

**IN THE HIGH COURT OF HIMACHAL PRADESH**  
**AT SHIMLA**  
**CMP.No. 5314/2024 & CMP.No.5639/2024**  
**IN/AND**  
**CWP.No.3015 of 2024**  
**Reserved on:30.04.2024**  
**Pronounced on: 08.05.2024**

---

Hoshyar Singh Chambyal and others

.....Petitioners

Versus

Hon'ble Speaker, HP Legislative Assembly & others

.....Respondents

---

**Coram:**

***Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.***  
***Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.***

Whether approved for reporting?

For the petitioners : Mr. Maninder Singh, Senior Advocate (through V.C.) with Mr. Anshul Bansal, Mr. Ajay Vaidya and Mr. Shriyak Sharda, Advocates.

For the respondents : Mr. Kapil Sibal (through V.C. ) and Mr. K.S. Banyal, Senior Advocate, with M/s Rohit Sharma, Uday Banyal, Nizam Pasha, Aaprajita Jamwal, Nikhil Purohit and Jatin Lalwani, Advocates, for respondents no. 1 to 3.  
 Notice to respondent no. 2 not issued.  
 Mr. Ankush Dass Sood, Sr. Advocate with Mr. Arjun Lall, Advocate, for respondent no. 4/Election Commission of India.  
 M/s Shagun Sharma and Arun Kaushal, Advocate, for the intervener.

---

**M.S. Ramachandra Rao, Chief Justice.**

The petitioners in the Writ Petition are Independent Members of the Legislative Assembly of State of Himachal Pradesh ( for short "Assembly") having got elected in the elections held to the said Assembly in 2022.

2. On 22.3.2024, they submitted resignation letters ( Annexure P-1 colly) to the Speaker of the Himachal Pradesh Legislative Assembly (for short "Speaker") resigning from Membership of the Assembly with effect from

22.3.2024 in terms of Art.190(3)(b) of the Constitution of India read with Rule 287 of the Rules of Procedure and Conduct of Business in Himachal Pradesh Legislative Assembly (for short “the Rules”).

3. The resignation letters were personally handed over by the petitioners to the Speaker on 22.3.2024.

4. On 23.3.2024, the petitioners had also joined the Bharatiya Janata Party.

5. The petitioners wrote letters to His Excellency the Governor of Himachal Pradesh on 24.3.2024 ( Annexure R1/4) complaining that the Speaker had not accepted the resignation letters for political and malafide reasons and that he was acting in contravention of the Constitutional mandate. They sought his intervention in the matter to ensure acceptance of their resignations immediately.

6. On 26.3.2024, the petitioner no.2 wrote to the Speaker a reminder requesting him to accept his resignation immediately. Similar letters were written on 27.3.2024 by the other two petitioners and also petitioner No.2 ( Annexure P-2 colly).

7. Show cause notices dt.**27.3.2024** (Annexure P-8 colly) were issued by the Speaker through the Secretary of the Himachal Pradesh Legislative Assembly stating *inter alia* that the petitioners had come to the residence of the Speaker at 3.30 pm on 22.3.2024 along with BJP MLAs Sh.Balbir Singh Verma and Dr.Janak Raj and had handed over their resignation letters; that they had also submitted copies of their resignation letters to the Secretary of the Assembly accompanied by Sh.Jai Ram Thakur, Leader of the Opposition party; that on **23.3.2024**, the Secretary of the Assembly had received a complaint from some Ministers and Congress party MLAs about the petitioners’ conduct since 27.2.2024 claiming that their resignation cannot be

termed as “voluntary”; and so, in terms of Art.190 (3) (b) of the Constitution of India read with Rule 287 of the Rules, the petitioners should appear in person **for inquiry** before the Speaker on **10.4.2024** at 12.15 pm, at the Committee Room, HP Vidhan Sabha/Assembly, Shimla to determine whether their resignation from the Assembly is liable to be accepted or rejected.

8. Along with the Show cause notices, copy of the complaint dt.23.3.2024 from some Ministers and Congress party MLAs was enclosed.

9. Petitioners then filed on 4.4.2024, the instant Writ Petition seeking the following reliefs:

- i Issue an appropriate Writ or direction to the Speaker (respondent no.1) to forthwith accept the resignation of the petitioners dt.22.3.2024 w.e.f 22.3.2024 and issue appropriate communication to that effect forthwith; and.*
- ii Issue an appropriate Writ, order or direction quashing the Show Cause notice dt.27.3.2024 and all consequent proceedings arising out of it; and*
- iii Consequently issue an appropriate Writ, order or direction to the Election Commission of India ( respondent no.4) to notify the three vacancies in the assembly constituencies; and*
- iv Any other and further order (s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.*

### **The events after filing of the Writ Petition**

10. The Writ Petition was listed for admission on 10.4.2024 and notice was issued to the Speaker (respondent no.1), Secretary of the Assembly (respondent no.3) and the Election Commission of India (respondent no.4). The matter was directed to be listed on 24.4.2024 for filing of replies by them.

