HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

(1) S.B. Civil Writ Petition No. 8056/2020

1. Bahujan Samaj Party, Through Its National General Secretary Satish Chandra Misra, Having Its Central Office At 4, Gurudwara, Rakabganj Road, New Delhi
2. Bahujan Samaj Party, State Unit, Rajasthan Through Its State President Bhagwan Singh Baba, Son Of Sri Prabhati Lal, Resident Of D-170C, Bhargu Marg, Bani Park, Jaipur, Rajasthan.

----Petitioners

Versus

1. Hon'ble Speaker, Rajasthan Legislative Assembly, Jaipur Rajasthan.
2. Secretary, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
3. Shri Rajendra Singh Gudha S/o Not Known, Member Legislative Assembly, Rajasthan, Udaipurwati (Jhunjhunu), Resident Of Ward No. 2, Gudha, Tehsil Udaipurwati, District Jhunjhunu, Rajasthan.
4. Shri Lakhan Singh Karauli S/o Not Known, Member Legislative Assembly, Rajasthan, Resident Of House No. 464, Sarya Ka Pura, Khadkhad, Tehsil Hindaun, City And District Karauli, Rajasthan.
5. Shri Deep Chand S/o Not Known, Member Legislative Assembly, Rajasthan, Kishangarh Bas (Alwar) Resident Of Village Jatka, Post Mahud, Tehil Kishangarhbass, District Alwar, Rajasthan.
6. Shri Joginder Singh Awana S/o Not Known, Member Legislative Assembly, Rajasthan, Nadbai (Bharatpur) Resident Of D-256, Sector-20, Noida, Gautambuddh Nagar, U.P.
7. Shri Sandeep Kumar S/o Not Known, Member Legislative Assembly, Rajasthan, Tijara (Alwar) Resident Of Village Thada, Post Sithal, Tehsil Tijara, District Alwar, Rajasthan.
8. Shri Wajib Ali S/o Not Known, Member Legislative Assembly, Rajasthan Nagar (Bharatpur) Resident Of House No. 468, Fakiran Mohallan, Sikari Patti, Ansick Nagar, Bharatpur, District Bharatpur, Rajasthan.

----Respondents

Connected with

(2) S.B. Civil Writ Petition No. 8004/2020

Sh. Madan Dilawar S/o Madholal, MLA, H.No. 4-E-7, Rangbari Yojna, Kota (Raj.)

----Petitioner

Versus

1. The Hon'ble Speaker, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
2. Sh. Lakhan Singh S/o Jagan, Karoli (155), R/o House No. 464, Sarya Ka Pura Khadkhad, Teh. Hindon, District Karoli (Raj.)
3. Sh. Rajender Singh Guda S/o Madho Singh, Udyapurvati (139), R/o Ward No. 2 Guda, Teh. Udyapurvati, District Jhunjhunu, Rajasthan.
4. Sh. Deepchand S/o Baluram, Kishangadbas (71), R/o Gram Jatka, Post - Mahund, Teh. Kishangarh Bas, District Alwar, Rajasthan.
5. Sh. Joginder Singh Avana S/o Girwar Singh, Nadbai (62), R/o B-256, Sector 50, Noida, Gautam Budh Nagar, Uttar Pradesh.
6. Sh. Sandeep Kumar S/o Balwant, Tijara (174), R/o Gram Thada, Post - Sital, Teh. Tijara, District Alwar, Rajasthan.
7. Sh. Vajib Ali S/o Sher Mohammad, Nagar (158), R/o House No. 468, Fakiraj Mohala, Sikari Patti, Anshik 4, Nagar, District Bharatpur, Rajasthan.
8. The Secretary, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
9. Mr. C.P. Joshi, MLA S/o Late Sh. Ram Chandra Joshi, At Present Hon'ble Speaker, Rajasthan Legislative Assembly, 49, Civil Lines, Jaipur - 302 006
10. Bahujan Samaj Party, Through Its National General Secretary, Shri Satish Chand Mishra, Having Its Central Office At 4, Gurudwara Rakab Ganj Road, New Delhi.

----Respondents

In SB Civil Writ Petition No.8056/2020

For Petitioner(s)	:	Shri Satish Chandra Mishra, Sr. Adv. assisted by Shri Dinesh Kumar Garg and Shri Deepak Kumar Kane
For Respondent No.1	:	Shri Kapil Sibal, Sr. Adv. (through Video Conferencing) assisted by Shri Prateek Kasliwal & Shri Sunil Fernandes Shri Nizam Pasha Ms. Supriya Saxena Ms. Priyanka Pareek
For Respondent No.2		Shri M.S. Singhvi, Advocate General assisted by Shri Darsh Pareek & Shri Siddhant Jain
For Respondent No.3 & 4		Shri Rajeev Dhavan, Sr. Adv. (through Video Conferencing) assisted by Shri Ghanshyam Singh Rathore with Ms. Alka Bhatnagar Ms. Nupur Kumar Shri Prastut Dalvi
For Respondent No.5		Shri Sidharth Luthra, Sr. Adv. (through Video Conferencing) with Shri Rajesh Maharshi with Shri Anmol Kheta Shri Sheezan Hashmi Shri Anoopam Prasad Shri Udit Sharma
For Respondent No.6 & 7		Shri Devadatt Kamat, Sr. Adv. (through Video Conferencing) with Dr. Vibhuti Bhushan Sharma Shri Harshal Tholia Shri Rajesh Inamdar Shri Javed Ur Rehman Shri Aditya Bhatt
For Respondent No.8		Shri G.S. Bapna, Sr. Adv. (through Video Conferencing) assisted by Shri Sanjay Sharma
For Intervenor-INC		Shri Vivek K. Tankha, Sr. Adv. (through Video Conferencing) with Major R.P. Singh, Sr. Adv. assisted by Shri Shashwat Purohit Shri Varun Chopra Shri Jaivardhan Joshi

Shri Gurtej Pal Singh

SB Civil Writ Petition No.8004/2020

For Petitioner(s)	:	Shri Harish N. Salve, Sr. Adv. (through Video Conferencing) Shri Satya Pal Jain, Sr. Adv. (through Video Conferencing) assisted by Shri Ashish Sharma & Shri Dheeraj Jain
For Respondent No.1	:	Shri Kapil Sibal, Sr. Adv. (through Video Conferencing) assisted by Shri Prateek Kasliwal & Shri Sunil Fernandes Shri Nizam Pasha Ms. Supriya Saxena Ms. Priyanka Pareek
For Respondent No.2 & 3		Shri Rajeev Dhavan, Sr. Adv. (through Video Conferencing) assisted by Shri Madhav Mitra with Shri Syed Shahid Hasan Ms. Nupur Kumar Shri Prastut Dalvi Shri Veerendra Singh
For Respondent No.4		Shri Sidharth Luthra, Sr. Adv. (through Video Conferencing) with Shri R.B. Mathur with Shri Anmol Kheta Shri Sheezan Hashmi Shri Anoopam Prasad Shri Hitesh Mishra
For Respondent No.5 & 6		Shri Devadatt Kamat, Sr. Adv. (through Video Conferencing) with Shri Anil Mehta Shri Siddharth Bapna Shri Rajesh Inamdar Shri Javed Ur Rehman Shri Aditya Bhatt
For Respondent No.7		Shri G.S. Bapna, Sr. Adv. (through Video Conferencing) assisted by Shri Banwari Singh
For Respondent No.8		Shri M.S. Singhvi, Advocate General assisted by Shri Darsh Pareek & Shri Siddhant Jain

For Intervenor-INC Shri Vivek K. Tankha, Sr. Adv. (through Video Conferencing) with
Major R.P. Singh, Sr. Adv. assisted by
Shri Shashwat Purohit
Shri Varun Chopra
Shri Jaivardhan Singh
Shri Gurtej Pal Singh

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

JUDGEMENT

24/08/2020

The writ petition no.8056/2020 has been filed by the Bahujan Samaj Party (for short- `the BSP') with the following prayers:

"I. To quash the impugned order dated 18.09.2019 passed by the Hon'ble Speaker, Respondent No.1 as contained in Annexure No.1 to this writ petition.
II. Disqualify Respondent Nos.3 to 8 from being the member of Rajasthan State Legislative Assembly under Paragraph 2(1) (a) of the Tenth Schedule of the Constitution of India for having voluntarily given up the membership of Bahujan Samaj Party and for having defected to Indian National Congress Party; and
III. Pass such other Orders as may be considered just and proper in the facts and circumstances of the case."

