

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WPA No. 6193 of 2023

Suvendu Adhikari

Vs.

Hon'ble Speaker, West Bengal Legislative Assembly & Ors.

With

WPA (P) 213 of 2021

Ambika Roy

Vs.

The Hon'ble Speaker West Bengal Legislative Assembly & Ors.

For the Petitioners : Mr. Billwadal Bhattacharyya, Ld. Sr. Adv.
Mr. Anish Kumar Mukherjee, Adv.
Mr. Suryaneel Das, Adv.
Mr. Tamoghna Pramanick, Adv.

For Respondent : Mr. Kishore Datta, Ld. A.G.
Nos. 1 and 3 : Mr. Vivekananda Bose, Adv.
Mr. Debopriyo Karan Adv.
Mr. Ratikanta Pal, Adv.

Hearing Concluded on : October 24, 2025
Judgment on : November 13, 2025

DEBANGSU BASAK, J.:-

1. Two writ petitions have been taken up for analogous hearing as they relate to the similar issues and the order dated June 8, 2022 passed by the Speaker, West Bengal Legislative Assembly.

2. A Member of the Legislative Assembly has filed WPA(P) 213 of 2022 (hereinafter referred to as the first writ petition for the sake of convenience) while the leader of the opposition of the State's Legislative Assembly has filed WPA 6193 of 2023 (hereinafter referred to as the second writ petition, again for the sake of convenience). It has been acknowledged at the Bar that, both the writ petitions involve similar issues and relate to the decision taken by the Speaker of the State Legislative Assembly regarding the plea of disqualification of the respondent No. 2.

3. Learned Senior Advocate appearing for the second writ petitioner has submitted that, respondent No. 2 was elected as a Member of the State Legislative Assembly from Krishnanagar Uttar Constituency on Bharatiya Janata Party (BJP) ticket. Respondent No. 2 had defected to the All India Trinamool Congress (AITC) on June 11, 2021 by announcing the same at a press conference held on the headquarters of AITC, namely Trinamool Bhawan and that, the same was broadcast on the official handle of AITC on the social media platform.

4. Learned Senior Advocate appearing for the second writ petitioner has contended that, the first writ petitioner filed an application for disqualification of the respondent No. 2 before the respondent No. 1. Respondent No. 2 had filed the first writ petition

challenging the decision of the respondent No. 1 dated July 9, 2021 nominating the respondent No. 2 as the Chairman of the Public Accounts Committee. By a judgment and order dated September 28, 2021, the Coordinate Bench had issued a direction requiring the respondent No. 1 to decide disqualification of the respondent No. 2.

5. Learned Senior Advocate appearing for the second writ petitioner has contended that, the respondent No. 1 has decided on the prayer of the disqualification of the respondent No. 2 subsequent to the judgment and order dated September 28, 2021 by the impugned order dated June 8, 2022.

6. Learned Senior Advocate appearing for the second writ petitioner has contended that, the respondent No. 1 returned erroneous finding with regard to the evidence produced before him. He has contended that, proceedings under the Tenth Schedule of the Constitution are to be tested on the touchstone of the principles of pleadings. He has drawn the attention of the Court to the pleadings filed before the respondent No. 1. He has contended that, the evidence that was produced before the respondent No. 1 with regard to the defection of the respondent No. 2 from BJP to AITC were not denied by the respondent No. 2 in his pleadings. In such circumstances, he has contended that, the respondent No. 1 erred in holding that there was no evidence to establish the disqualification.

In this regard, he has relied upon **2010 Volume 11 Supreme Court Cases 296 (Sumitomo Heavy Industries Limited vs. Oil and Natural Gas Corporation Limited)** and **2013 Volume 6 Supreme Court Cases 602 (S.R. Tewari vs. Union of India)**.

7. Learned Senior Advocate appearing for the second writ petitioner has contended, without prejudice to his contentions with regard to the evidence placed on record that, the second writ petitioner filed a rejoinder in the proceedings before the respondent No. 1 where, further materials were disclosed. He has referred to the materials disclosed in the rejoinder. He has pointed that, such materials individually and collectively, would establish that the respondent No. 2 defected from BJP to AITC.