11. On 10.4.2024, the petitioners gave replies to the Show Cause notices *without prejudice* asserting that their resignations were voluntary and genuine, that the speaker was obliged to take action of issuing the communication for

acceptance of their resignations dt.22.3.2024 w.e.f 22.3.2024 immediately, that he had no option not to accept them, and that the show cause notices were contrary to the constitutional scheme and the principles of law laid down by Courts in India. It was mentioned in the replies that the impermissible delay in acceptance of resignations by the Speaker had compelled the petitioners to file this Writ Petition for relief as above. The petitioners also denied the allegations and contents of the complaint dt.22.3.2024 from some Ministers and Congress party MLAs annexed to the Show cause notices dt.27.3.2024 and stated that they were untrue, misconceived, unsustainable and devoid of merit. According to them, the show cause notices were, in the facts and circumstances, completely impermissible and unsustainable. They requested the Speaker to accept the resignations immediately.

12. On 24.4.2024, the matter was adjourned to 25.4.2024. Replies had been filed on 24.4.2024 by the Speaker and the Secretary of the Assembly.

13. On 25.4.2024, the arguments of Sh. Maninder Singh, Senior Counsel for the petitioners were heard and also those of Sh.Kapil Sibal for respondent no.1 ( the Speaker) in part through VC. For continuation of hearing, the matter was posted to 30.4.2024.

14. On that day the Senior Counsel for both sides concluded their arguments and judgment was reserved.

15. Both parties filed Written submissions which will be considered in this judgment.

**Other important events occurring after filing of the Writ Petition.**

16. On 24.4.2024, the Speaker issued to the petitioners Show Cause notices for their disqualification under para 2(2) of the X Schedule stating that being independent Members of the Assembly and having got elected otherwise as a

candidate set up by any political party, they incurred disqualification by joining the Bharatiya Janata Party on 23.3.2024.

17. I may however point out that these Show Cause notices are not subject matter of this Writ Petition.

**CMP.No.5314/ 2024**

18. Petitioners filed **CMP.No.5314/ 2024** to place on record their replies dt.10.4.2024 to the Show Cause Notices dt.27.3.2024. This application was not opposed by the respondents. It is accordingly allowed.

**CMP.No.5639/2024**

19. On 25.4.2024, an intervention application **CMP.No.5639/2024** was moved by one Harish Janartha, another elected member of the Assembly, who was one of the signatories of the complaint dt.23.3.2024 addressed to the Speaker (wherein they had alleged that the resignations of petitioners were not voluntary and on the basis of which the Show Cause notice dt.27.3.2024 were issued by the Speaker), seeking leave to intervene in the matter in support of the action initiated by the Speaker. It is contended by him that he is vitally interested in the outcome of the inquiry proceedings which have been initiated by the Speaker on the complaint given by him and others. According to him, the petitioners had filed the Writ petition with the motive to scuttle the pending proceedings before the Speaker and prevent the same.

20. Since the Speaker had already engaged a Sr.Counsel Sh.Kapil Sibal to defend his action in issuing Show Cause notices and to oppose the grant of reliefs in the Writ Petition, I find no reason to entertain the intervention application. **CMP.No.5639/2024** is accordingly dismissed.

### **Contentions of petitioners**

21. The petitioners contend that their resignations are “genuine” and “voluntary” since they had delivered them in person to the Speaker on 22.3.2024, that the Speaker in the Show Cause notices itself mentions that they had given them to him at his residence on that day, that they even gave reminders to the Speaker to accept their resignations, that they filed the instant Writ Petition stating that they had done so voluntarily, and had also mentioned the same in the replies dt.10.4.2024 given by them to the Speaker to the Show Cause notices which he had issued, that in a personal interaction which the petitioners had with the Speaker on 10.4.2024 they had again prayed the Speaker to accept their resignations, and so, there is no need for any inquiry by the Speaker as is being undertaken by him.

22. They contend that the complaint dt.23.3.2024 has been engineered and doctored only with a view to somehow, in a malafide and impermissible manner to prevent the petitioners from exercising their indefeasible right to resign as Members of the Legislative Assembly.

