(1992) 02 AHC CK 0038

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition no. 41 (MB) of 1991

Kailash Nath Singh Yadav		APPELLANT
	Vs	
Speaker, Vidhan Sabha, Lucknow and another		RESPONDENT

Date of Decision: Feb. 10, 1992

Acts Referred:

- Conduct of Elections Rules, 1961 - Rule 10, 5
- Constitution of India, 1950 - Article 102(2), 121, 124, 133(1), 136
- Members of Uttar Pradesh Legislative Assembly (Disqualification ofn ground of Defection) Rules, 1987 - Rule 3, 7
- Uttar Pradesh General Clauses Act, 1904 - Section 16, 21
- Uttar Pradesh Rajya Vidhan Mandal (Neta Virodhi Dalki Suvidhayan) Niyamavali, 1981 - Rule 3(2)
- Uttar Pradesh State Legislature (Members Emolument and Pension) Act, 1980 - Section 2H

Citation: AIR 1993 All 334

Hon'ble Judges: S.N. Sahay, J; D.K. Trivedi, J

Bench: Division Bench

Advocate: R.N. Trivedi and H.L. Srivastava, for the Appellant; Chief Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.N. Sahay, J.
This is a petition under Art. 226 of the Constitution for a writ of certiorari to quash the order dated 6th December, 1991 passed by respondent No. 1 as contained in Annexure-14.

2. The facts of the case, which have been set out in the writ petition, may be briefly stated as follows. The petitioner was elected to the U.P. Legislative Assembly in the elections held in May/June, 1991. The petitioner had contested on the Janta Dal ticket The Janta Dal is a National Party, recognized by the Chief Election Commissioner. In the Legislative Assembly the Janta Dal having 92 members emerged as the largest opposition party. The petitioner was elected as the Leader of Janta Dal Legislative Party in the Legislative Assembly on 25th June, 1991. He was recognised as Leader of opposition by respondent No. 1, who is Speaker of the Legislative Assembly. On 25th November, 1991 a letter was sent by 51 members of the Janta Dal Legislature Party in the Legislative Assembly to respondent No. 1 intimating that they have unanimously decided to remove the petitioner from the post of Leader of their party and as such the petitioner should not be recognized as Leader of the Janta Dal Legislature Party. This was contested by the petitioner in a letter dated 29th Nov. 1991 sent by him to respondent No. 1. He stated that there are 91 members of Janta Dal in the Legislative Assembly and 12 members in the Legislative council and the total number of members of the Janta Dal Legislature party is 103. The petitioner contended that no action should be taken on the aforesaid letter as the assent of at least 52 members was required for removing the petitioner from the post of Leader of Party. The petitioner had earlier sent a letter dated 26th Nov. 1991 to respondent No. 1 requesting him to declare 14 members of the Janta Dal Legislature Party including respondent No. 2 Sri Rewati Raman Singh, as unattached members on the ground that they have been expelled from the membership of the party. In the letter dated 29th November, 1991, the petitioner reiterated that these 14 members may immediately be declared as non-attached members. The respondent No. 1 directed the petitioner to furnish certain information as required under Rule 3 of the Members of U.P. Legislative Assembly (Disqualifications on ground of Defection) Rules, 1987. The information was duly furnished by the petitioner. After that the respondent No. 1 gave an opportunity to the petitioner and the 14 members concerned to appear and present their case before him. The impugned order dated 6th December, 1991 Annexure-14 was thereafter passed by respondent No. 1 after hearing the parties concerned.