8. Learned Senior Advocate appearing for the second writ petitioner has contended that, Section 65B of the Evidence Act, 1872 was complied with. He has contended that, requisite certificate was produced which was wrongfully discarded by the respondent No. 1. He has relied upon **2018 Volume 2 Supreme Court Cases 801 (Shafhi Mohammad Vs. State of HP)** to contend that, certificate under Section 65B (4) of the Evidence Act, 1872 is intended to ensure the authenticity of the electronic evidence and that same did not impose a factual rigid or hyper technical requirement. Section

65B (4) of the Evidence Act, 1872 is only a procedural requirement intended to ensure authenticity.

9. Learned Senior Advocate appearing for the second writ petitioner has contended that, the respondent No. 2 admitted that he was with the AITC on June 11, 2021. He has acknowledged the press conference and its contents. He has pointed out that, the written statement of the respondent No. 2 was not properly verified.

10. Referring to the doctrine of non-traverse and deemed admission, learned Senior Advocate appearing for the second writ petitioner has referred to the written statement filed by the respondent No. 2 as also the sur rejoinder filed by him in the proceedings before the respondent No. 1. He has contended that, the statements made by the writ petitioner, stood admitted by the respondent No. 2 in the proceedings before the respondent No. 1. He has pointed out that, the respondent No. 1 is also guilty of evasive denial and that, such denial is required to be construed as an admission. He has relied upon ***AIR 1964 SC 538 (Badat & Co Bombay Vs. East India Trading Co.)*** in support of his contention.

11. Relying on ***1994 Supp 2 Supreme Court Cases 641 (Ravi S. Naik Vs. Union of India)*** learned Senior Advocate appearing for the second writ petitioner has contended that, determination of defection under the Tenth Schedule does not hinge merely upon a

formal act of resignation from a political party. The conduct of the member, has to be taken into consideration. He has also relied upon **1996 Volume 2 Supreme Court Cases 353 (G. Viswanathan Vs. Hon'ble Speaker, Tamil Nadu Legislative Assembly)** and **2004 Volume 8 Supreme Court Cases 747 (Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council & Ors.)** in support of his contention.

12. Learned Senior Advocate appearing for the second writ petitioner has contended that, the conduct of the respondent No. 2 establishes that the respondent No. 2 voluntarily gave up his membership of the BJP, even though no formal resignation letter was submitted. According to him, the defence of the respondent No. 2 that absence of a formal resignation shall save him from disqualification is wholly unsustainable.

13. Learned Senior Advocate appearing for the second writ petitioner has contended that, apart from the written comments filed by the respondent No. 2, no other material was brought on record by the respondent No. 2 to deny the allegations made against him. He has pointed out that, verified screenshots and video of the respondent No. 2 appearing in the AITC press conference was produced as evidence. Transcript of the press conference evidencing the respondent No. 2 joining the other party had been produced in

the proceeding. Social media post as also media coverage officially shared by the AITC had been produced. He has contended that, once voluntarily giving up of party membership is established, subsequent developments cannot erase the disqualification already incurred. In support of such contention he has relied upon **2012 volume 2 Supreme Court Cases 708 (D. Sudhakar and Others Vs. D.N. Jeevaraju).**

14. Learned Senior Advocate appearing for the second writ petitioner has contended that, strict rules of evidence do not apply to disqualification proceedings. In this regard, he has relied upon **2006 (108) (1) Bom LR 227 (Filipe Nery Rodrigues vs. Sadanand Mhalu Shet)** and **2020 Volume 1 Supreme Court Cases 1 (M. Siddiq vs. Mahant Suresh Das).**

15. Learned Senior Advocate appearing for the second writ petitioner has contended that, the respondent No. 1 acting as an adjudicating authority has limited role. He is bound by judicial precedent. Respondent No. 1 when adjudicating a disqualification petition, acts at quasi-judicial authority and his decision is amenable to judicial review as has been held in **2020 Volume 2 Supreme Court Cases 595 (Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly).** According to him, the respondent No. 1 as the adjudicating authority had failed to

discharge such responsibility. He has relied upon ***All India Reporter 1952 Bom 165 (Mohamed Oomer vs. S. M. Noorudin)*** and ***All India Reporter 1964 SC 477 (Syed Yakoob vs. K. S. Radhakrishnan)*** in support of his contention.

