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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURIDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2020

IN THE MATTER OF: -

The Hon'ble Speaker,
Rajasthan Legislative Assembly …Petitioner

VERSUS

Prithviraj Meena & Ors. …Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is within time.

2. The Petition is barred by time and there is de~~lay of~~ days in filing the same against final order dated 24.07.2020 and petition for condonation ~~of~~ __ days delay has been filed.

3. There is delay of_____ day in re-filing the petition and petition for condonation of _____ days delay in re-filing has been filed.

FILED ON: 29.07.2020 **(BRANCH OFFICER)**

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) NO. OF 2020

[WITH PRAYER FOR INTERIM RELIEF]

[Arising out of the Impugned interim order dated 24.07.2020 passed by the Hon'ble High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. Vs. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., in D.B. Civil Writ Petition No. 7451/2020]

IN THE MATTER OF:

POSITION OF PARTIES

BETWEEN:	**IN THE HIGH COURT**	**IN THIS HON'BLE COURT**
THE HON'BLE SPEAKER, RAJASTHAN LEGISLATIVE ASSEMBLY, JAIPUR, RAJASTHAN	Respondent No. 1	Petitioner
Versus		
1. PRITHVIRAJ MEENA	Petitioner No. 1	Contesting Respondent No.1

To

THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH: -

1. The Petitioner, Speaker of Rajasthan Legislative Assembly, is constrained to move this instant Special Leave Petition, against the impermissible *quia timet* order dated 24.07.2020, in D.B. Civil Writ Petition No.7451/2020 (**"Impugned interim Order"**) by which the Hon'ble High Court of Rajasthan, has admitted the writ petition filed by the Respondents herein to the extent of prayers (A), (B) and (E) of the writ petition and has further passed a 'status quo' order, thereby passing a quia timet order against the Petitioner herein from proceeding with the hearing of the Notices dated 14.07.2020 issued by the Petitioner herein to the Respondent-MLAs.

2. QUESTIONS OF LAW

It is submitted that the present SLP raises the following substantial questions of law for the consideration of this Hon'ble Court:

I. Whether the Impugned non speaking order is valid in admitting the writ petition, without any ratiocination?

II. Whether the Hon'ble High Court in its jurisdiction under Article 226/ 227 of the Constitution go into the 'manner of exercise of jurisdiction' of the Speaker to commence a proceeding against any legislator under Paragraph 2(1)(a) of the Tenth Schedule of the Constitution?

III. Whether the Courts can interfere with the exercise of powers by the Speaker and issuance of notice on the limited grounds of judicial review available viz- mala fides, violation of Constitutional Law, violation of natural justice and perversity for judicial review, without any final decision being taken by taken Speaker?

IV. Whether the Court can interfere in pending disqualification proceedings before the Speaker in view of the clear bar under Article 212 read para 6(2) of the Tenth Schedule of the Constitution?

V. Whether the impugned order could have been passed in the face of the law laid down by a Constitution Bench of this Hon'ble Court in ***Kihoto Hollohan v. Zachillhu***,[(1992) Supp 2 SCC 651], which has been followed consistently till as recently as in ***Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly***,[2020 SCC OnLine SC 55]?

VI. Whether the notice dated 14.07.2020 is a proceeding in the House under Article 212 and para 6(2) of the Tenth Schedule?

VII. Whether mere challenge to the constitutional validity of Para 2(1)(a) *ipso facto* result in para 2(1)(a) being effaced from the Constitution?

VIII. Whether the Hon'ble High Court could have done indirectly something that could not have done directly and settled by this Hon'ble Court?

IX. Whether requiring the Petitioner to adjourn proceedings under the Tenth Schedule, on any ground, amounts to granting a *quia timet* relief in effect?

X. Whether the pendency of a non maintainable, premature Writ Petition could be turned into the sword of Damocles hanging over the Tenth Schedule proceedings?

3. DECLARATION IN TERMS OF RULE 3(2)

The Petitioner submits that no other petition seeking leave to appeal has been filed by him against the Impugned interim order dated 24.07.2020 passed by the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., D.B. Civil Writ Petition No. 7451/2020.

4. DECLARATION IN TERMS OF RULE 5:

The Annexures P-1 to P- 13 produced along with the Special Leave Petition are true copies of the pleading/documents which form a part of the records of the case in the Courts below.