3. It is stated in the impugned order that a show cause notice was issued to the 14 members concerned in view of the letter of the petitioner dated 26th November, 1991. Their reply was received on 16th December 1991, in which their expulsion from the membership of the Janta Dal Legislature Party was challenged. In the meantime, 56 members of the Janta Dal Legislature Party Physically appeared before respondent No. 1 on 5th December, 1991 and informed him that the Leader of the Party in the Legislative Assembly would be respondent No. 2 in place of the petitioner. The matter was considered by respondent No. 1, who after entering into a detailed discussion of the same, proceeded to pass, the impugned order. It was held by respondent No. 1-

(1) That a division has taken place in the U.P. Janta Dal Legislature Party before 25th Nov. 1991 and now there are two groups, which are transacting their business under the leadership of different persons and, therefore, it is directed that the group consisting of those members whose Leader is Sri Kailash Nath Singh Yadav, shall be recognized as Janta Dal (A) and the other group, whose Leader is Sri Rewati Raman Singh shall be recognized as Janta Dal (B) in the U.P. Legislative Assembly till further orders:

(2) That it is not necessary to give any decision with regard to the unattached status of 14 members, who are alleged by the petitioner to have been expelled;

(3) That since Janta Dal (B) has the largest numerical strength in the U.P. Legislative Assembly, its Leader respondent No. 2 shall be recognized as Leader of opposition.

(4) That the list of those 56 members, who have accepted Sri Rewati Raman Singh as their Leader and have been recognized as Janta Dal (B) is contained in Appendix-1 and the remaining 35 members of the Janta Dal in the U.P. Legislative Assembly shall be recognized as Janta Dal (A).

4. From a perusal of the impugned order, it will appear that it is in three parts. The first part is with regard to the finding recorded by respondent No. 1 that a there are two groups in the Janta Dal Legislative Party as a result of a division in the party which had taken place before 25th November, 1991. One of these groups consists of 56 persons, who have accepted Sri Rewati Raman Singh as their Leader. The other group consists of 35 persons who Leader is Sri Kailash Nath Singh Yadav. The second part of the impugned order is that the group, represented by Sri Kailash Nath Singh Yadav shall be known as Janta Dal (A) and the group represented by Sri Rewati Raman Singh shall be known as Janta Dal (B) in the U. P. Legislative Assembly till further orders. The third part of the impugned order is that Sri Rewati Raman Singh shall be recognized as Leader of opposition, It may be added that respondent No. 1 has not issued any direction with regard to the status of 14 persons in the Legislative Assembly, who are alleged by the petitioner to have been expelled from the membership of the Janta Dal Legislature Party. The impugned order has been challenged in its entirety by the petitioner.

5. In assailing the finding recorded by respondent No. 1 with regard to the division of the Janta Dal Legislature Party into the groups, the provisions of Tenth Schedule to the Constitution have been invoked on behalf of the petitioner. It is contended that the finding is without jurisdiction inasmuch as, it has been recorded in violation of the provisions of paragraph 3 of the Tenth Schedule and Rules 3 and 7 of the Memberss of Uttar Pradesh Legislative Assembly (Disqualification on grounds of Defection) Rules, 1987, which have been hereafter referred to as Tenth Schedule and Defection Rules for the sake of brevity and convenience.

6. A perusal of the provisions of the Tenth Schedule, would make it clear that it is necessary to appreciate the difference in the concept of political party, original

political party and Legislature Party. The concept of Political Party consists the core of other two aspects as without reference to a political party, no Legislature party or original political party can be conceived according to the clauses (b) and (c) of paragraph 1 of the Tenth Schedule. The expression ''Political Party'' has not been defined in the Tenth Schedule which is supplemental to the provisions of Arts. 102(2) and 191(2) of the Constitution and is a complete code with regard to disqualification on ground of defection: But clause (a) of the explanation to sub-paragraph (1) of para-graph-2 contains sufficient indication as to the manner in which a political party may be identified for the purposes of the provisions of the Tenth Schedule. According to the provisions of clause (a) referred to above, the elected members of the House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member. The provisions with regard to a nominated member of a House are contained in clause (b) of the aforesaid explanation. In clause (b) there is no elaboration of the words political party''. However, it cannot be deemed that it was contemplated to apply different standards for identifying a political party for the purposes of clause (a) and clause (b). Therefore, it may be taken to be a reasonable view that a political party which is recognized under the law as the political party for setting up a candidate for election as member of House of Parliament or State Legislature, as the case may be.