The writ petition no.8004/2020 has been preferred by Shri Madan Dilawar, a Member of Rajasthan Legislative Assembly with the following prayers:

"A. Issue of writ of certiorari or any appropriate writ, order or direction setting aside the order dated 22.07.2020 (served on the petitioner 28.07.2020) passed by the Respondent No.1;

B. Set aside the order dated 18.09.2019 passed by the Respondent No.1 has accepting the so-called merger of the Bahujan Samaj Party into the Congress and allowed them to become Members of the Indian National Congress;

C. Call for records pertaining to the petition dated 16th March, 2020 filed by the petitioner under 10th Schedule of the Constitution of India, praying for Disqualification of the Respondents No.2 to 7 from the Membership of the Rajasthan Vidhan Sabha w.e.f. 16-09-2019 and decide the same exercising powers under Article 226 of the Constitution of India;

D. Issue a Writ of Mandamus or any other such writ as this Hon'ble Court may deem fit disqualifying Respondent(s) No.2 to 7 from the Membership of the Rajasthan Vidhan Sabha w.e.f. 16.09.2019.

E. Pass any other order deemed fit in the interest of justice and equity."

Although the prayers in these writ petitions are worded differently; but, in essence, they seek to quash the order dated 18.9.2019 passed by the respondent no.1, the Speaker with a declaration that 6 MLAs of BSP, the respondents herein, stand disqualified with effect from 16.9.2019. In the writ petition

no.8004/2020, there is an additional prayer to set aside the order dated 22.7.2020 passed by the respondent no.1.

Since both these writ petitions involve common facts and common questions of law, they are being decided by this common order.

The facts in brief, as taken from S.B. Civil Writ Petition No.8004/2020, are that the election for Legislative Assembly of Rajasthan was held on 7.12.2018 in which the respondents no.2 to 7 were elected on the tickets issued by BSP, a national political party. On 16.9.2019, the respondents no.2 to 7 moved an application with the Speaker claiming merger of BSP in Indian National Congress (for short-`the INC'). The Speaker, vide its order dated 18.9.2019, accepted the claim in terms of paragraph 4(1)(a) and 4(2) of the Tenth Schedule of the Constitution of India. Shri Madan Dilawar filed a disqualification petition dated 6.3.2020 under paragraph 6 of Tenth Schedule seeking disqualification of the respondents nos.2 to 7 with effect from 16.9.2019 alleging defection qua paragraph 2. The aforesaid application came to be rejected by the Speaker vide its order dated 22.7.2020 impugned by Shri Madan Dilawar in addition to seeking disqualification of the respondents no. 2 to 7.

Shri Satish Chandra Mishra, learned senior counsel assisted by Shri Dinesh Garg, assailing the order dated 18.9.2019 contended, relying on a Constitution Bench judgement of the Hon'ble Supreme Court in the case of Rajendra Singh Rana & Ors. vs. Swami Prasad Maurya & Ors.(2007) 4 SCC 270 and a Division Bench judgement of the Hon'ble Supreme Court in the case of Jagjit Singh vs. State of Haryana & Ors.-(2006) 11 SCC page 1,

that the Speaker is not clothed with independent jurisdiction to invoke the provisions of paragraph 4 to accept a claim of merger dehors adjudication on disqualification application under paragraph 6 and the provisions of paragraph 4 are available only as defence against the plea of disqualification.

He submitted that there was no material before the Speaker to accept the claim of merger raised by the respondents no.2 to 7 except the application itself which has not seen light of the day inasmuch as neither its copy was supplied to them in spite of their request nor same has been placed on record of the writ petition along with its reply by the Speaker.

Referring to the provisions of paragraph 4, the learned senior counsel asserted that the same envisage merger of a political party in two steps; paragraph 4(1) speaks of merger of original political party with another political party and only on satisfaction of this condition, the occasion of deemed merger under sub-paragraph (2) would arise as it specifically refers "….. **have agreed to such merger**". He submits that use of the phrase "such merger" employs significance and indicates that paragraph 4(2) can be invoked only in case of merger of original political party with another political party. He contended that indisputably, there has been no merger of either National Unit of BSP or its State Unit with the INC and hence the order impugned dated 18.9.2019 cannot be sustained in the eye of law.

Shri Mishra submitted that he had no occasion to assail the order dated 18.9.2019 by way of disqualification petition vide paragraph 6 inasmuch as on earlier occasion i.e. after the Rajasthan Assembly Election, 2008, the disqualification petition

filed by the BSP assailing the order dated 09.04.2009 whereby the Speaker had accepted the claim of merger by all the six MLAs of the BSP of their party with the INC, was dismissed by the Speaker after lapse of about two and half years vide order dated 27.2.2012 on account of its non maintainability as Rule 6 of the Rajasthan Assembly Members (Disqualification on the Grounds of Defection) Rules of 1989 (for short-`the Rules of 1989'), requires plea of disqualification only on behest of a Member of the Assembly. He submitted that on this occasion also, the petitioner-BSP is left with no Member in the Assembly to file a disqualification petition and hence, the petitioner has approached this Hon'ble Court invoking this writ jurisdiction.

Shri Satya Pal Jain, learned senior counsel assisted by Shri Ashish Sharma for the petitioner-Madan Dilawar contended that the order dated 18.9.2019 is beyond the jurisdiction of the Speaker as no such order vide paragraph 4 of Tenth Schedule could have been passed on an application filed by the respondents no.2 to 7 claiming merger. He submitted that paragraph 4 does not stipulate adjudicatory process on any claim of merger and can only be put as defence on a disqualification petition under paragraph 6.

He attacked the order dated 18.9.2019 on the ground of it being violative of principles of natural justice as neither any notice either to the BSP or any other person was given nor, any opportunity of hearing was afforded to any interested person before passing it. He submitted that the Speaker was required to conduct an enquiry as to whether there had been merger of BSP with INC in conformity with the provisions of paragraph 4 before

recording his satisfaction in this regard vide order dated 18.9.2019.

Relying on the judgements of the Hon'ble Supreme Court in the cases of Kedar Shashikant Deshpande & Ors. vs. Bhor Municipal Council & Ors.-(2011) 2 SCC 654, Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi & Ors.-(2015) 12 SCC 381 and a Full Bench judgement of Punjab and Haryana High Court in Prakash Singh Badal & Ors. vs. UOI-AIR 1987 P&H 263, learned senior counsel canvassed that there cannot be any deemed merger under paragraph 4(2) unless there is merger of a political party with another political party under paragraph 4(1).

Assailing the order dated 22.7.2020, he submitted that it does not tantamount to an order rejecting the disqualification petition in as much as the office note prepared by the staff has simply been endorsed by the Speaker without application of mind and is a non-speaking one.

Relying upon the judgement of Hon'ble Supreme Court in the case of Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council & Ors.-(2004) 8 SCC 747, learned senior counsel asserted that the disqualification petition could not have been dismissed citing procedural/technical lapses. He asserted that the law envisages that mere bringing to the notice of the Speaker the factum of disqualification incurred by any Member is sufficient whereupon the Speaker is under the constitutional obligation to adjudicate upon the question of disqualification.

Per contra, Shri Kapil Sibal, learned senior counsel assisted by Shri Prateek Kasliwal, learned counsel, agreeing with the submission made by learned senior counsels for the petitioners

that enquiry vide paragraph 4 of Tenth Schedule is not contemplated independent of a disqualification application vide paragraph 6, submitted that the writ petition against the order dated 18.9.2019 is not maintainable, it being in the nature of an administrative order passed by the Speaker under Rules 3, 4 and 5 read with Form-3 of the Rules of 1989. He contended that since there is no dispute between the parties as to the order dated 18.9.2019 not being an order under paragraph 4, the arguments raised by learned senior counsels for the petitioners of it being violative of provisions of paragraph 4, are rendered untenable. The learned senior counsel contended that mere reference of the provisions of paragraph 4 in the order dated 18.9.2019 would not change its nature which is essentially an administrative order having been passed under the Rules of 1989.

He submitted that as and when the Speaker receives an application from a Member/group of Members claiming merger, he has to record the factum of such claim in the Register being maintained for this purpose as well as for other administrative reasons which does not amount of adjudication on the claim of merger; rather, there is a constitutional bar to entertain any such claim at that stage in absence of disqualification petition. Learned senior counsel submitted that at the stage of recording the claim of merger, the Speaker cannot examine merit of such claim, which he can do only while entertaining a disqualification petition under paragraph 6 as paragraph 4 affords the defence to the Member whose disqualification is alleged. He contended that the disqualification is never automatic and it requires adjudication by the Speaker as and when a disqualification petition is filed alleging

that the claim of merger tantamounts to voluntary giving up membership of the party on whose symbol the Member was elected. Referring to the paragraphs 2, 4 and 6 of the Tenth Schedule, he submitted that the scheme of Tenth Schedule stipulates adjudication on the question of disqualification only under paragraph 6 and no such enquiry is required to be carried out at any stage prior to it.