23. They contended that he should have accepted their resignations immediately, that his action in conducting a roving inquiry by reference to extraneous factors is not bonafide, and so the Writ Petition should be allowed and reliefs sought for should be granted.

24. According to them failure of the Speaker to accept the petitioners’ resignations immediately violates their indefeasible right to resign from the Legislative assembly and is destructive of the principles of democracy.

25. It is stated that where the Speaker had failed to exercise his jurisdiction for deciding the disqualification petition under X Schedule of the Constitution of India and had postponed the same, and proceeded to decide a subsequent claim for ‘split’ in the political party, a Constitution Bench of the Supreme

Court in *Rajinder Singh Rana v. Swami Prasad Maurya*<sup>1</sup> had held that the conduct of the Speaker is not a mere procedural irregularity, but is in the nature of a jurisdictional illegality and the High Court's jurisdiction in judicial review was attracted.

26. Reliance is also placed on the decision in *Comptroller and Auditor General v. K.S.Jagannathan*<sup>2</sup> to contend that if a government or public authority has failed to exercise or has wrongly exercised the discretion conferred on it by a statute, the High Courts in India exercising their jurisdiction under Art.226 have the power to issue a Writ of Mandamus or a Writ in the nature of mandamus or to pass orders and give necessary directions; and in a proper case, in order to prevent injustice, the High Court may itself pass an order or give directions which the government or public authority should have passed or given had it properly and lawfully exercised its discretion.

### **Contentions of Speaker (respondent no.1)**

27. The respondent No.1 however contends that looking at the reliefs claimed by the petitioners, they cannot be granted by this Court since the power to accept the resignation is conferred exclusively on the Speaker by Art.190 (3) (b) and such a power is not conferred on this Court for it to treat the resignations submitted by petitioners to the Speaker as voluntary and genuine.

28. It is contended that the Speaker is a high Constitutional Authority and cannot be treated like an ordinary executive authority and subjected to power of judicial review of this Court even *before* he has passed any order regarding the resignations submitted by the petitioners.

---

<sup>1</sup> (2007) 4 SCC 270

<sup>2</sup> (1986)2 SCC 679

29. It is contended that even in respect of matters relating to disqualification under X Schedule, though the Speaker is treated as a Tribunal (which is not the case when he proceeds to decide on resignation), judicial review is impermissible *prior* to the making of a decision by the Speaker as held in ***Kihoto Hollohan v. Zachillhu***<sup>3</sup>.

30. It is pointed out that there is no judicial precedent till date where the Constitutional Courts have directed the Speaker to accept resignations submitted by Members of Legislative Assembly or to take a decision on the resignation within the time specified, and so the Writ Petition ought to be dismissed.

31. It is contended that there is a doubt created about the “voluntariness” of the resignations in view of the circumstances brought to the Speaker’s notice by the Congress MLAs on 23.3.2024 and so he was completely justified in conducting an inquiry on the aspect and the proviso to Art.190(3)(b) of the Constitution empowers him to do so.

### **Consideration by the Court**

32. Art.190(3) (b) of the Constitution of India deals with issue of resignation of Members of State Legislature and its acceptance by the Speaker of the Assembly. It states:

**“190. Vacation of seats.—**(1) *No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.*

(2) *No person shall be a member of the Legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules<sup>2</sup> made by the President, that person’s seat in the Legislatures of all such States shall become vacant, unless he*

---

<sup>3</sup> 1992 Supp (2) SCC 651, at page 710



has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in clause (1) <sup>3</sup>[or clause (2)] of Article 191; or

<sup>4</sup>[(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,]

his seat shall thereupon become vacant:

<sup>5</sup>[Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.]

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.” (emphasis supplied)

Rule 287 of the Rules states:

“ 287. Resignation of seats in House:-

1 A member who desires to resign his seat in the House shall intimate in writing or online under his hand addressed to the Speaker, his intention to resign his seat in the House, in the following form and shall not give any reason for his resignation:-

.....

Provided that where any member gives any reason or introduces any extraneous matter the Speaker may, in his discretion, omit such words, phrases or matter and the same shall not be read out in the House.