16. Relying upon 2007 Volume 4 Supreme Court Cases 270 (Rajendra Singh Rana vs. Swami Prasad Maurya) 2007 Volume 3 Supreme Court Cases 184 (Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha & Ors.) and 1986 Volume 2 Supreme Court Cases 679 (CAG vs. Jagannathan), learned Senior Advocate appearing for the second writ petitioner has contended that, once the order of the respondent No. 1 is found unsustainable, the High Court can decide the petition for disqualification itself.

17. Learned Advocate General appearing for the respondent Nos. 1 and 3 has contended that, the second writ petitioner sought disqualification of the respondent No. 2 on the ground of defection to AITC. He has referred to the petition filed with regard to such disqualification. He has contended that no certificate under Section 65B of the Evidence Act, 1872 was filed with regard to the screenshots of the news report. He has contended that, the petition was defective under Rule 6 of the West Bengal Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 and was liable to be dismissed under Rule 7 (2) thereof. However, the respondent

No. 1 had allowed an opportunity to regularize the same. He has referred to such order allowing regularization. He has pointed out that the second writ petitioner filed an affidavit to regularize such petition.

18. Learned Advocate General appearing for the respondent Nos. 1 and 3 has pointed out that the respondent No. 2 filed a reply to which, the second writ petitioner filed a sur rejoinder along with printouts of screenshots of social media posts and a compact disc allegedly containing video footage of the press conference held by the AITC on June 11, 2021. He has contended that, a certificate claimed to be under Section 65B of the Evidence Act, 1872 was also filed with respect to the screenshots and the compact disc.

19. Learned Advocate General appearing for the respondent Nos. 1 and 3 has referred to the sur rejoinder filed by the respondent No. 2. He has pointed out that, objection was raised against the submission of additional evidence by way of rejoinder, as also the genuineness of the electronic record was disputed by the respondent No. 2.

20. Learned Advocate General appearing for the respondent Nos. 1 and 3 has contended that, initially, the respondent No. 1 dismissed the petition by an order dated February 11, 2022. The Division Bench by a judgement and order dated April 11, 2022 passed in

WPA(P) 213 of 2022 had set aside the order dated February 11, 2022 and remanded the defection petition for fresh decision. The second writ petitioner had filed an unsigned written note without service upon the respondent No. 2 before the respondent No. 1.

21. Learned Advocate General appearing for the respondent Nos. 1 and 3 has contended that, the impugned order of the respondent No. 1 cannot be faulted. He has contended that, there was no certificate under Section 65B of the Evidence Act, 1872 in law. He has contended that, the computer model does not exist, the period of activities was not specified, screenshots when downloaded, printed and transcribed in compact disc was not stated and that, there was no certificate from the social media house. He has contended that, the screenshots evidently were produced from a mobile phone and not from any computer. The compact disc had been submitted without verification and no effort was made by the second writ petitioner to obtain any certificate with respect to the video from the persons concerned. Therefore, according to him, the electronic evidence sought to be introduced was not admissible in evidence. In support of his contentions, he has relied upon **2020 Volume 7 Supreme Court Cases 1 (Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Others)**.