Relying on the Constitution Bench judgement of the Hon'ble Apex Court in Kihoto Hollohan vs. Zachillhu & Ors.-1992 Suppl. (2) SCC 651, Shri Sibal asserted that the Speaker acts as a quasi judicial Tribunal while taking a decision on a disqualification petition under paragraph 6 and it is only against such decision, judicial review is permissible by the High Court/Supreme Court on the limited parameters as laid down therein. He submitted that except the decision taken vide paragraph 6, the proceedings before the Speaker cannot be subject matter of judicial review. He submitted that, therefore, the order dated 18.9.2019 cannot be subject matter of judicial review not being an order passed on the disqualification petition.

Placing reliance on the judgements of the Hon'ble Supreme Court in the cases of Speaker, Haryana Vidhan Sabha (supra) and Keisham Meghachandra Singh vs. the Hon'ble Speaker, Manipur Legislative Assembly & Ors.-2020 (1) ALT 299, learned senior counsel submitted that the Hon'ble Apex Court has refused to entertain challenge to the order passed purportedly under paragraph 4 in absence of adjudication by the Speaker on the plea of disqualification under paragraph 6. He submitted that the Hon'ble Supreme Court proceeded to examine the validity of the

order passed by the Speaker accepting claim of split in the case of Rajendra Singh Rana (supra) in the peculiar facts and circumstances of the case wherein the order was passed without adjudicating the pending disqualification petition and term of the Assembly was going to expire very soon and therefore, the same cannot be held as precedent to interfere with the order dated 18.9.2019 passed herein. He submitted that a Division Bench of this Court has, in the case of Shri Krishna vs. State of Rajasthan & Ors., D.B. Civil Special Appeal (Writ) No.86/2010, vide its judgement dated 15.3.2020, categorically held that no writ lies against an order passed by the Speaker accepting the claim of merger and the only remedy available for a person challenging such claim, is to file a disqualification petition and this Court is bound by the Division Bench judgement of this Court.

Supporting the order dated 22.7.2020; learned senior counsel argued that the Speaker has committed no error in dismissing the disqualification application not being in consonance with the mandatory provisions contained in the Rules of 1989. He submitted that the petitioner is free to move a fresh application vide paragraph 6 in tune with the statutory requirement laid down under Rules of 1989. Repelling apprehension of the learned senior counsel for the BSP, he submitted very candidly that if any disqualification petition is moved even by the BSP, the same would be entertained in spite of not being moved by one of the Members as envisaged under Rule 6 of the Rules of 1989.

Learned senior counsel submitted that on a disqualification application moved by Shri Vijay Singh on 7.8.2020, notices have already been issued to the respondents no. 2 to 7 by the Speaker

vide its order dated 10.8.2020 fixing the date 14.8.2020 for appearance and reply by the respondents. He, therefore, submitted that this Court has no jurisdiction to entertain the writ petitions against the order dated 18.9.2019 not being an adjudicatory order on the disqualification petition.

Shri Mahendra Singh Singhvi, learned Advocate General assisted by Shri Darsh Pareek, learned counsel, advancing the arguments raised by Shri Sibal, submitted that it is only an order passed by the Speaker acting as quasi judicial tribunal under paragraph 6 which can be subject matter of judicial review by this Court on the touch stone of the parameters laid down by Hon'ble Apex Court in the case of Kihoto Hollohan (supra).

Replying to the contention raised by Shri Mishra that Rule 6 of the Rules of 1989 bars the petitioner-BSP from assailing the order dated 18.9.2019, learned Advocate General, relying upon the judgement of the Hon'ble Supreme Court in the case of Speaker, Orissa Legislative Assembly vs. Utkal Keshari Parida- (2013) 11 SCC 794, asserted that any person interested is also entitled to bring to the notice of the Speaker the factum of disqualification incurred by any Member of the House and the Speaker, on receiving such information, is under the constitutional obligation under paragraph 6 to adjudicate upon it. Defending the order dated 18.9.2019, Shri Singhvi contended that it is an administrative order for making proper sitting arrangement in the House and by no stretch of imagination; it can amount to adjudication on the claim of merger by the respondents no.2 to 7.

Shri Rajeev Dhavan, learned senior counsel assisted by Shri Madhav Mitra, learned counsel, submitted that the office of the

Speaker does not come into picture in the entire scheme of Tenth Schedule unless a disqualification petition is moved under paragraph 6. He contended that the Tenth Schedule does not stipulate adjudication at each and every stage i.e. at the stage of paragraph 2 and paragraph 4 and only adjudication required from the Speaker under the Tenth Schedule, is when disqualification is alleged against a Member. Placing reliance upon the judgement of the Hon'ble Supreme Court in the case of Rajendra Singh Rana (supra), learned senior counsel contended that proceeding under the Tenth Schedule gets started before the Speaker only on a complaint being made alleging disqualification. He submitted that the jurisdiction of any constitutional authority can only be relatable to the Constitution itself and cannot be enlarged by any authority including the judiciary because of any necessitated circumstances. Referring to the judgement of the Hon'ble Supreme Court in the case of Raja Soap Factory vs. S.P. Shantharaj & Ors., AIR 1965 SC 1449, learned senior counsel contended that the Speaker acquires the jurisdiction of the Tenth Schedule only when disqualification petition is moved.

He argued that the submissions made by the learned counsel for the petitioners are self contradictory inasmuch as on the one hand it is contended that the Speaker does not have any jurisdiction to accept claim of merger under paragraph 4 in absence of a claim of disqualification; on the other hand, they are seeking to quash the order dated 18.9.2010 on the premise of it having been passed by the Speaker without satisfying himself as to merger of the original political party i.e. BSP with the INC; the alleged mandatory requirement under sub paragraph 4(1).

Learned senior counsel submitted that the disqualification under the Tenth Schedule is never automatic unless somebody triggers the motion by moving under paragraph 6. He submitted that no doubt, the disqualification, if any, would relate back to the date of disqualification incurred under paragraph 2; but, only after adjudication by the Speaker under paragraph 6. He submitted that a conjoint reading of paragraphs 2, 4 and 6 of the Tenth Schedule reveals that when a disqualification petition is moved alleging disqualification, paragraph 4 affords the defence. He submitted that in these circumstances, the order dated 18.9.2019 cannot be reckoned as an adjudication accepting the claim of merger.

Drawing attention of this Court towards sub-para 2 of paragraph 6, the learned senior counsel asserted that all the proceedings under sub-paragraph 1 of this paragraph, are deemed to be proceedings in the State Legislature within the meaning of Article 212 and hence, such proceedings; barring the final decision, are immune from the scrutiny of judicial review. He submitted that if the acceptance of claim of merger vide order dated 18.9.2019 is taken as an order under paragraph 4, it would inevitably result into the proceedings vide paragraph 4 having no immunity as envisaged for the proceeding under paragraph 6(1) vide paragraph 6(2), which could never have been intention of the Parliament while introducing the Tenth Schedule in view of the very high constitutional status being enjoyed by the Speaker.

Shri Siddharth Luthra, learned senior counsel assisted by Shri Rajesh Maharishi, learned AAG, drawing attention of this Court towards Rule 4 of the Rules of 1989 read with Form 3, submitted that claim of merger by the 6 MLAs of BSP was in the

nature of intimation to the Speaker about change of their affiliation who was under an obligation to publish such claim in bulletin form without entering into any enquiry under paragraph 4. He submitted that there can be no decision on the claim of merger dehors adjudication on a disqualification petition. Referring to a judgement of the Hon'ble Gauhati High Court in the case of Padi Richo vs. Speaker, Arunachal Pradesh Legislative Assembly & Ors. reported in (2017) 6 Gauhati Law Reports 431, learned senior counsel submitted that while accepting the claim of merger, the Speaker acts only as an administrative authority and is not required to enter into any adjudicatory process in absence of the plea of disqualification.

Shri Devidutt Kamat, learned senior counsel assisted by Dr. Vibhuti Bhushan Sharma, learned AAG, submitted that Tenth Schedule of the Constitution of India provides a comprehensive and exhaustive scheme for decision on disqualification of a Member of the Parliament or the Assembly, as the case may be. Referring to paragraph 6(2), he submitted that the adjudicatory process under paragraph 6(1) is given trappings of legislative nature rendering such proceedings beyond the scope of the judicial review; therefore, logically, any proceeding prior to the stage of inquiry under paragraph 6(1), would be protected more rigorously. He placed reliance on paragraph 431 of the Constitution Bench judgement of the Hon'ble Apex Court in case of Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha & Ors.-(2007) 3 SCC 184 in this regard.

He asserted that acceptance of claim of merger, in absence of a disqualification petition, is only a ministerial act on the part of the Speaker.