2 If a member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, the Speaker may accept the resignation immediately.

- 3 If the Speaker receives the letter of resignation either by post or through someone else, the Speaker may make such enquiry as he thinks fit to satisfy himself that the resignation is voluntary and genuine. If, the Speaker, after making a summary enquiry either himself or through the agency of Legislative Assembly Secretariat or through such other agency, as he may deem fit, is satisfied that the resignation is not voluntary and genuine, he shall not accept the resignation.
- 4 A member may withdraw his letter of resignation at any time before it is accepted by the Speaker.
- 5 The Speaker shall, as soon as may be, after he has accepted the resignation of a member, inform the House that the member has resigned his seat in the House and he has accepted the resignation.
- 6 The Secretary shall, as soon as may be, after the Speaker has accepted the resignation of a member, cause the information to be published in writing or online in the Bulletin-II and the Gazette and forward a copy of the notification in writing or online to the Election Commission of India for taking steps to fill the vacancy thus causes:

*Provided that where the resignation is to take effect from a future date, the information shall be published in the Bulletin Part-II and the Gazette not earlier than the date from which it is to take effect”*

### **The role of the Speaker in the matter of accepting resignation of Members of the Assembly**

33. I shall first refer to the status of the Speaker under the Constitution. Admittedly, he is an officer of the State Legislative Assembly. He performs the function of presiding over the proceedings of the House and represents the

House for all intents and purposes. The office of the Speaker has been held to be one held in high respect in parliamentary tradition.

34. I may refer to the recent judgment of the Supreme Court highlighting this aspect in ***Subhash Desai v. State of Maharashtra***<sup>4</sup>. The Supreme Court noted:

*“ 81. Before addressing the petitioner’s submission, it is necessary to refer to the status of the Speaker under the Constitution. Article 178 provides that the Legislative Assembly shall, as soon as may be, choose two Members of the Assembly to be the Speaker and Deputy Speaker. The procedure for the election of the Speaker and the Deputy Speaker is generally provided by the relevant rules of the Legislative Assembly.*

*82. In a parliamentary democracy, the Speaker is an officer of the Assembly. The Speaker performs the function of presiding over the proceedings of the House and representing the House for all intents and purposes. In **Kihoto Hollohan( 3 Supra)**, it was contended that the Speaker does not represent an independent adjudicatory machinery since they are elected by the majority of the Assembly. Rejecting the argument, this Court emphasised that the office of the Speaker is held in high respect in parliamentary tradition. The Court held that the Speaker embodies propriety and impartiality and that it was therefore inappropriate to express distrust in the office of the Speaker : (SCC p. 714, para 118)*

*“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.”*

35. Therefore the allegations of malafide and arbitrary action made against the actions of the Speaker ought not to be lightly accepted considering the status of the said office in a parliamentary system of democracy where he deserves high respect and trust.

---

<sup>4</sup> (2024) 2 SCC 719, at page 778

36. Next, I shall briefly discuss the role of the Speaker in the matter of accepting resignation of Members of the Assembly and the scope of permissible inquiry under Art.190(3)(b) proviso.

37. In ***Shivraj Singh Chouhan v. M.P. Legislative Assembly***<sup>5</sup>, the Supreme Court summed up the scope of power of the Speaker in relation to dealing with acceptance of resignation of Members of the State Legislative Assembly quoting its earlier decision in ***Shrimath Balasaheb Patil v. Speaker, Karnataka Legislative Assembly and others***<sup>6</sup> as under:

*“36. The role of the Speaker in accepting resignations and determining disqualifications was the subject of a three-Judge Bench decision of this Court in **Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly**( 6 supra) . While elaborating on the provisions of Article 190(3) (b) as amended, the judgment lays down the following principles:*

*36.1. A Member of the Legislature is vested with the sole prerogative to determine whether or not to continue in office.*

*36.2. A Member who seeks to resign cannot be compelled to continue in office.*

*36.3. A resignation is required to be accepted by the Speaker or the Chairman, as the case may be.*

*36.4. The seat occupied by the Member falls vacant only upon acceptance of the resignation.*

*36.5. The role of the Speaker is to determine whether a resignation is “voluntary or genuine”.*

*36.6. The satisfaction of the Speaker should be based on the information received or otherwise and upon making such enquiry as is considered to be fit.*

*36.7. Though, the term “genuine” has not been defined, what is meant is the authenticity of the letter of resignation.*

*36.8. Though, the expression “voluntary” has not been defined, it would mean that a resignation should not be a result of threat of force or coercion.”*

<sup>5</sup> (2020) 17 SCC 1, at page 28

<sup>6</sup> (2020) 2 SCC 595

38. It was also held in *Shrimath Balasaheb Patil (6 supra )* that the Speaker can reject the resignation, if the Speaker is satisfied that the resignation was “not voluntary or genuine”; Speaker’s satisfaction should be based on the information received and after making such inquiry as he thinks fit; that the aforesaid aspects do not require a roving inquiry; and with the experience of the Speaker, who is the head of the House, he is expected to conduct such inquiry as is necessary and pass an order. If a member appears before him and gives a letter in writing, an inquiry may be a limited inquiry. But if he receives information that a Member tendered his resignation under coercion, he may choose to commence a formal inquiry to ascertain if the resignation was voluntary and genuine. The Supreme Court held that the Speaker can reject a resignation only if the inquiry demonstrates that it is not “voluntary” or “genuine.” The inquiry should be limited to ascertaining if the Member intends to relinquish his Membership out of his free will. Once it is demonstrated that a Member is willing to resign out of his free will, the Speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any other extraneous factors while considering the resignation. *The satisfaction of the Speaker is subject to judicial review.*