22. Learned Advocate General appearing for the respondent No. 1 and 3 has contended that, the second writ petitioner did not adopt alternative method of proving the evidence, although opportunity with regard thereto was given. He has contended that, personal information or knowledge cannot be imputed by the respondent No. 1 to the proceedings. In support of his contentions, he has relied upon **1875 IA 259 (Hurpurshad and Others vs. Sheo Dyal and Others), ILR (1895) 17 All 294 (Bhagwan Singh vs. Bhagwan Singh and Others), All India Reporter 1917 Pat 1 (Murat Lal vs. Emperor), All India Reporter 1972 Pat 208 (Jokhan Singh and Others vs. Marjad Koeri and Others)** and **2019 SCC online All 7931 (Chandra Pal and Others vs. Govind Ram and Another).**

23. Learned Advocate General appearing for the respondent No. 1 and 3 has contended that subsequent events can be taken into consideration. Respondent No. 2 had been appointed as the Chairman of the Public Accounts Committee, the respondent No. 1 did not receive any request for change of seat, no whip was issued to the respondent No. 2 and that, the bulletin was not objected to. In support of his contention that subsequent events can be taken into consideration, he has relied upon **2012 volume 2 Supreme Court cases 708 (D Sudhakar (2) and Others vs. D. N. Jeevaraju and**

Others)* and **2021 Volume 13 Supreme Court Cases 794 (Ram Chandra Prasad Singh vs. Sharad Yadav).*

24. Learned Advocate General appearing for the respondent No. 1 and 3 has contended that, allegations of bias against the respondent No. 1 is unfounded. He has pointed out that, although the application of the second writ petitioner was deficient in view of Rule 6 of the Rules of 1986 warranting dismissal under Rule 7 (2) thereof nonetheless, the respondent No. 1 had permitted rectification thereof. Rectification affidavit had contained only news reports which were not accompanied by any certificate under Section 65B of the Evidence Act, 1872. In rejoinder, the second writ petitioner had submitted screenshots and compact disc without verification and the certificate under Section 65B of the Evidence Act, 1872. After relegation of the matter to the respondent No. 1 by the High Court, unsigned written notes were submitted by the second writ petitioner. The respondent No. 1 had allowed the second writ petitioner to rectify defects. Despite there being an objection from the respondent No. 2 via his sur rejoinder, to the production of evidence with rejoinder, the respondent No. 1 instead of rejecting the same, allowed oral evidence.

25. We have heard two writ petitions analogously as both involve similar issues and are largely between the same parties. Essentially,

in both the writ petitions the legality and validity of the decision of the respondent No. 1 relating to the application for disqualification on defection of the respondent No. 2 from the State Legislative Assembly has fallen for consideration.

26. Respondent No. 1 had been elected to the State Legislative Assembly on the ticket of the BJP. The second writ petitioner had filed an application before the respondent No. 1 alleging that, the respondent No. 2 had defected from BJP to AITC.

27. The respondent No. 1 had nominated/appointed the respondent No. 2 as the Chairperson of the Public Accounts Committee on July 19, 2021. The first writ petitioner had filed the public interest litigation being WPA (P) No. 213 of 2021 assailing, inter alia, the order dated July 9, 2021 passed by the respondent No. 1 appointing the respondent No. 2 as the Chairman of the Public Accounts Committee. The Division Bench had passed orders dated August 12, 2021 and August 24, 2021 in such public interest litigation. The Division Bench by an order dated September 20, 2021 had observed that, the issue of disqualification of the respondent No. 2 as a member of the State Legislative Assembly and his appointment as the Chairman of the Public Accounts Committee were intertwined.

28. Respondent No. 1 and 3 had filed two separate Special Leave Petitions assailing the order dated September 20, 2021 passed by the High Court in the first writ petition. Both the Special Leave Petitions had been disposed of by an order dated November 22, 2021 by directing the respondent No. 1 to expeditiously decide the disqualification petition.

29. By an order dated February 11, 2022, the respondent No. 1 had dismissed the disqualification petition. The second writ petitioner has assailed the order dated February 11, 2022 passed by the respondent No. 1, in the writ petition being WPA 3629 of 2022. The second petitioner had also filed an application under Article 32 of the Constitution of India challenging the order dated February 11, 2022 passed by the respondent No. 1. Such petition under Article 32 of the Constitution of India of the second writ petitioner was disposed of by an order dated February 25, 2022 requesting the High Court to decide the public interest litigation as well as the first writ petition.