Placing reliance on a Full Bench judgement of the Punjab & Haryana High Court in case of Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha, 1997 SCC Online P&H, 788, learned senior counsel submitted that even adjudication under paragraph 6 does not stipulate giving of notice to the political party whose Member claims merger with another political party and hence, submission of the petitioner that the order dated 18.9.2019 deserves to be set aside being violative of the principles of natural justice, does not merit acceptance.

Referring to paragraphs 117 and 118 of the Constitution Bench judgement of Hon'ble Apex Court in the case of Kihoto Hollohan (supra), he submitted that the Speaker represents the August House, its dignity and freedom. He contended that within the walls of the House, his authority is supreme and therefore, this Court cannot interfere in the order impugned undisputedly not passed under paragraph 6; only order under Tenth Schedule against which this Court can exercise its writ jurisdiction. Shri Kamat relied upon another Constitution Bench judgement of the Supreme Court in case of Nabam Rebia & Anr. Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Ors., (2016) 8 SCC 1 to canvass that this Court has constricted power of judicial review and is restricted to the adjudication qua paragraph 6 carving out certain extreme exceptions because the Speaker, while exercising this jurisdiction, exercises the power of "constitutional adjudication". Referring to yet another judgment of the Hon'ble

Supreme Court in case of Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly & Ors.-(2020) 2 SCC 595, learned senior counsel asserted that under our constitutional scheme, it is only the Speaker who has been vested with power to take a decision on the question of disqualification and therefore, the prayer made by the petitioners in the writ petitions seeking disqualification is not amenable to the jurisdiction of this Court. To buttress this submission, he also placed reliance on the judgement of the Hon'ble Supreme Court in the case of Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council & Ors.-(2004) 8 SCC 747.

Lastly, learned senior counsel argued that the judgements rendered by the Supreme Court in the cases of Rajendra Singh Rana (supra) and Jagjit Singh (supra) have no application in the present case as those cases pertained to paragraph 3 i.e. of split and not of merger.

Learned senior counsel Shri G.S. Bapna assisted by Shri Sanjay Sharma, learned counsel, contended that both the writ petitions deserve to be dismissed only on the ground of delay and laches. He submitted that the order dated 18.9.2019 has been assailed by the BSP by way of this writ petition after a delay of about ten months and was challenged by the petitioner Madan Dilawar after six months by way of disqualification petition without offering any plausible explanation for this inordinate delay.

Learned senior counsel Shri Vivek K Tankha assisted by Major R.P. Singh, learned AAG, drawing attention of this Court towards various provisions under Chapter III of Part-VI of the Indian Constitution, submitted that the Speaker happens to be the

Chief Officer of the State Legislature responsible for conduct of its business. He submitted that if any Member incurs disqualification under Article 191(1), decision of the Governor shall be final; but, if the disqualification is incurred under the Tenth Schedule, Article 191(2) provides the decision of the Speaker to be final. Referring to Article 208, learned senior counsel contended that the Rules of Procedure for regulating the procedure and conduct of its business by a House, are made by the Speaker or the Chairman, as the case may be. He submitted that the provisions of Article 212 bar jurisdiction of the Court to question validity of any proceeding in the legislature on the ground of any alleged irregularity of procedure and no officer or Member of the Legislature of the State in whom powers are vested by or under the 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. He contended, therefore, the order dated 18.9.2019, passed by the Speaker in exercise of his administrative power to conduct business of the House, cannot be subjected to the scrutiny of judicial review in the writ jurisdiction. Learned senior counsel contended that, whenever any claim of merger is raised by a Member(s), the Speaker is required to record such claim to determine status of such Member(s) for effecting proper sitting arrangement as well as for smooth and proper conduct of the business of the House, without any adjudication on merit of such claim in absence of plea of disqualification.

Relying on Rule 4 read with Form 3 of the Rules of 1989, learned senior counsel submitted that the order dated 18.9.2019

is in the nature of procedural information order which is also reflected from its heading.

He argued that it is the Speaker only who is authorized to take a decision on the plea of disqualification of a Member and this Court has no jurisdiction to take a decision on such plea in absence of any such adjudication by the Speaker in the first instance. He placed reliance on the Constitution Bench judgement of the Hon'ble Apex Court in case of Kihoto (supra) and a Division Bench judgement of this Court in Shri Krishna (supra) to buttress his submission.

Lastly, he contended that after passing of the order dated 18.9.2019, two sessions of Legislative Assembly have already been held in November, 2019 and March, 2020 respectively without any iota of objection against the order by any of the petitioners and hence, the writ petitions are liable to be dismissed being hit by the principles of estoppel and acquiescence.

Shri Satish Chandra Mishra, learned senior counsel submitted, in rejoinder, that the contention raised by the learned counsels for the respondents as to the order dated 18.9.2019 being administrative in nature, is not tenable in the face of the order itself. Referring to the order impugned, he contended that it is in the nature of decision by the Speaker on the claim raised by the respondents no.2 to 7 of merger of BSP with the INC on the parameters laid down under paragraph 4 and is, therefore, without jurisdiction. He submitted that since the order dated 18.9.2019 is void ab initio and non-est, the writ petition cannot be held to be suffering from delay and laches.

Learned senior counsel asserted that the Division Bench judgement of this Court in the case of Shri Krishna (supra), cannot be held to be a binding precedent as it was rendered in absence of the BSP as a party to it which was the only party adversely affected by the order of the Speaker accepting claim of merger. He submitted that even the Hon'ble Division Bench has categorically held that the appellant-petitioner was having no locus standi to challenge the order passed by the Speaker. He further contended that the order passed by the Division Bench in case of Shri Krishna (supra) was subject matter of challenge in the SLP filed by the BSP against the order passed by the Speaker rejecting their disqualification petition; but, the effluxion of time, rendered the SLP infructuous; but, the Hon'ble Supreme Court was pleased to leave the questions of law involved therein, open. He submitted that in these circumstances, the aforesaid judgment of the Division Bench of this Court cannot be said to have attained finality.

Reiterating his submissions, learned senior counsel argued that the provisions of paragraph 4(2) are not independent of provisions of paragraph 4(1) and unless the respondents were able to show merger of the BSP with the INC either at the National or at State level, the deeming provision could not have been invoked by the Speaker for accepting the claim of merger. Relying on a judgement of the Full Bench of the Bombay High Court in case of Shah Faruq Shabir vs. Govind Rao Ramu Vasave & Ors., 2016 (4) AIR Bombay 786, he contended that the principle of split under paragraph 3 is squarely applicable in case of merger as well and therefore, the contention raised by the respondents that the

ratio of the judgements of the Hon'ble Supreme Court in the cases of Rajendra Singh Rana (supra) and Jagjit Singh (supra), has no applicability in the present case, is not tenable.

He asserted that the judgement rendered by the Hon'ble Gauhati High Court has no application in the present case as that case pertained to issuance of a bulletin only by the office of the Speaker without accepting the claim of merger under paragraph 4; whereas, in the present case, the order dated 18.9.2019, it in no uncertain terms, speaks of decision by the Speaker as to acceptance of the claim of merger by the respondents no.2 to 7 in terms of paragraph 4. He argued that even assuming the order impugned to be an administrative order, it deserves to be quashed and set aside being violative of principles of natural justice inasmuch as it has been passed without issuing any notice to the BSP.

Learned senior counsel Shri Satya Pal Jain submitted, in rejoinder, relying upon a Constitution Bench judgement of the Hon'ble Supreme Court in Mohinder Singh Gill vs. the Chief Election Commissioner of India & Ors, AIR 1978 SC 851 that the order dated 18.9.2019 can be defended by the respondents only on the reasons specified therein and the same cannot be supplemented later on. He submitted that since the order impugned has been passed invoking paragraph 4, its validity has to be adjudged only on the parameters laid down therein and it cannot be treated as an executive order as claimed by the respondents. He submitted, relying on a Full Bench judgement of the Punjab and Haryana High Court in the case of Prakash Singh Badal vs. Union of India, AIR 1987 P&H 263, that the order dated

18.9.2019 having been passed under paragraph 4, is without jurisdiction, void ab initio and non est in the eye of law.

Learned senior counsel asserted that the writ petition does not suffer from any delay as immediately after passing of the order dated 18.9.2019, an application dated 9.10.2019 came to be filed under Right to Information Act, 2005 seeking copy of the application dated 16.9.2019 and other related documents; but, the application as well as the first appeal against the order rejecting application, came to be dismissed.

He submitted that in his disqualification petition, he has raised all the legal objections against the order accepting merger; but, the same was dismissed by the Speaker vide order dated 22.7.2020 without appreciating any of the grounds raised therein. He argued that since the order dated 22.7.2020 categorises itself as "कार्यालय टिप्पणी" i.e. "office note", undisputedly prepared by the staff which has simply been approved by the Speaker without any application of mind; hence, by no stretch of imagination, it can be reckoned as an order passed by the Speaker. Relying on the judgement of the Hon'ble Supreme Court of India in case of Dr. Mahachandra Prasad Singh (supra), he contended that the order dated 22.7.2020 being contrary to the law laid down therein, cannot be sustained in the eye of law and is liable to be quashed and set aside.