7. The setting up of a candidate for election as a member of the House relates to the conduct of election. It will be pertinent for the purposes of the conduct of elections to refer to the relevant provisions of the Constitution or to any law, which may be made by Parliament under Entry 72 of List I (Union List) or by the State Legislatrue under Entry 37 of List II (State List) of the VII Schedule to the Constitution. Such a law has been made by Parliament in the shape of the Representation of the People Act, 1951. The election contest is held in the eyes of law on individual basis, although in real life, for all practical purposes, the trial of strength is between the political parties, which enter the election fray. The allotment of symbols to the contesting candidates in accordance with Rules 5 and 10 of the Conduct of Election Rules, 1961 which have been framed under the said Act is in separable part of the election process and it is through the allotment of symbols that the political parties gain recognition and throw their weight in the election battle. Political parties arc recognised for the allotment of symbol in accordance with the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 which have been issued by the Election Commission of India under the said Rules. The provisions of paragraph 3 of this Order indicate that any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this order must possess some distinctive features for being characterised as a political party. These features inter alia are that the association or body must have a distinctive name, the political principles on which it is based, the policies, aims and objects it pursues or seeks to pursue, and its programmes, functions and activities for the purpose of carrying out its political principles, policies, aims and objects and

its relationship with the electorates and the popular support it enjoys. The identity of a political party is determined and recognition is given to a political party after considering these particulars and other relevant matters and the candidates set up by the political party concerned are allotted symbols accordingly.

8. The identity of the political party by which a candidate has been set up for election as a member of a House of Parliament or State Legislature may be affected or destroyed by split or merger as envisaged in paragraph 3 or paragraph 4 of the Tenth Scheduled. But in either case it is linked with the disqualification of a member on the ground of defection. The question whether there is split in or merger of a political party would be relevant under the provisions of the - Tenth Schedule for the purpose of deciding the main question as to disqualification. It appears to us that whether it is a faction which has arisen as a result of a split in the original political party or whether a new political party has been formed by merger of the original political party with another political party, the group representing the faction arising out of split or the new political party must ordinarily possess the characteristics for being recognized as a political party under the election law. In other words the criteria laid down in the abovementioned provisions of law may be fruitfully applied for deciding the question of split or merger also within the meaning of paragraphs 3 and 4 of the Tenth Schedule.

9. The basic rule for entering disqualification is enunciated in paragraph 2 of the Tenth Schedule and a member of the House becomes subject to disqualification, if he has voluntarily given up his membership of such political party or has voted or abstained from voting contrary to any direction? issued by the political party to which he belongs or by any authority/ authorised by it this behalf. The exceptions to the basis rule are given in a portion of paragraph 2 itself and also in paragraphs 3 and 4. The act of voting or abstinence from voting may be permitted or condoned by or on behalf of the political parties in the circumstances indicated in paragraph 2 and in that case it will not invite the penal consequences of disqualification. The conditions of split or merger, as the case may be which would save the members concerned from disqualification as explained in paragraphs 3 and 4 and as it is not quite relevant for the purposes of the present case, it is not necessary to elaborate the same.

10. Paragraph 6(1) of the Tenth Schedule confers jurisdiction on the Chairman or as the case may be, the Speaker of the House to decide the question as to whether a member of the House has become subject to disqualification under this Schedule and declares that the decision of the Chairman or speaker shall be final. The procedure for deciding any question referred to in paragraph 6(1), including the procedure for any enquiry, which may be made for the purpose of deciding such question, is to be regulated by the Rules framed by the Chairman or the Speaker under paragraph 8(1)(d) of the Tenth Schedule. It has been brought to our notice that the Defection Rules have been made by the Speaker of the U.P. Legislative

Assembly under paragraph 8(1)(d). If that be so, it cannot be denied that the learned counsel for the petitioner is right in his submission that where a question has been raised as to whether a member of the U.P. Legislative Assembly has become subject to disqualification under the Tenth Schedule, and such question has been referred to the Speaker for his decision under paragraph 6(1), the Speaker is bound to decide the question in exercise of his jurisdiction after observing- the procedure prescribed by the Defection Rules, including Rules 3 and 7 (on which reliance has been placed on behalf of the petitioner in this case).