30. By an order dated April 11, 2022, the High Court had disposed of the writ petition being WPA 3629 of 2022 by setting aside the order dated February 11, 2022 of the respondent No. 1 and remanded the disqualification petition to the respondent No. 1 for fresh adjudication.

31. In terms of the order dated April 11, 2022 of the High Court, the respondent No. 1 had re heard the defection petition and rejected the same by the order dated June 18, 2022 which is impugned in the second writ petition.

32. The second writ petitioner had applied for disqualification of the respondent No. 2 by a petition dated June 17, 2021. The petition was under Rule 6 of the Rules of 1986. Along with such application, second writ petitioner had disclosed the nomination paper of the respondent No. 2. Such nomination paper has established that, the respondent No. 2 was nominated by the BJP to contest the State Legislative Assembly election for the 83, Krishnagar Uttar Assembly constituency. It has been admitted at the Bar that the respondent No. 2 was elected to the State Legislative Assembly as a candidate of the BJP.

33. In paragraph 3 e. of the petition dated June 17, 2021, the second writ petitioner had alleged that the respondent No. 2 joined AITC on June 11, 2021 despite being elected as a member of the West Bengal State Legislative Assembly as a candidate of the BJP. The second petitioner had enclosed true copy of reports and tweets confirming the defection of the respondent No. 2 to AITC. In paragraph 5 of the petition, the second writ petitioner had also quoted the press statement made by the respondent No. 2. The

second writ petitioner had annexed the news articles to the defection petitions.

34. The respondent No. 2 had filed written comments before the respondent No. 1 in the defection proceedings. In such written comments, respondent No. 2 had acknowledged that, he attended a meeting held by AITC on June 11, 2021 and that he was extremely disturbed due to his wife's ill health and attended the meeting as a gesture of courtesy to the rival party leaders. He had contended that, the news media misinterpreted his presence in such meeting as joining AITC. In paragraph 7 of the written comments, respondent No. 2 had denied that he ever joined AITC or that he has given up its membership of the BJP.

35. The respondent No. 2 had verified the written comments by way of an affidavit. In such affidavit, he had contended that, statements made in paragraphs 1 and 9 of the written comments were true to his knowledge and the rest were his humble submissions. The statements noted in the preceding paragraph of this judgement and order, had been made by the respondent No. 2 in paragraphs 4 and 7 of his written comments before the respondent No. 1. Such paragraphs had not been verified as true to knowledge by the respondent No. 2.

36. The respondent No. 2, despite an opportunity being granted by the respondent No. 1, to deal with the allegations made in the petition alleging defection, had chosen not to deny the material allegations made against him in the defection petition. The respondent No. 2 did not deny his presence in the press conference held on June 11, 2021 by AITC. He has not denied the contents of such press conference as stated by the second writ petitioner in his petition before the respondent No. 1. The respondent No. 2 did not deny the statements made by the second writ petitioner in paragraph 5 of the defection petition where, the second petitioner had quoted the statements made by the respondent No. 2 in the press conference as to his defection from BJP to AITC. That the respondent No. 2 had contested and won the assembly elections of BJP ticket had also been admitted.

37. The second writ petitioner had filed a rejoinder to the written comments of the respondent No. 2. In such a rejoinder, again, assertions as to the respondent No. 2 defecting to the AITC had been made. Various materials including electronic materials had been relied upon.

38. The respondent No. 2 had filed a sur rejoinder to the rejoinder of the second writ petitioner. He had denied the allegation of defection in his sur rejoinder. However, he had affirmed

paragraphs 1 and 11 of the sur rejoinder as true to his knowledge. Paragraphs 1 and 11 of the sur rejoinder has no denial with regard to his defection.

39. By the order dated February 11, 2022, the respondent No. 1 had dismissed the petition for disqualification of the respondent No. 2 from the state legislative assembly. The respondent No. 1 by the order dated February 11, 2022 had held that, the second writ petitioner was not able to establish the contentions of defection so as to attract the provisions of paragraph 2 (1) (a) of the Tenth Schedule of the Constitution of India.