Heard the learned counsels for the parties and perused the record.

The pivotal question which arises for consideration of this Court is regarding the nature of the order dated 18.09.2019.

While, it has been case of the petitioners that since the order dated 18.9.2019 has been passed by the Speaker invoking the provision of paragraph 4, it is without jurisdiction. The respondents, on the other hand, have claimed the order to be administrative in nature.

The parties are ad idem that the Speaker does not have independent jurisdiction to adjudicate upon the claim of merger vide paragraph 4 dehors a motion seeking disqualification and, as a matter of fact, the provisions of paragraph 4 afford defence to a legislator against the plea of his disqualification. The following judgements of the Hon'ble Apex Court lay down, in no uncertain terms, the aforesaid proposition of law.

1. Rajendra Singh Rana & Ors. Vs. Swami Prasad Maurya & Ors., (2007) 4 SCC 270;

25..... "A proceeding under the Tenth Schedule gets started before the Speaker only on a complaint being made that certain persons belonging to a political party had incurred disqualification on the ground of defection. To meet the claims so raised, the members of Parliament or Assembly against whom the proceedings are initiated have the right to show that there has been a split in the original political party and they form 1/3rd of the Members of the Legislature of that party or that the party has merged with another political party and hence para 2 is not attracted. **On the scheme of Articles 102 and 191 and the Tenth Schedule, the determination of the question of split or merger cannot be divorced from the motion before the Speaker seeking a disqualification of a Member or Members concerned**. It is therefore not possible to accede to the arguments that under the Tenth Schedule to the Constitution, the Speaker is an independent power to decide that there has been a split or merger of a

political party as contemplated by para 3 and 4 of the Constitution."

26….."The Rules prescribed by various Legislatures including the U.P. Legislature contemplate the making of an application to the Speaker when there is a complaint that some Member or Members have voluntarily given up his membership or their memberships in the party. It is only then that in terms of the Tenth Schedule, the Speaker is called upon to decide the question of disqualification raised before him in the context of para 6 of the Tenth Schedule. **Independent of a claim that someone has to be disqualified, the scheme of the Tenth Schedule or the Rules made thereunder, do not contemplate the Speaker embarking upon an independent enquiry as to whether there has been a split in a political party or there has been a merger.** Therefore, in the context of Article 102 and 191 and the scheme of the Tenth Schedule to the Constitution, we have no hesitation in holding that the Speaker acts under the Tenth Schedule only on a claim of disqualification being made before him in terms of para 2 of the Tenth Schedule."

27….. "Call it a defence or whatever, a claim under para 3 as it existed prior to its deletion or under para 4 of the Tenth Schedule, are really answers to a prayer for disqualifying the member from the legislature on the ground of defection. Therefore, in a case where a Speaker is moved by a legislature party or the leader of a legislature party to declare certain persons disqualified on the ground that they have defected, it is certainly open to them to plead that they are not guilty of defection in view of the fact that there has been a split in the original political party and they constitute the requisite number of legislators or that there has been a merger."

2. Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi, (2015) 12 SCC 381;

42. Accordingly, the main challenge to the impugned decision of the Division Bench of the Punjab and Haryana High Court is with regard to the competence of the Speaker of the Assembly to decide the question of disqualification of the Members of the Haryana Janhit Congress (BL) Party on their joining the Indian National Congress Party on the basis of the letters written by the five Members of the former legislature party. Incidentally, the learned Single Judge held that the issue would have to be decided by the Speaker himself while considering the disqualification petitions under paragraph 6 of the Tenth Schedule to the Constitution. What is important, however, is the question as to whether such a decision could be arrived at under paragraph 4 of the Tenth Schedule to the Constitution whereunder the Speaker has not been given any authority to decide such an issue. Paragraph 4 merely indicates the circumstances in which a Member of a House shall not be disqualified under Sub-paragraph (1) of Paragraph 2. One of the circumstances indicated is where the original political party merges with another political party and the Member claims that he and any other Member of his original political party have become Members of such other political party, or, as the case may be, of a new political party formed by such merger. As stressed by the learned Solicitor General, for the purpose of sub-paragraph (1), the merger of the original political party of a Member of the House, shall be deemed to have taken place if, and only if, not less than two-thirds of the Members of the legislature party concerned agreed to such merger. **In other words, a formula has been laid down in paragraph 4 of the Tenth Schedule to the Constitution, whereby such Members as came within such formula could not be disqualified on ground of defection in case of the merger of his original political party with another**

political party in the circumstances indicated in paragraph 4(1) of the Tenth Schedule to the Constitution.

43. The scheme of the Tenth Schedule to the Constitution indicates that the Speaker is not competent to take a decision with regard to disqualification on ground of defection, without a determination under paragraph 4, and paragraph 6 in no uncertain terms lays down that if any question arises as to whether a Member of the House has become subject to disqualification, the said question would be referred to the Speaker of such House whose decision would be final. The finality of the decisions of the Speaker was in regard to paragraph 6 since the Speaker was not competent to decide a question as to whether there has been a split or merger under paragraph 4. The said question was considered by the Constitution Bench in Rajendra Singh Rana's case (supra). While construing the provisions of the Tenth Schedule to the Constitution in relation to Articles 102 and 191 of the Constitution, the Constitution Bench observed that the whole proceedings under the Tenth Schedule gets initiated as a part of disqualification proceedings. Hence, determination of the question of split or merger could not be divorced from the motion before the Speaker seeking a disqualification of the Member or Members concerned under paragraph 6 of the Tenth Schedule. **Under the scheme of the Tenth Schedule the Speaker does not have an independent power to decide that there has been split or merger as contemplated by paragraphs 3 and 4 respectively and such a decision can be taken only when the question of disqualification arises in a proceeding under paragraph 6. It is only after a final decision is rendered by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution that the jurisdiction of the High Court under Article 226 of the Constitution can be invoked."**

Thus, the crystal clear position of law which emerges is that the Speaker has no independent power to adjudicate upon the claim of merger in absence of a motion of disqualification and the provisions of paragraph 4 afford to a Legislator a defence mechanism against the plea of his defection. However, once, a Member is held to be suffering from disqualification, it relates back to the date incurring the same.

In view of the aforesaid well settled and unexceptional proposition of law, as admitted by both the parties also, the contention by the petitioners that since the order impugned is in the nature of the decision by the Speaker accepting claim of merger of the BSP with the INC raised by the respondents no.2 to 7 on the touchstone of parameters under paragraph 4 in absence of the motion seeking disqualification, it is without jurisdiction rendering it void ab initio and non est in the eye of law, has no legs to stand and does not deserve to be accepted. This Court, in view of the fact that the order dated 18.9.2019 came to be passed in absence the claim of disqualification, is unable to persuade itself to acknowledge the order as having been passed under paragraph 4 or in the nature of adjudication on the claim of merger. Rather, this Court finds force in the submission made by the respondents that whenever any claim of merger is raised by a Member / Group of Members, otherwise than by way of defence to the plea of defection, the Speaker is under an obligation, under the Rules of business, without any adjudication on merit of such claim, to accept the same for the purposes of carrying out necessary changes in the register being maintained for this purpose as well

as changes in the sitting arrangement of the Members in the House.

The Hon'ble Apex Court has, in case of Rajendra Singh Rana (supra), held as under:

> **25…** "**The power to recognize a separate group in Parliament or Assembly may rest with the Speaker on the basis of the Rules of business of the House.** But that is different from saying that the power is available to him under the Tenth Schedule to the Constitution independent of a claim being determined by him that a Member or a number of Members had incurred disqualification by defection."
>
> **28…"**Under the Tenth Schedule the Speaker is not expected to simply entertain a claim under paras 3 and 4 of the Schedule without first acquiring jurisdiction to decide a question of disqualification in terms of para 6 of the Schedule. **The power, if any, he may otherwise exercise independently to recognize a group or a merger, cannot be traced to the Tenth Schedule to the Constitution. The power under the Tenth Schedule to do so accrues only when he is called upon to decide the question referred to in para 6 of that Schedule**."