5. GROUNDS:

Leave to appeal is sought for on the following amongst other grounds, which may be read in addition and without prejudice to each other:

A. BECAUSE the impugned order directing 'status quo' in relation to the proceedings before the Speaker under the Tenth Schedule is constitutionally impermissible and is directly in contravention of the settled legal position in relation to quia timet actions under the Tenth Schedule. In **Kihoto Hollohan v. Zachillhu' – [1992 Supp (2) SCC 651], this** Hon'ble Court unequivocally has held in Para 110, 111, no *quia timet* action is permissible. Even against the final order of the Speaker, there are limited grounds of interference by the Courts in judicial review.

> ***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……**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.

B. BECAUSE the notice dated 14.07.2020 was only limited to inviting comments from the Respondents and there was nothing adverse against the Respondents. It is submitted that such a notice is not at all a final determination or decision on disqualification but only a commencement of the proceedings.

C. BECAUSE, the notice dated 14.07.2020 is in the realm of the legislative proceedings under Para 6(2) of the Tenth Schedule. Para 6(2) of the Tenth Schedule and Article 212 of the Constitution read as follows:

***6. Decision on questions as to disqualification on ground of defection**.—(1) .....*

*(2) A**ll 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.***

***212.** Courts not to inquire into proceedings of the Legislature.— (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.*

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

D. BECAUSE when the final decision of the speaker is amenable to judicial review on limited grounds, there was no question of the High Court entertaining the Writ at the notice stage. In view of the mandate of Para 6(2) of the Tenth Schedule read with Article 212, the notice dated 14.07.2020 calling for comments on the disqualification could not have been challenged at all till the final decision is reached by the Speaker. The proceedings before the Speaker are in the nature of proceedings in the House and are not subject to judicial review. Article 212 clearly bars any such challenge.

E. BECAUSE, in ***Pandit M.S.M. Sharma v. Sri Krishna Sinha,*** **[(1959) Supp (1) SCR 806]** this Hon'ble Court held as under :-

"10. *It now remains to consider the other subsidiary questions raised on behalf of the petitioner. It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State*

cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. ***Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business****. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business thatcannot be a ground for interference by this Court under Article 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non-compliance with rules of procedure cannot be a ground for issuing a writ under Article 32 of the Constitution vide Janardan Reddy v. State of Hyderabad [(1951) SCR 344] .*

F. BECAUSE, the effect of the impugned order is to efface Para 2(1)(a) of the Tenth Schedule which is totally impermissible. Para 2(1)(a) was introduced by the Fifty Second Amendment Act, 1985 as a tool for remedying the constitutional sin of ‘defection’. Para 2(1) (a) has been construed judicially in several decisions and it has been held

that any conduct by which inference can be drawn that the person concerned has left the membership of the party would attract the disqualification of Para 2(1)(a). This has to be determined by the Speaker in the facts and circumstances of each case.

G. BECAUASE, the Respondents seek to challenge the constitutional Validity of Para 2(1)(a) in the Writ Petition. There is a presumption of Constitutionality of every Statute. In respect of a constitutional provision the presumption is even higher. The Respondents could not have at all rebutted the presumption at the interim stage. Moreover after the validity of Tenth Schedule has been upheld by this Hon'ble Court, the High Court could not have passed the interim order on the basis that certain constitutional issues arise(which in fact don't). It is well settled that a mere challenge to the validity of a constitutional provision cannot result in the provision itself being inoperable till Court decides the same. The impugned order being an interim order seeks to stultify and render inoperative the very provision of Para 2(1)(a) which is legally impermissible.

H. BECAUSE, the Respondents were not at all entitled to interim, injunctive relief. It is submitted that Courts should be very loath to stay the operation of a statute even in the interim, when constitutionality is in question. At the most, the Court can strike down the statute if it is found to be *ultra vires* the Constitution at the time of final adjudication. However, the operation of the statutory provisions cannot be stultified by granting an interim order in the

manner it has been done in the instant case. [***Health for Millions v. Union of India*** (2014) 14 SCC 496, paras 3, 13, 16].

I. BECAUSE the High Court acted in gross judicial indiscipline and judicial impropriety in seeking to reopen settled issues decided by a Constitution Bench of this Hon'ble Court in Kihoto. It is submitted that the constitutional validity of Tenth Schedule including Para 2(1)(a) had been specifically challenged before this Hon'ble Court in Kihoto and the contention was negatived. In these circumstances, the Division Bench of High Court could not have acted as Appellate Court over the correctness of the decision in **Kihoto** supra.