11. The jurisdiction, of the Speaker had been made absolute by excluding the jurisdiction of all Courts under paragraph-7. of the Tenth Schedule and by providing further, by cheating a legal fiction under paragraph 6(2) of that Schedule, for applying the provisions contained in Art. 212 of the Constitution, that the Proceedings of the Speaker shall not be called in question on the ground of any alleged irregularity of procedure and that the Speaker shall not be subject to the jurisdiction of any court in respect of the exercise by him of his powers. Till recently it was thought that judicial review in such matters has been completely excluded although it was laid down long back In the matter of: Under Article 143 of the Constitution of India, that immunity from judicial interference is confined to matters of irregularity of procedure and there would be ho immunity, if the proceedings are held in defiance of the mandatory provisions of the Constitution or by exercising powers which the Legislature has not been granted by the Constitution or if the impugned procedure is illegal and unconstitutional. But the above theory of total immunity from judicial interference as been exploded by the declaration of law by the Supreme Court in the recent case of Kihota Hollohon v. Zachilhu (1991)4 SVLR (Civil) 214 wherein it has been laid down in the majority opinion as follows:--

"The Speakers/Chairman 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 Scheme in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairman Having regard to the Constitutional intendment and the status of the repository of the adjudicatory power, no quai time 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. That paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairman is valid. But the concept of statutory finality embodied in paragraph 6(1) does not detract from or abrogate judicial review under Arts. 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 In the matter of: Under Article 143 of the Constitution of India, to protect the validity or 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."

12. The learned counsel for the petitioner has also referred to Sub-Committee of Judicial Accountability Vs. Union of India and others, which relates to the construction of Arts. 121 and 124 of the Constitution and the Judges (Inquiry Act) 1968 in connection with the impeaching of a Judge of the Supreme Court. The learned counsel has submitted that in that case it was contended that the Constitutional process of removal of a Judge, both in its substantive and procedural aspects, is a political process within the exclusive domain of the Houses of Parliament. The conduct of the Speaker in regulating the procedure and business of the House shall not be subject to the jurisdiction of any Court. The Speaker of the Lok Sabha in the exercise of his power under the Judges (Inquiry) Act 1968 acts in an area outside the Court''s jurisdiction. There is nothings in the Judges Inquiry Act, 1968 which detracts from this doctrine of lapse. On the contrary the provisions of the Act are consistent with the Constitutional proposition. With respect of this contention, it was observed that the Constitutional process for removal of a Judge up to the point of admission of the motion, Constitution of the Committee and the recording of findings by the Committee art not, strictly proceedings in the Houses of Parliament. The Speaker is a statutory authority under the act. Up to that point the matter cannot be said to remain outside the Court''s jurisdiction.

13. It will be clear from the order of respondent No. 1 dated 4th December, 1991 (Annexure-11) and the impugned order dated 6th December, 1991 (Annexure-14) that respondent No. 1 had come to the conclusion that there are two groups in the Janta Dal in the Legislative Assembly and that these two groups had come into existence before 25th Nov. 1991. He had arrived at this conclusion in view of the facts that 51 members of the party had sent a letter dated 25th Nov, 1953 (although signatures of 49 persons only were found to be genuine) disowning the petitioner as Leader of the Party, that the petitioner had sent a letter dated 26th Nov. 1991 stating that 14 members had been expelled and that 56 out of a total of 91 members had physically appeared before respondent No. 1 to state that respondent No. 2, was their Leader and not the petitioner. We are unable to hold that the finding of respondent No. 1 regarding the existence of groups in the Janta Dal in the circumstances stated by him may be regarded as a finding under Paragraph 3 of the Tenth Schedule that the Janta Dal has split into two groups. It is remarkable that no decision has been given that the groups emerging in the Janta Dal, have acquired the identity of a new political party. It has not been shown to us on behalf of the petitioner that any question had been referred to the Speaker under paragraph 6(1) of the Tenth Schedule as to whether any member of the House has become subject to disqualification under that Schedule. In the absence of any such reference, the

