(1997) 03 GUJ CK 0008

Gujarat High Court

Case No: None

Dilipsinh Vakhatsinh Parmar		APPELLANT
	Vs	
Gumansinh Vaghela Hon''ble Speaker, Gujarat Legislative Assembly and Others		RESPONDENT

Date of Decision: March 17, 1997

Acts Referred:

- Constitution of India, 1950 - Article 122, 13, 136, 143, 180(2)

Citation: (1998) 3 GLR 2119

Hon'ble Judges: R.A. Mehta, Acting C.J.; R.K. Abichandani, J

Bench: Division Bench

Judgement

R.K. Abichandani, J.

All these seven petitions have been heard together and are being disposed of by this common judgment at the instance of both the sides. The Learned Counsels for both the sides have referred to the papers filed in the main matter Special Civil Application No. 1837 of 1997 for the purpose of their arguments.

2. These identical petitions seek to challenge the order passed by Hon''ble the Speaker of the Gujarat Legislative Assembly on 24th February 1997 which is at Annexure "A" to the petition by which these petitioners were in response to their letter dated 20th February 1997 addressed to Hon''ble the Speaker informed by him that he did not find it proper at that stage to change the sitting arrangement under which these petitioners were allotted their seats with the Mahagujarat Janata Party in the House. A declaration is also sought that these petitioners continued to be the members of the Bharatiya Janata Party and that they were entitled to sit with the members of the Bharatiya Janata Party in the House. By an amendment a further prayer is sought, seeking a direction that the names of the petitioners should be

deleted from the list of the members of the Mahagujarat Janata Party and be entered in the list of members of the Bharatiya Janata Party in the roll of the Gujarat Legislative Assembly. By a further amended prayer, the petitioners seek a direction for setting aside the order of the Hon''ble Speaker published in the bulletin dated 18th February 1997 at Annexure V to the affidavit-in-reply of the respondent No. 3 President of the M.J.P., by which-the Hon''ble Speaker declared the earlier order dated 3rd September 1996 giving recognition to the separate group of Dilipbhai Parikh as operative and directed the Secretary of the Legislative Assembly to make the sitting arrangements in the House accordingly.

All these petitioners were admittedly elected as the candidates of the Bharatiya Janata Party ("B.J.P." for short) in the Assembly elections of 1995. It is their case that the B.J.P. secured an absolute majority by obtaining 121 seats in a House of 182 in which the Congress Party secured 45 seats and 16 independent candidates were elected. According to the petitioners, at a meeting of the B.J.P. legislators on 18-8-1996 which was attended by 97 M.L.A.s, who were elected as the candidates of the B.J.P. Atmaram Patel, C.K. Raulji, Mansinh Chauhan, Vipul Chaudhary and some others were expelled from the party for anti-party activities. On that day itself between 7-00 to 10-00 p.m. four M.L.A.s led by Shri Atmaram Patel, submitted a memorandum to His Excellency the Governor alongwith a list of M.L.A.s alleging that a separate group representing faction consisting of not less than one-third of the members of the B.J.P., was constituted under the name of Mahagujarat Janata Party in the Gujarat Legislative Assembly and that the present ruling party was reduced in strength to 75 members and had lost majority in the House. The Governor was, therefore, requested to take appropriate action in this regard. It was also stated that necessary application for being recognised as a group representing the faction which had formed into Mahagujarat Janata Party ("M.J.P." for short) in the Assembly was being made to Hon''ble the Speaker. According to the petitioners, as soon as they came to know about this move, they and others wrote letters disputing their signatures contained in the list forwarded to the Governor.