Rule 3 and Rule 4 of the Rules of 1989 provide the procedure regarding information to be furnished by the leader of a group of MLAs or the individual Members to the Speaker of their Election, their affiliation with a particular political party and other information as provided therein, within 30 days of the first sitting of the House which is required to be recorded in the register containing information about the Members maintained under Rule 5. Scheme of the Rules read with Form 3 also stipulates intimation to the Speaker with regard to any change in the information

furnished initially including change of affiliation, which is required to be recorded in the register as well as published in the bulletin. Such change also necessitates change in the sitting arrangement of the Members in the House. Under our constitutional scheme, the Speaker discharges dual functions; one as the highest administrative officer of the House responsible for its smooth, proper and efficient working and second as the quasi judicial Tribunal under Tenth Schedule to adjudicate upon the question of disqualification by way of defection. Since, any adjudication on the claim of merger cannot be divorced from the decision on disqualification petition; rather, there is constitutional bar on entertaining such claim dehors decision on the plea of disqualification, the order dated 18.9.2019 can only be held to have been passed by the Speaker in exercise of his administrative authority as the Officer of the House. The Hon'ble Gauhati High Court has, in case of Padi Richo (supra) involving somewhat similar circumstances, wherein a group of MLAs claiming merger requested the Speaker to publish the information in the bulletin form which was published accordingly under the heading "matters for general information"; repelling the contention raised by the petitioners therein that such order of the Speaker tantamounted to recognition of the claim of merger, held that such publication in the bulletin could not be held as an adjudication by the Speaker accepting claim of merger and could not be treated as an order under Tenth Schedule. It was further held by the Hon'ble High Court therein that since no adjudication on the claim of merger takes place in absence of the plea of defection, the principles of natural justice are not required to be followed at the time of

recording claim of merger as such for the purpose of its publication in the bulletin.

The Full Bench of Punjab and Haryana High Court has, in case of Prakash Singh Badal (supra), held as under:

> **34.....”**Under para. 6, the Speaker would have the jurisdiction in this matter only if any question arises as to whether a member of the House has become subject to disqualification under the said Schedule and the same has been referred to him for decision. The purpose of requirement of a reference obviously is that even when a question as to the disqualification of a member arises, the Speaker is debarred from taking suo motu cognizance and he would be seized of the matter only when the question is referred to him by any interested person. The Speaker has not been clothed with a suo motu power for the obvious reason that he is supposed to be a non-party man and has been entrusted with the jurisdiction to act judicially and decide the dispute between the conflicting groups. The other prerequisite for invoking the jurisdiction of the Speaker under para 6 is the existence of a question of disqualification of the some member. Such a question can arise only in one way, viz., that any member is alleged to have incurred the disqualification enumerated in para 2(1) and some interested person approaches the Speaker for declaring that the said member is disqualified from being member of the House and the claim is refuted by the member concerned.
>
> **35.** Now, let us examine the matter other way round as suggested by Mr. Shanti Bhushan. **Suppose a split has taken place in the original party giving rise to a separate faction and more than one third of the members have chosen to form a group representing such a faction; the question arises, is there any cause for them to approach the Speaker under para 6? The answer obviously would be in the negative.**

All that they need do would be to approach the Speaker, put up their claim and request him to make necessary corrections in the records. When such a claim is made, by no stretch of reasoning it can be said that a question has arisen as to whether they have become subject to disqualification under the Tenth Schedule. The Speaker, therefore, would have no jurisdiction to take cognizance of any dispute under para 6 nor to render any decision. Instead, he has to accept the claim as it is. This procedure has to be adopted because the entries in the records maintained under para 8(1)(a) have to be corrected and seats to be allotted to the new group by virtue of the "powers conferred on the Speaker under R. 4 of Chap. II of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly). When the members claim to have formed a separate group, they would obviously be deemed to have voluntarily given up the membership of their political party within the meaning of clause (a) of para 2(1). If some interested party feels that thereby they have incurred the disqualification, it is he who has to approach the Speaker under para 6 and it would be then that a question can be said to have arisen as to whether a member of a House has become subject to disqualification and the Speaker would be seized of the matter. If no one challenges the claim of the members who have formed a new group, the provisions of para 6 would not come into operation nor the Speaker would be seized of any question relating to the disqualification of any member of the House. The action of the Speaker which he is required to take when a claim is made under para 3 would not, therefore, be an order under para 6 and would be only an executive action on his part in exercise of his powers under Rules 4 and 113 of the

said Rules. Moreover, as already stated above, the provisions of para 3 are an exception to para 2 and provide a defence to a member who is alleged to have incurred a disqualification. It is a thing of common knowledge that no one can approach a judicial or quasi judicial authority for adjudication upon his defence because unless someone alleges that he has committed the wrong, no cause of action would arise for pleading the defence or seeking an adjudication thereon.

36. The argument of Mr. Shanti Bhushan that if the splinter group had no right to approach the speaker under para 6 and has to wait till some interested party makes a reference to the Speaker, it would lead to a paradoxical situation as in that case the splinter group would not know to which political party they belong or whose whip they are to obey becomes untenable in view of the analysis of the relevant provisions made above. The moment such a claim is made, the splinter group would be deemed to have given up voluntarily the membership of their political party and the new faction which has come into being would be deemed to be their political party for the purposes of para 2(1). If their claim is not disputed by any interested person or by their original political party, no trouble would arise; but if somebody disputes their claim, he has to approach the Speaker under para 6, who would then be seized of the matter and pass a proper order because no other authority in case of dispute has the jurisdiction to declare that the splinter group has incurred the disqualification or not."

The majority view in the aforesaid Full Bench judgement of the Punjab and Haryana High Court was approved by the Hon'ble Apex Court in case of Rajendra Singh Rana (supra). The aforesaid judgments leave no room for doubt that whenever a Member or

group of Members approaches the Speaker with a claim of merger, the Speaker is under an obligation to record such claim for administrative reasons and such action cannot be traced to the Tenth Schedule.

In the aforesaid facts and circumstances as well as the law laid down by the Hon'ble Apex Court of India and the High Courts, if the order dated 18.9.2019 is juxtaposed to the Constitutional Scheme under Chapter III of Part-VI, Tenth Schedule and the Rules of 1989, the only inevitable conclusion which arises is that it is in the nature of administrative order passed by the Speaker recording claim of merger by the respondents no.2 to 7 in his capacity as the Officer of the Legislative Assembly only for the purposes of carrying out suitable and necessary changes in the register containing information about the Members, its publication in the bulletin as stipulated under the Rules of 1989 and for carrying out necessary changes in the sitting arrangements of the Members in the House and cannot be reckoned as an adjudication by the Speaker upon the claim of the respondents regarding merger of BSP with INC. Such order cannot be held to be in the nature of the pre-emptive move also either by the respondents no.2 to 7 or by the Speaker to any probable plea of defection.

The contention of the learned counsels for the petitioners that the order impugned is without jurisdiction being in the nature of "decision" by the Speaker on the claim of merger, does not merit acceptance as this Court is not persuaded to accept the order dated 18.9.2019 falling in the category of "decision". As has already been held on the basis of scheme of Tenth Schedule, the authoritative pronouncement of the Hon'ble Apex Court and

various High Courts, the Speaker acquires jurisdiction to adjudicate upon the claim of merger only while considering the plea of disqualification and not otherwise, therefore, the order dated 18.09.2019 cannot be held to be the decision on the claim of merger by the respondents no. 2 to 7. Even otherwise also, the "decision" in itself implies conflict of facts and/or law and verdict on such conflict through judicial process by an independent and competent authority which is final qua the authority passing it.

The Hon'ble Supreme Court has, in case of Purnima Manthena & Ors. Vs. Renuka Datla & Ors.-(2016) 1 SCC 237, held as under:

> **49…."A decision logically pre-supposes an adjudication on the facts of the controversy involved** and mere deferment thereof to a future point of time till the completion of the essential legal formalities would not ipso facto fructify into a verdict to generate a question of law to be appealed from."

Similarly, the Hon'ble High Court of Delhi in case of M/s. Ratan & Co. vs. P. Narayanan, AIR 1977 Delhi 93 held as under:

> **"23. A decision means a concluded opinion. It is an authoritative answer to the question raised before a court. It is the settlement of a controversy submitted to it. Decision implies the exercise of a judicial determination as the final and definite result of examining a question**……"

Therefore, in the considered opinion of this court, the order dated 18.9.2019 fails to meet any of such criteria so as to bring it within the trappings of "decision" by the Speaker on the claim of merger by the respondents no.2 to 7 and cannot be reckoned as "decision".

The contention of the learned counsels for the petitioners that since the order impugned dated 18.9.2019 refers itself to be the decision on claim of merger and hence, it cannot be treated to be an administrative order, does not deserve acceptance as it is trite that mere nomenclature given to an order is never determinative of its true nature which can only be assessed by looking into its substance. The Hon'ble Supreme Court has, in case of C. Gupta vs. Glaxo-Smithkline Pharmaceuticals Ltd.-(2007) 7 SCC 171, held as under:

> **18. It is not in dispute that the nomenclature is really not of any consequence**. Whether a particular employee comes within the definition of workman has to be decided factually."