39. Admittedly though the petitioners gave their resignations in person to the Speaker on 22.3.2024, an inquiry had been initiated by the Speaker only on 27.3.2024 by issuing Show Cause notices dt.27.3.2024 to the petitioners. This inquiry is initiated because of a complaint dt.23.3.2024 said to have been made to the Speaker by certain Congress party Ministers and MLAs. It appears that replies had been filed on 10.4.2024 by the petitioners to the Show cause notices. On that day certain questions were also put to the petitioners by the Speaker but the inquiry has not concluded. It is still pending. In the short

period from 27.3.2024 till date, merely because the resignations of petitioners is not accepted by the Speaker, I see no warrant to treat his action as malafide and unreasonable.

40. It cannot be said that merely addressing a resignation letter to the Speaker would lead to the seat automatically falling vacant. The amendment to Art.190(3)(b) by the Constitution (Thirty Third) Amendment Act,1974 made it necessary for the resignation to be “accepted” by the Speaker. So there is undoubtedly an element of discretion to be exercised by him. Unless he is satisfied as to the “genuineness” and “voluntary” nature of resignation, he is not bound to “accept” the resignation. The satisfaction of the Speaker on these aspects has to be arrived at *after making such inquiry as he thinks fit*, whether the same is based on information received or otherwise.

41. What the petitioners are asking this Court in prayers made in the instant Writ Petition is that this Court must direct the Speaker to accept their resignations w.e.f.22.3.2024 immediately. Consequently they seek quashing of the Show Cause notices dt.22.3.2024 issued to them.

42. In other words they want this Court to go into the aspect as to whether the resignations given by them are “genuine” and “voluntary”, come to a conclusion in their favour, and issue the direction to the Speaker to accept the resignations. In other words they want this Court to usurp the functions of the Speaker on the validity of their resignations.

43. *Normally, when the legislature confers a discretionary power on an authority, it has to be exercised by it in its discretion and the decision ought to be that of the authority concerned and not that of the Court. The court cannot impede the exercise of discretion of an authority acting under the statute by issuance of a writ of mandamus.*

44. In **Union of India v. S.B. Vohra**<sup>7</sup>, the Supreme Court had held:

*“33. It is, however, trite that ordinarily the court will not exercise the power of the statutory authorities. It will at the first instance allow the statutory authorities to perform their own functions and would not usher the said jurisdiction itself.*

*34. In State of W.B. v. Nuruddin Mallick*<sup>8</sup> this Court declined a suggestion that the Court itself examined and decided the question in issue stating: (SCC p. 153, para 28)

*“28. ... Instead of sending any reply, the management filed the writ petition in the High Court, leading to passing of the impugned orders. Thus, till this date the appellant Authorities have not yet exercised their discretion. Submission for the respondents was that this Court itself should examine and decide the question in issue based on the material on record to set at rest the long-standing issue. I have no hesitation to decline such a suggestion. The courts can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion, or when exercised, to see whether it has been validly exercised. It would be inappropriate for the Court to substitute itself for the statutory authorities to decide the matter.”*

*It was further observed: (SCC p. 153, para 30)*

*“30. ... As I have held above, without the statutory authority applying its mind for their approval and the impugned order not adjudicating the issue in question how could the impugned orders be sustained.”*

45. In **State of Kerala v. Kandath Distilleries**<sup>9</sup>, the Supreme Court reiterated:

*“30. The legislature when confers a discretionary power on an authority, it has to be exercised by it in its discretion, the decision ought to be that of the authority concerned and not that of the court. The court would not interfere with or probe into the merits of the decision made by an authority in exercise of its discretion. The court cannot impede the*

<sup>7</sup> (2004) 2 SCC 150 : 2004 SCC (L&S) 363, at page 168

<sup>8</sup> (1998) 8 SCC 143

<sup>9</sup> (2013) 6 SCC 573, at page 584

*exercise of discretion of an authority acting under the statute by issuance of a writ of mandamus. ...”*