J. BECAUSE, the same grounds that have been raised by the Petitioners today with respect to the Tenth Schedule being in alleged violation of Article 19(1)(a), and also therefore a violation of the basic structure, was also raised in ***Kihoto's*** case **[*Kihoto Hollohan v Zachillhu*** (1992) Supp 2 SCC 651, Para 24]. The Hon'ble Court had considered the same and decided that the Tenth Schedule does not violate the basic structure or freedom of free speech and expression [at Para 53]. The Petitioners are therefore seeking to achieve indirectly what they cannot achieve directly. The questions framed directly impinge upon the binding decision in **Kihoto.** In this regard paras 1, Para 13 and Para 53 of **Kihoto** may be noted:-

> **M.N. VENKATACHALIAH, J.** (*for himself, Jayachandra Reddy and Agrawal, JJ.*)— In these petitions the constitutional validity of the Tenth Schedule of the Constitution introduced by the Constitution (Fifty-second Amendment) Act, 1985, is assailed. These two cases were amongst a batch of writ petitions,

transfer petitions, civil appeals, special leave petitions and other similar and connected matters raising common questions which were all heard together "

13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(*a*) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election.

53. Accordingly we hold:

"[T]hat the Paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected Members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

The contention that the provisions of the Tenth Schedule, even with the exclusion of Paragraph 7, violate the basic structure of the Constitution in that they affect the democratic rights of elected Members and, therefore, of the principles of Parliamentary democracy is unsound and is rejected."

K. BECAUSE, in view of the above determination of the validity of the Tenth Schedule by this Hon'ble Court, it was impermissible for the High Court to sit in judgment over the aforesaid decision.

L. BECAUSE, merely because there are new grounds for challenge, ***Kihoto*** cannot be re-opened for consideration. By adding a new nuance, the Petitioners seek to circumvent previously decided law in ***Kihoto***. It is submitted that the law as laid down in ***Kihoto***, which has been pronounced by a Constitution Bench of the Hon'ble Apex Court is binding upon this Hon'ble Court. [***Somawanti v. State of Punjab*** AIR 1963 SC 151, Para 22] [Also rely upon ***Mohd. Ayub Khan* v. *Commissioner of Police, Madras*** AIR 1965 1623, Para 7].

M. BECAUSE, whether non-attendance of meeting, criticism of the original party constitutes grounds for the Speaker to decide whether conduct falls under Para 2(1)(a) is for the sole consideration of the Speaker. The Speaker is yet to decide on the particular facts and circumstances of each Petitioner and the same shall be done on a case to case basis. However, the Petitioners are not letting the Speaker decide by indulging in litigation at the stage of the first notice itself.

N. BECAUSE, it is well settled legal position, that ordinarily Courts in judicial review do not entertain a challenge at the notice stage. The person aggrieved has to face the enquiry or proceedings and it is only the final determination which is amenable to judicial review. It is relevant to note that there is absolutely no determination of the issue by the Speaker at this stage at all. The notice had merely called for comments from the Respondents. No cause of action accrued to the Respondents to file the Writ Petitions which are premature and ought to have been dismissed at the threshold.

O. BECAUSE, it may also not be out of place to state that the Hon'ble High Court after granting extra-ordinary indulgence to the Writ Petitioners by listing the hearing of the writ petition on a day today basis, once it has arrived at a finding in the impugned order that the Writ Petition is maintainable (an erroneous finding), it proceeds to "admit "the writ and detaches itself of all urgency. It is a fact that the courts ought to take judicial notice that admitted matters do not reach for hearing before several years, by which time probably the term of the present assembly would end and render the instant lis as infructuous. Having embarked on an adjudicatory arena that the Constitution exclusively reserves for the Speaker, the Ld DB has erred in failing to show the urgency post issuance of quia timet order and adjudicate the writ petition on merits with the same urgency that was on display at the pre-quia timet order issuance stage.

P. BECAUSE, the submissions that whether the conduct of the respondent-MLAs tantamount to "democratic dissent" or "floor crossing" and not "defection" is a question of fact that only the Speaker as the 'persona designata' under the Tenth Schedule was entitled and empowered to go into and it was inadvisable for the High Court to embark upon on such a fact finding expedition in its writ jurisdiction.