Speaker would have no jurisdiction to decide whether any split has taken place within the meaning of Paragraph 3 and if so what is its effect on the alleged disqualification of the member concerned. It cannot be said that whenever the Speaker records a finding or makes an observation regarding the existence of groups in a Legislature Party, whether such a finding is given or : observation is made as a basis for taking some action other than an action under paragraph 6(1) or as collateral matter in some other proceeding, such a finding or observation would necessarily be a finding or observation under paragraph 3 of the Tenth Schedule. There is no gain saying that for invoking the jurisdiction of Court in order to challenge a decision given under paragraph 6(1) of the Tenth Schedule, it must be shown as a fact that the question whether a member of a House has become subject to disqualification under this Schedule, was referred to the Chairman or Speaker as the case may be and the impugned decision has been given in pursuance of such reference. There can be no presumption about the existence of jurisdictional facts and in the absence of a plea to that effect the court will not be justified in entertaining the matter and interfering with the impugned decision. It follows that if no reference has been made under paragraph 6(1) and no finding has been given in connection with the decision of that reference under paragraph 3 of the Tenth Schedule, the question of non-compliance of the provisions of Rules 3 and 7 or any other rule of the Defection Rules would not arise. If a claim had been made under paragraph 3 or paragraph 6(1), then in that case, the petitioner might have been justified in raising the contention that the decision of the Speaker is without jurisdiction for non-compliance with the mandatory provisions of law.

14. The learned counsel for the petitioner has next argued that it is the internal affair of the party as to who should be its Leader. It is stated that respondent No. 1 has held in his order dated 4th December, 1991 that the question whether the petitioner continued to be the Leader of the Party has to be decided in accordance with the Constitution of the Janta Dal Legislature Party. It was also held by him that the meeting of 25th Nov. 1991 at which the petitioner is said to have been removed from the post of Leader of the Party was not held in accordance with the Constitution of the party and so the decision to that effect taken in the said meeting was of no consequence. It was also contended that the impugned order amounts to a review of the earlier order dated 4th December, 1991 and the finding that the Janta Dal had split into two groups before 25th Nov. 1991 is not in consonance with the earlier order. Accordingly it was submitted that respondent No. 1 could not have taken upon himself the responsibility of conducting the internal affairs of the Janta Dal Legislature Party and deciding as to who is its Leader.

15. We agree with the contention of the learned counsel that the party has a right to choose its leader and no outsider can interfere with the same. The question of leadership is to be decided by he party itself in accordance with the Constitution or rules regulating its affairs. This was the view taken by respondent No. 1 also in his order dated 4th December, 1991 and it was on the basis of this view that he

recorded the finding that the removal of the petitioner from the post of Leader of the Party in the meeting of 25th Nov. 1991 being not in accordance with the party Constitution was illegal. But he found, as observed in the impugned order, that the existence and validity of the Party constitution itself (on which the petitioner had placed reliance) was under challenge by the group led by respondent No. 2 and so it was not possible to take any immediate action on the basis of that constitution in accordance with the earlier order. Therefore, in view of the fact that there are two groups in the Janta Dal, the respondent No. 1 proceeded to decide that until further orders the group of 56 members who have declared respondent No. 2 to be their Leader would be known as Janta Dal (B) and likewise the group of the remaining 35 members who have accepted the petitioner as their Leader would be known as Janta Dal (A). The question about the status of 14 members alleged by the petitioner to have been expelled from the membership of the party, along with several other matters, has been left undecided. It is significant that no decision has been given by respondent No. 1 as to who is or shall be the Leader of Janta Pal. The impugned decision is also provisional. There can be no doubt that recognition of parties or groups is a matter pertaining to the conduct of business of the House and may be regulated by the Speaker within the parameters of the constitution. We cannot go behind the impugned order and read something between the lines. We have accordingly come to the conclusion that the impugned order does not interfere with the right of the members of the Janta Dal to manage to affairs of the party and choose their own Leader. It is a different matter that when respondent No. 1 gives his final decision, there may be a change in the situation which may affect the rights of the parties and which may warrant judicial interference. At this stage, we express no opinion and entertain no such apprehension.