A coordinate Bench of this Court in case of Inderjeet Singh vs. State of Rajasthan & Anr., RLW 2009 (2) Raj.1848 held as under:

> **"12.** A question which arises for consideration in this case is as to whether the appointment of the petitioner in the year 1977 was an adhoc appointment or a substantive appointment. For considering this question, the circumstances relating to the appointment, the post on which the petitioner was appointed and method adopted for giving appointment to the petitioner are to be considered. **In other words, while considering the nature of appointment of the petitioner, the substance has to be seen and not only the nomenclature used in the order of appointment. Mere mentioning of adhoc, temporary etc., in the order of appointment would not change the real nature of appointment**. In the instant case, the petitioner was given appointment in the year 1977 with

due selection, after having been successful in the interview held on 16.11.1977. The said appointment was against a vacant post and on a regular pay scale. The said appointment was thereafter continued till further orders by orders, vide order dated 20.6.1978…..”

“13. Taking into consideration, the overall facts and circumstances, particularly the fact that the appointment given to the petitioner after a selection process, merely mentioning in the order of appointment in the year 1977 that the appointment was adhoc, is not the correct indication about nature of appointment. In fact, the appointment given to the petitioner was substantive in nature….”

Much emphasis has been laid by the petitioners on the aspect that vide order impugned, the Speaker has accepted the claim of merger relying upon the provisions of paragraph 4 of the Tenth Schedule and therefore, the same is without jurisdiction, void ab initio and non est in the eye of law. In this regard, suffice is to say that mere mentioning of wrong statutory provision or its non-mentioning does not render an order illegal if the authority to pass the same can be traced to a statutory provision. The Hon’ble Apex Court has, in the case of P.K. Palanisamy V N. Arumugham and Anr.-(2009)9 SCC 173, held as under:-

> **27…”**It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor”.
>
> Similarly, in the case of N. Mani v. Sangeetha Theatre and Ors. (2004) 12 SCC 278, it is stated:

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

Since, validity of the order dated 18.09.2019 can be traced to the Rules of 1989; mere mentioning of provisions of paragraph 4 of the Tenth Schedule in it, would not render it void ab initio.

The offshoot of the aforesaid discussion in the light of settled principles of law is that the order dated 18.9.2019 cannot be reckoned as a decision on the claim of merger vide paragraph 4 of the Tenth Schedule; but, only as an administrative order under the Rules of 1989.

The question which, now, arises for consideration is the scope of interference in the order dated 18.9.2019 and jurisdiction of this Court to declare the respondents nos.2 to 7 as disqualified on account of defection?

A Constitution Bench of the Hon'ble Apex Court in the case of Kihoto (supra), after analyzing the purpose of introduction of Tenth Schedule introduced by the Constitution (52nd Amendment) Act, 1985 and its entire scheme, concluded as under:

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

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

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

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh's Case Spl.Ref. No. 1, [1965] 1 SCR 413, to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the legislature of a State" confines the scope of the fiction accordingly.

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

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

Thus, it was held by the Hon'ble Apex Court that the Speaker is the sole repository of the adjudicatory power under paragraph 6 of the Tenth Schedule to decide the question of disqualification on plea of defection and the Court acquires jurisdiction to put such adjudication to judicial review only on the infirmities based on violation of constitutional mandate, mala fides, non compliance with rules of natural justice and perversity. It was also held that the judicial review should not cover any stage prior to the making of a decision by the Speaker or a Chairman.

Another Constitution Bench judgement of the Hon'ble Apex Court in case of Raja Ram Pal (supra), held as under:

> **431…** "(n) Article 122 (1) and 212 (1) prohibit the validity of any proceedings in legislature from being called in question in a Court merely on the ground of irregularity of procedure;
>
> (o) The truth or correctness of the material will not be questioned by the Court nor will it go into the adequacy of the material or substitute its opinion for that of legislature;
>
> (p) Ordinarily, the Legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the Court may examine the validity of said contention, the onus on the person alleging being extremely heavy;"

Yet another Constitution Bench judgement of the Hon'ble Supreme Court of India in case of Nabam Rebia (supra), held as under:

> **"237.** The aforesaid reasoning eloquently speaks of the power, position and the status the office of the Speaker enjoys under the Constitution. It also states about the scope of the fiction. **The Court has constricted the power of judicial review and restricted it to the stage carving out certain extreme exceptions. It is because the speaker, while exercising the authority/jurisdiction, exercises the power of "constitutional adjudication".** The concept of constitutional adjudication has constitutional value in a parliamentary democracy; and constitutional values sustain the democracy in a sovereign Republic. The Speaker is expected to maintain propriety as an adjudicator. The Speaker when functions as a tribunal has the jurisdiction/authority to pass adverse orders. It is therefore, required that his conduct should not only be impartial but such impartiality should be perceptible. It should be beyond any reproach. It must reflect the trust reposed in him under the Constitution. Therefore, the power which flows from the introduction of Tenth Schedule by constitutional amendment is required to be harmoniously construed with Article 179(c). Both the provisions of the Constitution are meant to subserve the purpose of sustenance of democracy which is a basic feature of the Constitution. The majority in Manoj Narula vs. Union of India-(2014) 9 SCC 1 where speaking about democracy has opined that democracy in India is a product of the rule of law and it is not only a political philosophy but also an embodiment of constitutional philosophy."

In the aforesaid judgement also, it has been reaffirmed by the Hon'ble Apex Court that the Speaker, while exercising his jurisdiction under paragraph 6 of the Tenth Schedule, exercises

the power in the nature of "constitutional adjudication" and power of judicial review is restricted.

The Hon'ble Supreme Court in case of Shrimanth Bala Saheb Patil (supra), was pleased to held as under:

> **"103.** Article 192 of the Constitution provides that the Governor will be the authority for determination of disqualification on the grounds as contained under Article 191(1) of the Constitution. In contrast, the decision as to disqualification on the ground as contained in Article 191(2) of the Constitution vests exclusively in the Speaker in terms of Para 6 of the Tenth Schedule. There is no dispute that provisions under Tenth Schedule are relatable to disqualification as provided under Articles 102(2) and 191(2) of the Constitution."

The Hon'ble Apex Court has, in case of Speaker, Haryana Vidhan Sabha (supra) held as under:

> **43…"It is only after a final decision is rendered by the Speaker under para 6 of the Schedule X to the Constitution that the jurisdiction of the High Court under Article 226 of the Constitution of India can be invoked."**
>
> **44…."In that regard, we are of the view that since the decision of the Speaker on a petition under para 4 of Schedule X concerns only a question of merger on which the Speaker is not entitled to adjudicate, the High Court could not have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under para 6 of Schedule X to the Constitution. It is in fact in a proceeding under para 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order which is amenable to the writ jurisdiction of the High Court. It is in such proceedings that the question relating to the**

disqualification is to be considered and decided. Accordingly, restraining the Speaker from taking any decision under para 6 of Schedule X is, in our view, beyond the jurisdiction of the High Court, since the Constitution itself has vested the Speaker with the power to take a decision under para 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order."

The facts in the case of Speaker, Haryana Vidhan Sabha (supra) were somewhat similar to the facts as in the present case. In that case, the disqualification petition was filed subsequent to the order passed by the Speaker accepting the claim of merger purportedly under paragraph 4 of the Tenth Schedule and during pendency of the disqualification petition, a writ petition came to be filed by Shri Kuldeep Bishnoi seeking disqualification. The matter ultimately reached the Hon'ble Apex Court. The Hon'ble Apex Court, while declining to interfere in the order accepting claim of merger, was pleased to sustain the order passed by the Hon'ble Punjab and Haryana High Court directing the Speaker to take a decision on the disqualification petition within a period of four months.

Recently, the Hon'ble Apex Court, in case of Keisham Meghachandra Singh (supra) held as under:

> **"23.** Indeed, the same result would ensue on a proper reading of Kihoto Hollohan (supra). **Paragraphs 110 and 111 of the said judgment when read together would make it clear that what the finality clause in paragraph 6 of the Tenth Schedule protects is the exclusive jurisdiction that vests in the Speaker to**

decide disqualification petitions so that nothing should come in the way of deciding such petitions. The exception that is made is also of importance in that interlocutory interference with decisions of the Speaker can only be qua interlocutory disqualifications or suspensions, which may have grave, immediate, and irreversible repercussions. **Indeed, the Court made it clear that judicial review is not available at a stage prior to the making of a decision by the Speaker either by a way of quia timet action or by other interlocutory orders."**

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

to him. In case no decision is forthcoming even after a period of four weeks, it will be open to any party to the proceedings to apply to this Court for further directions/reliefs in the matter."