*(emphasis supplied)*

46. In the context of acceptance of resignations by a Speaker, in **Shivraj Singh Chouhan v. M.P. Legislative Assembly**<sup>10</sup>, the Supreme Court held that the Court cannot fetter the discretion of the Speaker to conduct an inquiry into whether a resignation is “voluntary” or “genuine”. It held:

*“39. It is in the above context that the inquiry by the Speaker or Chairman (as the case may be) has to be understood. The Court cannot fetter the discretion of the Speaker to conduct an inquiry into whether a resignation is “voluntary” or “genuine”. However, neither can the Speaker exceed the terms of the mandate and conduct an overboard inquiry into the underlying motives of the Member. It is sufficient that the Speaker is satisfied that the Member’s resignation is “voluntary” and “genuine”.*”

47. In **Pratap Gouda Patil v. State of Karnataka**<sup>11</sup>, the Supreme Court refused to fix a time frame or issue directions to the Speaker which may have the effect of fettering his discretion in respect of the exercise contemplated under Art.190 of the Constitution of India. It held:

*“3. The issue arising in the case is whether resignations submitted by Members of the Legislative Assembly at a point of time earlier than petitions for their disqualification under the Tenth Schedule of the Constitution should have priority in the decision-making process or whether both sets of proceedings should be taken up simultaneously or the disqualification proceedings should have precedence over the request(s) for resignation.*

*4. Arguments have been advanced by the learned counsel for the parties on the touchstone of Articles 164, 190, 191, 212 and 361-B and the Tenth Schedule of the Constitution. I have considered the same. Constitutional principles should not receive an exhaustive enumeration by*

<sup>10</sup> (2020) 17 SCC 1, at page 29

<sup>11</sup> (2019) 7 SCC 463, at page 463



the Court unless such an exercise is inevitable and unavoidable to resolve the issues that may have arisen in any judicial proceeding.

5. In the present case, having regard to the stage at which the above issues are poised in the light of the facts and circumstances surrounding the same, I am of the view that the aforesaid questions should receive an answer only at a later stage of the proceedings. The imperative necessity, at this stage, is to maintain the constitutional balance and the conflicting and competing rights that have been canvassed before us. Such an interim exercise has become prudent in view of certain time-frame exercise(s) that is in the offing in the Karnataka Legislative Assembly, particularly, the no-trust motion against the present Government, which we are told is due for being taken up on 18-7-2019. In these circumstances, the competing claims have to be balanced by an appropriate interim order, which according to us, should be to permit the Hon'ble Speaker of the House to decide on the request for resignations by the 15 Members of the House within such time-frame as the Hon'ble Speaker may consider appropriate. We also take the view that in the present case the discretion of the Hon'ble Speaker while deciding the above issue should not be fettered by any direction or observation of this Court and the Hon'ble Speaker should be left free to decide the issue in accordance with Article 190 read with Rule 202 of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly framed in exercise of the powers under Article 208 of the Constitution.

6. The order of the Hon'ble Speaker on the resignation issue, as and when passed, be placed before the Court.

7. I also make it clear that until further orders the 15 Members of the Assembly, ought not to be compelled to participate in the proceedings of the ongoing session of the House and an option should be given to them that they can take part in the said proceedings or to opt to remain out of the same. I order accordingly.” (emphasis supplied)

48. No doubt in the decision in **Rajinder Singh Rana ( 1 supra)**, where the Speaker had failed to exercise his jurisdiction for deciding the disqualification petition under X Schedule of the Constitution of India and had postponed the same, and proceeded to decide a subsequent claim for 'split' in the political party, a Constitution Bench of the Supreme Court had held that the conduct of

the Speaker is not a mere procedural irregularity, but is in the nature of a jurisdictional illegality and the High Court's jurisdiction in judicial review was attracted. But this decision was rendered in the context of discharge of the Speaker's functions as a tribunal under the X Schedule.

49. Notwithstanding the same in its recent decision rendered in 2024 in ***Subash Desai v. Principal Secretary, Governor of Maharashtra***<sup>12</sup>, the Supreme Court held that even the Supreme Court would not ordinarily adjudicate petitions for disqualification under the X Schedule in the first instance. It held:

*“76. In **Kihoto Hollohan**( 3 Supra), this Court held that the Speaker is a Tribunal for the purposes of the Tenth Schedule. Therefore, the exercise of power under the Tenth Schedule is subject to the jurisdiction of courts under Articles 136, 226 and 227 of the Constitution. This Court further observed that the finality clause contained in Para 6(2) did not completely exclude the jurisdiction of courts. However, it was held that such a clause limits the scope of judicial review because the Constitution intended the Speaker or the Chairman to be “the repository of adjudicatory powers” under the Tenth Schedule. This Court held that judicial review is not available at a stage prior to the decision of the Speaker or Chairman, save in certain exceptional circumstances detailed in that case. Thus, **Kihoto Hollohan** makes it evident that the exclusive power to decide the question of disqualification under the Tenth Schedule vests with the Speaker or Chairman of the House.*