40. By the judgement and order dated April 11, 2022, the Division Bench had dealt with the public interest litigation being WPA (P) 213 of 2021 and the writ petition being WPA 3629 of 2022. By such judgement and order, the Division Bench had set aside the order dated February 11, 2022 passed by the respondent No. 1 dismissing the disqualification petition and required the respondent No. 1 to decide the same as expeditiously as possible. Division Bench had kept WPA (P) 213 of 2021 pending while allowing WPA 3629 of 2022 by the judgement and order dated April 11, 2022.

41. Subsequent to the judgement and order dated April 11, 2022, the respondent No. 1 had taken up the disqualification petition for

consideration in which, the second writ petitioner had filed a written note of argument.

42. By an order dated June 18, 2022 impugned in WPA 6193 of 2023, the respondent No. 1 had dismissed the petition for disqualification. Presently therefore, the decision dated June 18, 2022 of the respondent No. 1 on the petition for disqualification of the respondent No. 2 subsists and is impugned in the second writ petitioner.

43. Under the Tenth Schedule of the Constitution of India, the respondent No. 1 has been empowered to decide a petition for disqualification. As has been noted above, the second writ petitioner filed a petition before the respondent No. 1 claiming disqualification of the respondent No. 2 as a member of the State Legislative Assembly due to the respondent No. 2 defecting to a different political party. The respondent No. 1 as adjudicating authority of such petition is governed by the provisions of the Tenth Schedule as also by the Rules of 1986. Decision of the respondent No. 1 exercising powers under the provisions of the Tenth Schedule of the Constitution of India read with the Rules of 1986 is amenable to judicial review as has been held in ***Ravi S. Naik (supra)***.

44. A decision of the respondent No. 1 is akin to a decision rendered by a Tribunal which is amenable to judicial review.

Decision of any Tribunal including the decision of the respondent No. 1 can be successfully assailed by way of a writ petition, if it is established inter alia that, such decision is vitiated by perversity, lack of jurisdiction or was passed in breach of principles of natural justice.

45. Before us, the writ petitioners have contended that, the impugned decision of the respondent No. 1 is vitiated on account of perversity.

46. In the impugned order, the respondent No. 1 has proceeded to test the rival contentions of the second writ petitioner and the respondent No. 2 on the basis that, “It is well settled that a charge of defection or disqualification is substantially akin to a criminal charge” as recorded in paragraph 46 of the impugned decision dated June 18, 2022. Having made such observation, the respondent No. 1 has proceeded to hold that, the second writ petitioner is required to “establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt.”

47. In our understanding, neither the Tenth Schedule nor the Rules of 1986 have provided for any criminal liability to be incurred by a member of the House in the event a petition alleging disqualification is allowed. Under Rule 8 of the Rules of 1986, the respondent No. 1 has two options at the conclusion of the

consideration of a petition alleging disqualification. One of the options is to dismiss the petition under Rule 8 (1) (a). The next option under Rule 8 (1) (b) is to declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule. Therefore, none of the options available to the respondent No. 1 deciding a petition for disqualification entails any criminal liability as against the member. Therefore, the respondent No. 1 had no basis to hold that, the proceedings for disqualification were quasi criminal in nature and that, the yardstick of proof is beyond reasonable doubt in contradistinction to preponderance of probabilities as in a civil case. In our view, the standard of proof in a disqualification proceeding governed by the Tenth Schedule and the Rules of 1986 is preponderance of probabilities and not beyond reasonable doubt as no criminal liability is involved.