16. The last contention of the petitioner is that he is entitled to be treated as Leader of opposition in the U. P. Legislature Assembly and the decision of respondent No. 1 to the the contrary is bad in law. The office of Leader of opposition is not a Constitutional office in the sense that it has not been created by the Constitution. It owes its existence to Parliamentry convention according to which he is Leader of the largest recognised opposition party in the House. Nevertheless the role of Leader of opposition party is of undoubted importance as he is the official spokesman of the minority party and is intimately connected with the conduct of business of the House. He has not certain in preferential rights. For instance, he is sworn immediately after the Chief Minister, he has the preferential right to address the House and he is entitled to rank and status of a cabinet Minister. He is regarded as the shadow Prime Minister and has to be prepared to take up the responsibility of forming a Government, if his party secures a majority at the election or if the Government resigns or is defeated at the floor of the House (See May''s Treatise on the Law, Privileges, proceedings and Usage of Parliament and Kaul and Shakdher''s Practice and procedure of Parliament).

17. Statutory recognition has now been accorded to Leader of Opposition in Uttar Pradesh for the purposes of salary and amenities as has been done in England and in the case of Parliament and other States in our Country. Section 2(h) of the U. P. State Legislature (Member''s Emolument and Pension) Act, 1980 provides that the Leader of as opposition means the Member of the Assembly or the Council who is for the time being recognized as such by the Speaker or the Chairman as the case may be. A leader of opposition is entitled to salary and constituency allowance, telephone facilities and other amenities in accordance with the relevant Rules of 1981 made under the said Act, copy of which has been filed as Annexure 1 to the writ petition. Therefore there can be no doubt that Leader of Opposition is a very important Parliamentary functionary and if a person holding that office is derecognized, it entails serious consequences depriving him of status, rank and pecuniary rights and other facilities.

18. Section 2(h) of the abovementioned Act enables but does not make it incumbent upon the Speaker or Chairman to recognize a member as Leader of Opposition. The Act contains no guideline for according such recognition. The power conferred by Section 2(h) is a discretionary power and is like any other statutory power to be exercised bona fide and in reasonable manner. If the power is exercised arbitrarily, it will infringe Article 14 of the Constitution and would be liable to be struck down. In the absence of any statutory guideline, it would be a reasoanable exercise of power u/s 2(h) if recognition is given to a Member as Leader of Opposition in conformity with the well established Parliamentary conventions which are not in conflict with and do not contravene the provisions of the Constitution or any other law for the time being in force. A provision analogous to that of Section 2(h) contained in Bihar Legislature (Leaders of the Opposition Salary and Allowances) Act, 1978 came up for consideration before the Patna High Court in Karpoori Thakur v. State, AIR 1983 Pat 86. It was held that the basis of recognition is not the Act in question but the prevailing practice and convention and therefore, if the Speaker recognizes any person as Leader of Opposition, he has to follow the requirements of such practice and convention also.

19. Although the Act does not contain any express provision to that effect, the recognition which is accorded by the Speaker or Chairman u/s 2(h) may be subsequently- withdrawn. Rule 3(2) of the U.P. Rajya Vidhan Mandal (Neta Virodhi Dal Ki Suvidhayan) Niyamavali, 1981 clearly indicates that the recognition may be withdrawn by the Speaker or Chairman. The circumstances in which the recognition may be withdrawn by him are not given in the Act row Rules but the Rules of statutory interpretation which are well settled and which are embodied in Sections 16 and 21 of the U. P. General Clauses Act, 1904 would indicate that withdrawal of recognition may be effected in like manner and subject to like sanction and conditions (if any) under which the recognition was given.

20. It is not disputed that the Speaker accorded recognition to the petitioner as Leader of Opposition on the ground that he was the Leader of Janta Dal, which is the party in opposition having the largest numerical strength. When it was discovered by respondent No. I while exercising the powers of Speaker that there are two groups in the Janta Dal and respondent No. 2 has been accepted by the group which has the largest numerical strength, he decided to recognize provisionally respondent No. 2 as Leader of opposition. In doing so, respondent No. 1 did not give up the principle on the basis of which a member is to be recognized as Leader of Opposition. The impugned order suggests the inference that he recognized that both the groups are of the same party. He has not held that by reason of the existence of the two groups, the identity of the Janta Dal has been broken or any change in the political character or integrity of the party has been brought about. Under these circumstances, it cannot be said that respondent No. 1 has exceeded his jurisdiction in recognizing respondent No. 2 as Leader of Opposition until further orders for the conduct of business in the Assembly.