*77. The petitioners have relied on **Rajendra Singh Rana** ( 1 Supra) to urge that this Court should invoke its extraordinary jurisdiction and itself decide the question of disqualification against the respondent MLAs. Alternatively, it is urged that this Court should direct the Deputy Speaker, Mr Zirwal, who was performing the functions of Speaker prior to 3-7-2022, to decide the disqualification petitions.*

*78. In **Rajendra Singh Rana**, disqualification petitions were filed against thirteen MLAs of the Bahujan Samaj Party (“BSP”) on 4-9-2003. On 26-8-2003, the Speaker accepted a split in the BSP and recognised a separate group by the name of Lok Tantrik Bahujan Dal. The thirteen*

---

<sup>12</sup> (2024) 2 SCC 719

MLAs against whom disqualification petitions were instituted were also part of the Lok Tantrik Bahujan Dal. On 6-9-2003, the Speaker accepted the merger of the Lok Tantrik Bahujan Dal with the Samajwadi Party without deciding the disqualification petitions against the thirteen MLAs. On 7-9-2005, the Speaker rejected the disqualification petitions against the MLAs. By its judgment dated 28-2-2006<sup>20</sup>, the High Court quashed the order of the Speaker rejecting the disqualification petitions against the MLAs and directed him to reconsider the petitions.

79. On appeal, this Court observed that it would not be appropriate for it to decide the disqualification petitions for the first time when the authority concerned had not taken a decision. It observed that this Court would normally remit the matter to the Speaker or Chairman to take a proper decision in accordance with law. However, this Court decided to adjudicate the disqualification petitions in view of the following peculiar facts and circumstances : (i) the Speaker of the Legislative Assembly in that case failed to decide the question of disqualification in a time-bound manner; (ii) the Speaker decided the issue of whether there was a split in the party without deciding whether the MLAs in question were disqualified; and (iii) the necessity of an expeditious decision in view of the fact that the disqualification petitions were not decided by the Speaker for more than three years and the term of the Assembly was coming to an end. In view of the above facts and circumstances, this Court was of the opinion that remanding the disqualification proceedings to the Speaker would lead to them becoming infructuous.

80. This Court should normally refrain from deciding disqualification petitions at the first instance, having due regard to constitutional intendment. The question of disqualification ought to be adjudicated by the constitutional authority concerned, namely, the Speaker of the Legislative Assembly, by following the procedure prescribed. Disqualification of a person for being a Member of the House has drastic consequences for the Member concerned and by extension, for the citizens of that constituency. Therefore, any question of disqualification ought to be decided by following the procedure established by law. In **Kshetrimayum Biren Singh**<sup>13</sup>, a three-Judge Bench of this Court set aside the order of the Speaker disqualifying MLAs under Para 2(1)(a) for not granting an opportunity to them to lead evidence and present their case. The Speaker was directed to decide the disqualification petitions afresh by complying with the principles of natural justice. Even in cases where the Speaker decides disqualification petitions without following the

<sup>13</sup> (2022) 2 SCC 759

*procedure established by law, this Court normally remands the disqualification petitions to the Speaker. Therefore, absent exceptional circumstances, the Speaker is the appropriate authority to adjudicate petitions for disqualification under the Tenth Schedule.*

*( emphasis supplied)*

50. Thus the Constitution bench in **Subash Desai** ( 12 supra) distinguished the decision in **Rajinder Singh Rana** ( 1 supra) and explained that in the peculiar/extraordinary facts and circumstances of that case (**Rajinder Singh Rana** ( 1 supra) ) i.e., the term of the Assembly was ending shortly and the disqualification petition would be rendered infructuous, the Supreme Court had proceeded to decide the disqualification petitions in that case; but that was not to be the general rule, and normally the Supreme Court would not decide such applications itself, when they had not been decided by the Speaker.

51. In the instant case, the elections to the Legislative Assembly had been held in November, 2022 and results were declared in December,2022. The term of the Assembly is till November,2027. So the situation in the instant case is not the same as in **Rajinder Singh Rana** ( 1 Supra).