48. Applying the test of preponderance of probabilities in the facts and circumstances of the present case, we find that, the averments and assertions relating to the disqualification of the respondent No. 2 made by the second writ petitioner, in the petition for disqualification, were not denied by the respondent No. 2. Both in the reply as also in the sur rejoinder the respondent No. 2 had affirmed only 2 paragraphs in each of them, as true to his

knowledge. The material allegations as against the respondent No. 2 made by the second writ petitioner, in the petition for disqualification as also in the rejoinder filed, had remained uncontroverted by the respondent No. 2. Such being the factual position, the respondent No. 1 had mis directed his enquiry in the proceedings by applying a wrong standard of proof and deciding the issue of defection on the same.

49. Significantly, the respondent No. 2 has not contested the instant proceedings also. It is the respondent No. 1 who has sought to take up the cudgels on behalf of the respondent No. 2. As a party respondent in a writ petition assailing the decision of the respondent No. 1 on a defection petition, between the same parties, the Coordinate Bench has, by the order dated April 11, 2022, held that, the respondent No. 1 had limited role to place the relevant material before the Court in support of the reasoning on the basis of which conclusions in the order impugned were arrived at.

50. Therefore, in the facts and circumstances of the present case, the role of the respondent No. 1 is circumscribed by the judgement and order dated April 11, 2022 rendered between the same parties.

51. In course of hearing of the two writ petitions before us, learned senior advocate appearing for the writ petitioners has demonstrated from his mobile phone that, the social media platforms

still carried the defection of the respondent No. 2 from BJP to AITC. Such electronic evidence had been shown to the learned Advocate General in Court, during hearing.

52. Before the respondent No. 1, the averments with regard to defection by the respondent No. 2, made in the defection petition filed by the second writ petitioner, have not been denied by the respondent No. 2 despite having opportunity to do so and having filed written comments and sur rejoinder. The pleadings filed by the second writ petitioner before the respondent No. 1 had both transcripts of the press conference as also the electronic evidence of the same and electronic evidence of the social media platforms. The pleadings also had certificates under section 65B of the Evidence Act, 1872.

53. *Arjun Panditrao Khotkar (supra)* has overruled *Shafhi Mohammad (supra)* on the issue of section 65A and section 65B of the Act of 1872 not being a complete code and regarding the requirement of certificate under section 65B of the Act of 1872. It has held that, production of certificate under section 65B of the Act of 1872 is mandatory only in cases of secondary evidence, that is, where primary evidence is not led or the original is not produced.

54. In the facts and circumstances of the present case, the second writ petitioner had produced electronic evidence, transcript

of the press conference, and other materials before the respondent No. 1. The second writ petitioner had established through the pleadings available before the respondent No. 1 that, the respondent No. 2 was present in the press conference held by AITC. The respondent No. 2 has not denied the fact that the press conference was held by AITC and that he was present therein. He has also not denied the contents of the press conference as stated by the second writ petitioner. He has sought to explain his presence on the ground of the ill-health of his wife. The material fact as to his joining the AITC as stated in the press conference has not been denied by the respondent No. 2.

55. Even if, one is to ignore the electronic materials placed before the respondent No. 1, then also, the transcripts as well as the averments made in the application, particularly when, the averments in the application were not being denied by the respondent No. 2 despite filing written comments thereto, should have been taken into consideration, on the basis of the principle of preponderance of probabilities, by the respondent No. 1 while adjudicating the issue as to whether or not, the respondent No. 2 had defected from BJP and suffered a disqualification in terms of the Tenth Schedule of the Constitution of India and the Rules of 1986.

56. *S R Tiwari (supra)* and *Sumitomo Heavy Industries Ltd (supra)* have held that, a perverse finding is one which is based on no evidence or one that is no reasonable person could have arrived at. However, unless it is found that, some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse.

57. Given the gamut of the evidence laid before the respondent No. 1, by the second writ petitioner, in the adjudication proceedings, the only plausible conclusion is that, the decision of the respondent No. 1 on the issue of disqualification of the respondent No. 2, is perverse. No reasonable person could have arrived at the conclusion as returned by the respondent No. 1 on the basis of the materials placed before him. Perversity vitiating the impugned decision is accentuated by the respondent No. 1 deploying a wrong yardstick evaluating the rival contentions.