In the case of Shri Krishna (supra), the order dated 9.4.2009 whereby the Speaker, Rajasthan Legislative Assembly accepted claim by 6 BSP MLAs of merger of the BSP with the INC under Schedule X, was assailed by way of writ petition which came to be dismissed by the learned Single Judge vide its judgement dated 18.12.2009 holding that it is the Speaker only who has jurisdiction to decide the question of disqualification of a Member of the Assembly with liberty to the petitioner to approach the Speaker for adjudication on the plea of disqualification. The Special Appeal (Writ) preferred by the petitioner against the judgement dated 18.12.2009 did not find favour with the Division Bench of this Court. This Court is bound by the aforesaid judgement and the contention of the learned counsels for the petitioners that the judgement dated 15.3.2010 passed by the Division Bench, is not binding upon this Court as it did not attain finality, is devoid of merit and is liable to be rejected.

Thus, the conspectus of the aforesaid judgements of the Hon'ble Supreme Court, the Division Bench of this Court as well as the scheme of Tenth Schedule shows that the Speaker, who enjoys a very high constitutional status, is the sole authority to delve upon the question of disqualification and while doing so, he acts as a quasi judicial Tribunal. Further, it is only his final decision, which can be subject matter of judicial review on limited parameters as prescribed in the case of Kihoto (supra). The Court acquires

jurisdiction only upon determination on the question of disqualification and not prior to that except in exceptional circumstances not obtaining in the present case.

Reliance placed by the petitioners on the case of Rajendra Singh Rana (supra) to substantiate their contention that this Court can interfere in the order dated 18.9.2019 accepting claim of merger, is wholly misplaced and misconceived. The Hon'ble Supreme Court proceeded to examine the validity of the order of the Speaker accepting claim of split passed in the teeth of pending disqualification application and especially in the circumstance where term of the Assembly was going to expire soon. The following observations of the Hon'ble Apex Court are apt to be reproduced as under:-

> **43**. As against these submissions, it is contended that it was for the Speaker to take a decision in the first instance and this Court should not substitute its decision for that of the Speaker. It is submitted that the High Court was therefore justified in remitting the matter to the Speaker, in case this Court did not agree with the 37 MLAs that the decision of the Speaker did not call for interference.
>
> **44**. **Normally, this Court might not proceed to take a decision for the first time when the authority concerned has not taken a decision in the eye of law and this Court would normally remit the matter to the authority for taking a proper decision in accordance with law and the decision this Court itself takes on the relevant aspects**. What is urged on behalf of the Bahujan Samaj Party is that these 37 MLAs except a few have all been made ministers and if they are guilty of defection with reference to the date of defection, they have been holding office without authority, in defiance of democratic principles and in such a situation, this Court must take a decision on

the question of disqualification immediately. It is also submitted that the term of the Assembly is coming to an end and an expeditious decision by this Court is warranted for protection of the constitutional scheme and constitutional values. We find considerable force in this submission.

45. "**Here, the alleged act of disqualification of the 13 MLAs took place on 27.8.2003 when they met the Governor and requested him to call the leader of the opposition to form the Government. The petition seeking disqualification of these 13 members based on that action of theirs has been allowed to drag on till now. It is not necessary for us to consider or comment on who was responsible for such delay. But the fact remains that the term of the Legislative Assembly that was constituted after the elections in February 2002, is coming to an end on the expiry of five years. A remand of the proceeding to the Speaker or our affirming the order of remand passed by the High Court, would mean that the proceeding itself may become infructuous...**"

Therefore, the Hon'ble Apex Court, while reinforcing the law that the court acquires jurisdiction only after final adjudication by the Speaker on the claim of split/merger qua plea of defection, endeavoured to decide the validity of the order passed by the Speaker accepting claim of split keeping the adjudication on the plea of disqualification pending as well as in view of the fact that the term of the Assembly was going to expire soon; therefore, this judgement cannot be held to be precedent requiring this Court to examine the validity of the order dated 18.9.2019.

There is another angle of the matter also. The order dated 18.9.2019 being administrative in nature, has immunity under Article 212 of the Constitution of India and no such exceptional

circumstance, as laid down vide paragraph 431 of the Constitution Bench judgement of the Hon'ble Apex Court in case of Raja Ram Pal (supra), exists in the present case which may warrant interference. Even otherwise also, it is settled law that the writ jurisdiction of the High Court is confined to the final adjudication by the Speaker on the plea of disqualification and the proceedings prior to that are not amenable to the jurisdiction except in exceptional circumstances as provided by Hon'ble Supreme Court in the case of Kihoto (supra) in following terms:

> **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."**

In so far as contentions of the learned counsels for the petitioners that the order dated 18.9.2019 deserves to be quashed and set aside being violative of the principles of natural justice and suffering from the vice of non-application of mind; are concerned, suffice is to say that the order impugned does not decide any of the rival claims of the parties and cannot be treated as an

adjudication on the claim of merger. As already held, it simply records the claim by the respondents no.2 to 7 of the merger of BSP with the INC. The order reflects prima facie satisfaction of the Speaker as to the claim having actually been made by the respondents no.2 to 7 and he was not required to conduct any further inquiry in this regard at that stage in absence of any plea of disqualification. The Speaker being a non-partisan person, is not expected, in our constitutional scheme, to invite objection at the time of recording claim of merger for the administrative purposes. If the submission of the petitioners is accepted, it would inevitably invite inquiry at this stage which is totally unwarranted under the Tenth Schedule as well as the scheme of the Rules of 1989. This Court finds support from the judgement of the Hon'ble Punjab and Haryana High Court in case of Prakash Singh Badal (supra) as well as of the Hon'ble Gauhati High Court in case of Padi Richo (supra)in this regard. Therefore, the contentions, in this regard, deserve to be rejected.

Since, the order dated 18.9.2019 has been held to be an administrative order and not an order under paragraph 4 of the Tenth Schedule, this Court refrains itself from venturing into the question of its validity qua the parameters laid down therein.

Therefore, in view of the aforesaid analysis and also in view of the aforesaid settled and unexceptional position of law, this Court is of the opinion that it does not have jurisdiction either to interfere with the order dated 18.9.2019 or, to declare the respondents no.2 to 7 to be disqualified on the plea of their defection and the decision, in this regard, rests with the Speaker only under Tenth Schedule of the Constitution of India.

So far as validity of the order dated 22.7.2020 is concerned, the Hon'ble Supreme Court has, in case of Dr. Mahachandra Prasad Singh (supra), held as under:

> **"16.** Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said rule and sub-rule (6) of the same rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The heading of Rule 7 is 'PROCEDURE". Sub-rule (1) of this rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said Rule and sub-rule (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the

jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires."

A three-Judges Bench of the Hon'ble Apex Court in the case of Orissa Legislative Assembly (supra), was pleased to hold as under:

> **"19.** The aforesaid observation is precisely what we too have in mind, as otherwise, the very object of the introduction of the Tenth Schedule to the Constitution would be rendered meaningless. The provisions of sub-rules (1) and (2) of Rule 6 of the 1987 Rules have, therefore, to be read down to make it clear that not only a Member of the House, but any person interested, would also be entitled to bring to the notice of the Speaker the fact that a Member of the House had incurred disqualification under the Tenth Schedule to the Constitution of India. On receipt of such information, the Speaker of the House would be entitled to decide under Para 6 of the Tenth Schedule as to whether the Member concerned had, in fact, incurred such disqualification and to pass appropriate orders on his findings."

In view of the aforesaid dictum by the Hon'ble Apex Court, the order dated 22.7.2020, rejecting the disqualification application on the ground of violation of Rule 6(7) of the Rules of 1989, which does not go to the root of the matter, cannot be sustained in the eye of law. Even otherwise also, once, the factum of alleged defection was brought to the notice of the Speaker, he was under the constitutional obligation to adjudicate upon the same. In view of the law laid down by the Hon'ble Apex Court in case of Orissa Legislative Assembly (supra), the BSP is also entitled to raise plea of disqualification before the Speaker.

S.B. Civil Writ Petition No.8056/2020

Resultantly, the writ petition is dismissed. However, the petitioners are at liberty to file a disqualification petition with the

Speaker raising plea of defection of the respondents no.3 to 8. If any such petition is filed, the Speaker is expected to decide the same in accordance with law without rejecting it under Rule 6(2) of the Rules of 1989.

S.B. Civil Writ Petition No.8004/2020

This writ petition is partly allowed to the extent that the order dated 22.7.2020 passed by the Speaker is quashed and set aside. The Speaker is expected to take a decision on the disqualification petition filed by the petitioner within the period of three months from today as the outer limit fixed by the Hon'ble Supreme Court in para 28 of the judgement in Keisham Meghachandra Singh (supra) for decision on such petitions. Rests of the reliefs prayed for, are declined.

The application no.1/2020 stands disposed of accordingly.

(MAHENDAR KUMAR GOYAL),J

Ravi Sharma/1-2