Q. BECAUSE, the Speaker-Petitioner herein, in due deference to the highest traditions of Constitutional Comity and respect for Constitutional Authorities, himself had volunteered to defer

disqualification proceedings in view of the request expressed in this regard by the Division Bench. At no point of the time, were the deferments agreed by the Speaker under the coercive force of an impermissible quia timet order by the Hon'ble High Court but the said deferments were voluntary and borne out of due respect and regard to the Hon'ble High Court. This respectful conduct cannot be converted as acquiescence or an admission of the powers of the Hon'ble High Court to pass quia timet orders as sought to be erroneously contended by the Respondents herein.

R. BECAUSE the High Court has no jurisdiction to decide the validity of para 2(1)(a) of the Tenth Schedule on the anvil of the basic structure doctrine. The basic structure doctrine is a judicially evolved doctrine evolved by this Hon'ble Court on what is the soul and spirit of the Constitution. Such a determination of the basic structure ought not to be carried out by the High Court more so when the challenge to para 2(1) (a) has already been upheld by this Hon'ble Court in **Kihoto**.

S. BECAUSE, the impugned order contains 53 paras. From paras 1 to 3, it deals with the factual matrix in the writ petition. At Para 4 it mentions the grounds on which the writ petition was filed by the Petitioners therein. From paras 7 to 26, it enumerates the submissions made by the Ld Senior Counsel for the Writ Petitioners and at Paras 27 to 47 it records the submissions of the Ld Senior Counsel appearing on behalf of the Respondents therein. Then abruptly, without any discussion, reasons or ratio it straightaway

proceeds to frame 13 (thirteen questions) in Para 49 and then passes the afore-mentioned *quia timet* directions for status quo at Paras 49 to 53.

T. BECAUSE, no reasons are revealed anywhere in the Impugned Order that persuaded the Ld DB to frame the 13 (thirteen) ostensible questions of law. The contentions of both sides are merely enumerated in extenso without an iota of discussion or ratiocination.

U. BECAUSE, the ostensible 13 questions are repetitive. It is respectfully submitted that the 13 ostensible questions framed in the Impugned Order are already answered and part of settled law laid down by this Hon'ble Court and on this ground too the impugned order deserves to be set aside.

V. Because the Impugned Order is vitiated by non-application of mind and deserves to be set aside

6. <u>GROUNDS FOR INTERIM PRAYER</u>:

The Petitioner seeks interim relief on the following grounds:

A. BECAUSE, vide the Impugned Order, the Hon'ble High Court has passed a 'status quo' order, thereby passing a quia timet order against the Petitioner herein from proceeding with the hearing of the Notices dated 14.07.2020 issued by the Petitioner herein to the Respondent-MLAs.

B. BECAUSE, '**Kihoto Hollohan v. Zachillhu' - 1992 Supp (2) SCC 651** clearly states at Para 110 and 111, that even the limited grounds of interference by the Courts in judicial review such as malafides of the Speaker, violation of Constitutional Law, violation of natural justice and perversity can only be taken once the final decision has been arrived at by the Speaker and not by way of a *quia timet* order. The Impugned Order is of the clear character and in the nature of *quia timet* action which is wholly impermissible

7. MAIN PRAYER:

In the facts and circumstances mentioned hereinabove it is most humbly prayed that this Hon'ble Court may be pleased to:

a) Grant special leave to appeal against the Impugned interim order dated 24.07.2020 passed by the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., D.B. Civil Writ Petition No. 7451/2020; and

b) pass any other order(s) as this Hon'ble Court may deem fit and proper in the interests of justice.

8. PRAYER FOR INTERIM RELIEF:

In view of the facts and circumstances it is most respectfully prayed that, this Hon'ble Court may be pleased to:

a) Pass an ad-interim ex-parte order staying impugned interim order dated 24.07.2020 passed by the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., D.B. Civil Writ Petition No. 7451/2020; and

b) Stay further proceedings in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors.,D.B. Civil Writ Petition No. 7451/2020 pending before the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur

c) Pass any other order(s) as it may deem fit in the interests of justice.

AND FOR THIS ACT OF KINDNESS YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

SETTLED BY:-

Kapil Sibal,
Vivek Tankha
Senior Advocates

DRAWN AND FILED BY:

NEW DELHI
DRAWN ON: 28.07.2020
FILED ON: 29 .07.2020

(SUNIL FERNANDES)
Advocate for the Petitioner