58. *G. Viswanathan (supra)* has explained the meaning of “voluntarily given up his membership of such political party” in the Tenth Schedule. It has held that, only when the elected member joins another party will such elected member be treated to have voluntarily given up his membership of the party by which he was set up as a candidate for election.

59. *Dr. Mahachandra Prasad Singh (supra)* has held that, disqualification comes into force and becomes effective on the happening of the event. It has also held that, once the facts placed show that a member of the House has done any such act which comes within the purview of paragraph 2 (1), (2) or (3) of the Tenth Schedule, the disqualification will apply and that, the Speaker of the House will have to make a decision to that effect.

60. In the facts and circumstances of the present case, the second writ petitioner has been able to establish that, the respondent No. 2 defected from BJP to AITC on June 11, 2021. Such action of the respondent No. 2 has incurred the disqualification contemplated under the Tenth Schedule. Subsequent events as canvassed on behalf of the respondent No. 1 and 3 do not have the effect of curing the disqualification which was already incurred. In any event, it is not for the respondent No. 1 and 3 to set up any defence on behalf of the respondent No. 2 particularly when, the respondent No. 2 is not contesting the claim of the second writ petitioner.

61. *Rajendra Singh Rana (supra)* has held that, judicial review of the decision of the Speaker on the issue of disqualification under the Tenth Schedule is permissible.

62. *Raja Ram Pal (supra)* has recognised that, judiciary is not prevented from scrutinizing the validity of the Legislature's action trespassing on fundamental rights of citizens, subject to restrictions contained in other constitutional provisions such as Articles 122 and 212.

63. Having held that, the decision of the respondent No. 1, as impugned before us, is perverse, we are not inclined to enter into an elaborate discussion on the rest of the authorities cited at the Bar on various issues. We have noted while recording the rival contentions, the authorities which have been cited on various issues. Suffice it to say that, the same would not have persuaded us to take a view different from what we have returned.

64. The disqualification petition had been filed on June 17, 2021 alleging defection on June 11, 2021. The respondent No. 1 had taken a decision dated February 11, 2022 dismissing the disqualification petition. The Coordinate Bench had by the order dated April 11, 2022 set aside the decision of the respondent No. 1 dated February 11, 2022 and directed fresh adjudication. The respondent No. 1 had misapplied the law in deciding the disqualification petition and misappreciated the factual position in arriving at his decision dated June 18, 2022. There subsists an order of the Supreme Court dated

February 24, 2023 requiring hearing of the two petitions analogously.

65. In the facts and circumstances of the present case, given the quantum of time spent by the respondent No. 1 in deciding a petition for disqualification and given the fact that, the first decision of the respondent No. 1 dismissing the disqualification petition, was set aside by the Coordinate Bench and given the fact that, in the order impugned of the respondent No. 1, he has misapplied the yardstick for evaluation of evidence and misappreciated the facts presented before him, and given the fact that, the tenure of the state assembly is limited, remanding the disqualification petition to the respondent No. 1 for fresh hearing will not subserve the ends of justice.

66. In the facts and circumstances of the present case, therefore, we have no hesitation in setting aside the impugned order dated June 8, 2022 passed by the respondent No. 1 and allowing the petition for disqualification filed by the second writ petitioner, dated June 17, 2021. The respondent No. 2 is declared to have become disqualified in terms of the Tenth Schedule of the Constitution of India and the Rules of 1986 with effect from June 11, 2021.

67. It is expected that, the respondent No. 1, consequent upon the petition of the second writ petitioner dated June 17, 2021 being

allowed, will take requisite steps in terms of the Tenth Schedule and the Rules of 1986.

68. Since the respondent No. 2 is declared to have suffered disqualification with effect from June 11, 2021 nomination of the respondent No. 2 as the Chairman of Public Accounts Committee is set aside.

69. In view of the discussions above, WPA (P) 213 of 2021 and WPA 6193 of 2023 stands disposed of without any order as to costs.

[DEBANGSU BASAK, J.]

70. I agree.

[MD. SHABBAR RASHIDI, J.]