It appears that His Excellency the Governor forwarded papers to the Speaker for verification of the signatures. The D.O. letters dated 24th, 26th and 27th August, 1996, written by the Principal Secretary to the Governor to the Secretary of the Assembly regarding verification of names and signatures of M.L.A.s on the documents appended to those letters are referred in the communication dated 30th August, 1996 sent by the Secretary of the Assembly Mr. V.H. Dave to the Principal Secretary to the Governor of Gujarat. Under the said communication, it was informed that all the signatures of M.L.A.s excepting the signature of the M.L.A.s at Serial No. 40 on the memorandum and resolution which were forwarded with the letter dated 24th August, 1996, appeared to be resembling to the signatures on the available record of the Secretariat and that it was difficult to verify the signature appearing at serial No. 40 since it was in English while the Secretariat records had signature of that person in Gujarati. As regards the signatures of 13 members on

identical letters forwarded to the Assembly Secretariat, it was informed that they appeared to be resembling to the signatures of those members as per the Secretariat records. In respect of five letters forwarded under D.O. letter dated 26th August, 1996, it was informed that the five signatures of those letters appeared to be resembling to the signatures of those members. It was further informed that though the Hon''ble Speaker had not been requested to verify the claim regarding the split in the legislature party, it was for him to decide the question of split. It was also stated that 18 members out of the members who had signed the resolution forming a new party had personally met the Hon''ble Speaker on 26th August, 1996 claiming that they had not joined the new party.

The leader of the M.J.P. had handed over application dated 18th August, 1996, according to the Learned Counsel appearing for him, to the Speaker in the Assembly on 3-9-1996, by which the Hon''ble Speaker was requested to treat the group representing the faction named M.J.P. arisen as a result of a split in the original political party, as a separate political party in the Assembly and to allot separate seats in the House to the members of the M.J.P. Alongwith that application, it is alleged that necessary information with the declarations of the respective members was forwarded with the resolution of the M.J.P. Xerox copies of these papers are placed on record on behalf of the respondent No. 3 Dilipbhai Parikh and the original documents are not forthcoming, in view of the contention of the Hon''ble Speaker voiced through the learned Additional Advocate General that This Court has no jurisdiction to go into this aspect, since the action impugned by the petitioners is not any action taken by the Hon''ble Speaker as a Tribunal under Schedule X of the Constitution of India. The petitioners'' case is that they had not furnished any such forms and that signatures of five of the petitioners were forged while the signatures of two of them were obtained under duress.

On 31 st August, 1996, Mr. Dilipbhai Parikh filed Special Civil Application No. 6599 of 1996 challenging the communication dated 30th August, 1996 sent to the Private Secretary to the Governor of Gujarat by the Secretary of the Assembly Mr. V.H. Dave. In that petition, a statement came to be made by the learned Additional Advocate General on 18-9-1996 that the opinion expressed in the letter dated 30th August, 1996 issued by the Assembly Secretary on the direction of the then Speaker of the Assembly was only a tentative opinion of Hon''ble the Speaker in response to the Governor''s enquiry and had nothing to do with the finding on the disqualification application moved by the respondent No. 5 of that petition (Mr. Haren Pandya) and that the decision on incurring of disqualification by some of the members of the Legislative Assembly shall be taken by the Speaker in accordance with law. This fact is recorded in the order of Hon''ble Mr. Justice R. Balia, made on 18-9-1996 by which the petition was dismissed as not pressed, leaving all the parties open to raise their respective contentions as and when occasion for raising such contention arises. In the meantime, it appears that on 3-9-1996 an Assembly meeting was convened according to the petitioners to enable the then Chief Minister to prove his majority

on the Floor of the House and a whip was issued by the B.J.P. to its members to remain present and vote in favour of the motion of confidence which was to be moved by the then Chief Minister on that day.

3. On 3rd September, 1996 when the House convened at 10 a.m., the Deputy Speaker Shri Dabhi took the Chair in absence of the Speaker of the House Mr. H.L. Patel, who was unwell. At that time on being asked by Shri Dilipbhai Parikh as to what was done regarding his letter, the Hon''ble the Deputy Speaker made a declaration stating that he was asked by the Secretary to the Assembly to act as a Speaker and that in context thereof Shri Dilipbhai Parikh and others had met and spoken to him and in that regard he had a declaration to make that the group of Dilipbhai Parikh was in context of their representation and verification of signatures of 46 members, recognised by him and he was issuing instructions for making a separate sitting arrangement for them. Immediately thereafter there was commotion and interruption and the House was adjourned sine die at 10-04 hrs. Instruction was issued in writing on 3-9-1996 by him to the Secretary of the Assembly to the effect that since he had made the declaration about recognition of the group of 46 members in the House, the Secretary should implement the order of recognition of the said group and make necessary separate sitting arrangement for the group. Alongwith this order he forwarded to the Secretary the application for recognition of the group, a copy of the Constitution of the new group and forms. The House was reconvened by the Speaker at 3-00 p.m. but again the Deputy Speaker, who chaired the House in absence of the Speaker adjourned it sine die preventing the confidence motion from being voted upon, according to the petitioners.