52. I may point out that even in the cases relied on petitioners, the jurisdiction of the Constitutional Courts was invoked after the Speaker had taken a decision on the resignations submitted by the legislators as can be seen below:

a In **Shrimanth Balasaheb Patil** ( 6 Supra) at para 70 at pg.626, the Supreme Court noticed that the resignations submitted by the petitioners therein had been adjudicated by the Speaker. It was observed:

*“70. In the present case, 15 of the 17 petitioners had tendered their resignation from the House before the disqualification petitions were adjudicated. The Speaker vide orders dated 28-7-2019 in Disqualification*

*Petitions Nos. 3 and 4 of 2019 and Disqualification Petition No. 5 of 2019, and order dated 25-7-2019 in Disqualification Petition No. 1 of 2019, rejected the resignation of the petitioners therein, holding that they were not voluntary and genuine.”*

b In ***Shivraj Singh Chauhan*** ( 10 Supra) at para 75 at pg.47 it was noted:

*“ 75 . ....However, on 14-3-2020 the resignations of six Members who were Ministers of the incumbent Government were accepted by the Speaker acting in exercise of the constitutional authority under the proviso to Article 190(3)(b)...”*

c In ***T.Thagzalam Haokip v. Manipur Legislative Assembly***<sup>14</sup> at para 25 it was noticed by the Manipur High Court as under:

*“25....(v) The Speaker accepted the resignation tendered by the Writ Petitioners on the same day without holding any enquiry...”*

d In ***P.C.George v. Kerala Legislative Assembly***<sup>15</sup>, it was noticed by the Kerala High Court as under:

*“ 9. ... The resignation is seen rejected by a decision of the Speaker taken on 13.11.2015 merely observing that the resignation is not voluntary or genuine...”*

e In ***Vikram Singh v. Shri ram Ballabhji Kasat***<sup>16</sup>, the Madhya Pradesh High Court noticed:

*“2. Second respondent filed a caveat. He has filed an affidavit and copy of the declaration made by the Speaker and the gazette notification relating to the acceptance of resignation. Respondents 2 and 3 have sworn separate affidavits and produced some documents.”*

53. Unlike in the above cases, in the instant case, as of now, the Speaker had not taken any decision on the resignations submitted on 22.3.2024 by the petitioners.

<sup>14</sup> 2021 SCC Online Mani 261

<sup>15</sup> 2016 SCC Online Ker 7918

<sup>16</sup> 1994 SCC Online MP 83

54. If such a decision had been taken by the date the Writ Petition was filed, it would be certainly subject to judicial review. But that stage has not reached.

55. Considering the high respect to be given the office of the Speaker, and fact that he is the designated authority to decide on resignations of Members of Legislative Assembly under Art.190(3) (b) of the Constitution, and in the absence of any exceptional circumstances, and for the reasons mentioned above, I decline to grant the reliefs sought by petitioners as it would then amount to ourselves exercising in the first instance the adjudicatory powers conferred on the Speaker by Art.190 of the Constitution of India, which is impermissible in law.

56. Also a Division Bench of the Andhra Pradesh High Court in **S.A.Sampath Kumar v Kale Yadaiah**<sup>17</sup> has held, following the decision of the Supreme Court in **Kihoto Hollohan** (3 Supra), that the High Court cannot in exercise of its powers under Art.226 of the Constitution of India issue a mandatory direction to the Speaker of a State Legislative Assembly to dispose off a disqualification petition within a fixed time frame. The same was challenged in the Supreme Court of India in SLP (C) No.33677 of 2015 and the Supreme Court has<sup>18</sup> directed the papers to be placed before the Chief Justice of India to constitute a Bench to decide the said issue. However an authoritative decision on the issue, to my knowledge, has not been given by the Supreme Court.

57. By the same logic, in my opinion, no direction can be issued to the Speaker to take a decision on the resignation letters within a fixed time frame. Infact no such request was made by the counsel for the petitioners at all. It is therefore unnecessary to go into the said aspect.

<sup>17</sup> 2015 SCC online Hyd 418 = Order dt.20.9.2015 in W.A.No.158/2015 and W.P.No.7679 and 7217 of 2015

<sup>18</sup> (20121) 16 SCC 528

58. I hasten to add that I have not expressed any opinion on the voluntariness or genuineness of the resignations submitted by petitioners to the Speaker of the Himachal Pradesh Legislative Assembly.

Accordingly,

- i CMP.No.5314/ 2024 is allowed;
- ii CMP.No.5639/2024 is dismissed; and
- iii the Writ Petition is dismissed.

*No costs.*

**(M.S. Ramachandra Rao)**  
**Chief Justice**

**(Jyotsna Rewal Dua)**  
**Judge**

**May 08, 2024 .**