Court in **Keisham Meghachandra Singh** (supra) the Speaker in acting as a Tribunal under the Tenth Schedule to the Constitution is bound to decide the

disqualification petitions within a reasonable period. We find that it is not as if the respondent no.1 is not proceeding with the disqualification petitions. Justification has been provided as to why the respondent no.1 wants to decide Disqualification Petition No. 1 of 2022 in the first instance. There are four disqualification petitions pending before the respondent no.1. The respondent no.1 has categorically stated that the disqualification petitions will be decided expeditiously. For a disqualification incurred on 14.09.2022, the petitioner filed the Disqualification Petition No. 3 of 2022 on 11.09.2022 before the respondent no.1. The present petition was filed on 25.01.2023 for a direction to decide the disqualification petition filed by the petitioner within a time bound manner. The Speaker is proceeding with the hearing of Disqualification Petition No. 1 of 2022 and other matters. No doubt, the disqualification petitions have to be decided expeditiously and even the respondent no.1 has so stated in the affidavit. At this juncture however, we are not inclined to direct that the disqualification petition of the petitioner should be decided in a time bound manner as we are satisfied that there exists exceptional circumstances for which there are good reasons as to why it would not be appropriate to fix an outer limit within which the disqualification petition filed by the petitioner should be decided.

38. We have no manner of doubt that the disqualification petition filed by the petitioner will be decided expeditiously. We hope and trust that the stand taken in the affidavit in reply of the respondent no.1 that the disqualification petitions will be heard and decided expeditiously is adhered to and the law laid down in **Keisham Meghachandra Singh** (supra) is followed in its letter and spirit.

39. In this view of the matter, we dispose of the present petition with no order as to costs.

VALMIKI SA MENEZES, J.

M. S. KARNIK, J.

ANDREZA PEREIRA  Digitally signed by ANDREZA PEREIRA
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