21. The Speaker of the Legislative Assembly is a creature of the Constitution and he has no powers other than what has been conferred on him by or under the Constitution. There are certain powers which are conferred by the Constitution itself for instance, Articles 199 and 210. There are certain other powers which are conferred on the Speaker by the Acts, of Legislature passed in pursuance of the Constitutional provisions. There are yet certain other powers which have been reserved to the Speaker under the Rules of procedure etc. made under Article 208 of the Constitution. Even if the Speaker purports to exercise any power on the basis of Parliamentary conventions, it must be consistent with and not repugnant to the Constitutional and statutory provisions.

22. Under Article 208(1), a House of the Legislature of a State may make Rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business. The words "procedure" and "conduct of business" has been separately used. This indicates that these two words are to be given different connotations, even if they may in their import, overlap to some extent, so that the unhampered functioning of the Legislature as an organ of the State is ensured. The words "conduct of business" must be given the widest possible meaning which may fulfill the intendment and mandate of the Constitution consistent with its provisions and must refer to the business of the House, both inside and outside, unless the context otherwise requires. As a corollary Article 212 has been incorporated in the Constitution to fulfill the purpose of Article 208 and to achieve the independence of the Legislature in acting in its own sphere. According to clause (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. Clause (2) of the same Article lays down that no officer or member of the Legislature of a 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. The words ''proceedings in the Legislature'' used in clause (1) must necessarily refer, in the context in which they have been used, to the proceedings that take place in the House itself. But the same restricted meaning cannot in the very nature of things be given to the words procedure or the conduct of business'' used in clause (2).The context indicates that these words have reference to the powers which are vested in an officer or member of the legislature by or under the Constitution in respect of procedure or conduct of business. In order to ascertain such powers, reference will have necessarily to be made to the Rules made under Art. 208(1). In that view of the matter, the meaning which is to be assigned to the words ''conduct of business'' in Art. 208(1) are carried and are borne by those words in clause (2) of Art. 212 also. In other words, it cannot be said that the words ''conduct of business'' used in Art. 212(2) have a limited meaning and are to be confined to the conduct of business within or inside the House alone. The position with regard to maintenance of order is also different; for maintaining order is an expression which must have reference to the proceedings inside the House.

23. The leader or opposition in a Parliament any functionary inextricably connected with the business of the House and its functioning. According recognition to a member of the House as Leader of Opposition is a function which relates to the conduct of business of the House. Whatever is done by . the Speaker who is an Officer of the Assembly is done by him for carrying on the business of the House as understood in the wider seen, except in regard to those functions which he has to perform under the Constitution, in his own right as Speaker or as a statutory authority under any law for the time being in force. It has already been noticed that the statutory recognition given to the Leader of Opposition has not made any substantial changes as to the manner in which recognition may be given to him by the Speaker. Thus, when the Speaker accords recognition to a member of the House as Leader of Opposition, he exercises power with respect to conduct of business of the House. That being so, he shall not be subject to the jurisdiction of any court in respect of the exercise, by him of that power in view of the mandatory provisions of clause (2) of Art. 212. If a member-of the House has any grievance against the action of the Speaker in exercise of the powers vested in him, it is open to such member to ventilate his grievance and seek redress in some other appropriate forum according to law. In view of the aforesaid discussion we have come to the conclusion that the petitioner has failed to make out a case for our interference in the exercise of jurisdiction under Art. 226 of the Constitution.

Before parting with the case, we must record our appreciation of the valuable assistance, which we have received from Sri R. N. Trivedi, learned counsel for the petitioner, who has argued the case for several days.

The writ petition fails and is accordingly dismissed. No order as to costs.

24. Petition dismissed.