On 4-9-1996, the then Chief Minister addressed a letter to the Speaker Mr. Harishchandra Patel for declaring the recognition of the group given by the Deputy Speaker as null and void and requesting him not to allot separate seats for that group. The leader of the newly formed group also addressed a letter to the Hon''ble the Speaker on 5-9-1996 requesting him not to accede to the letter of the Chief Minister dated 4-9-1996 and contending that the action of the Deputy Speaker in absence of the Speaker was not without authority in view of Rule 13 of the Assembly Rules. The Speaker was also requested not to take any adverse decision in the matter before hearing the M.J.P. From a copy of the bulletin issued on 9-9-1996, it appears that the Secretary of the Assembly notified the order of Hon''ble the Speaker made on 4-9-1996 to the effect that the proceedings done by the Deputy Speaker in absence of the Speaker on 3-9-1996 were not in consonance with the provision of Article 180(2) of the Constitution and that the action of the Deputy Speaker in giving recognition to the group and directing separate sitting arrangement for them in the House was ex-facie without authority and unconstitutional. A direction was, therefore, given not to provide for any separate sitting arrangement as sought for by the group.

As noted above, on 18-9-1996, a statement was made in a writ petition filed by Mr. Dilipbhai Parikh, on behalf of the Speaker that his opinion was only tentative and that it had nothing to do with the application moved by a member (M.L.A. Mr. Haren Pandya respondent No. 5 in that petition) and that the decision on incurring of disqualification by members will be taken by the Speaker, in accordance with law. On 16th September, 1996, unfortunately, the Hon''ble Speaker Shri H.L. Patel, had passed away. On that day itself, the Acting Speaker issued orders which were published in the bulletin dated 18th February, 1997. In response to the representation of Shri Dilipbhai Parikh made on 16th September, 1996, it was declared therein that the order of the Speaker declaring the earlier order dated 3-9-1996 recognising the group as null and void, was to be treated as inoperative and the earlier order dated 3-9-1996 was to be treated as operative and that separate sitting arrangement should be made for the group by the Secretary of the Assembly. It appears that on 10-9-1996, 7 M.L.A.s of the B.J.P. had filed F.I.R. in the Gandhinagar Police Station, alleging that their signatures which appeared on the memorandum submitted on 18-8-1996 to His Excellency the Governor, were forged. On 18th September, 1996 the confidence motion moved by the then Chief Minister was passed by 92 votes as per the letter of the Secretary to the Assembly dated 18-9-1996 at Annexure "M/l" to the petition.

On 18-2-1997, a letter was addressed by the B.J.P. to the Speaker for making sitting arrangement for 77 M.L.As of the B.J.P. On that day itself, another letter was sent to the Secretary of the Assembly asking him to make arrangements for allotting 77 seats for the B.J.P., alleging that confusion was being created in the question of allotment of seats so that M.L.A.s are frightened and can be pressurised to change their loyalty. It was also alleged that the action was taken by Hon''ble the Speaker with a view to affect adversely the B.J.P. and to protect his own interest in the disqualification petition which was filed against him. The petitioners had also written a letter to the Speaker regarding sitting arrangement on 20-2-1997 in response to which the impugned communication dated 24th February, 1997 was sent to the petitioners by the Secretary of the Assembly on instructions from Hon''ble the Speaker, informing them that as per the orders of the Hon''ble the Speaker, they were members of the M.J.P., and the names of the members were published and further that the stand taken up by the petitioners that they had never joined the M.J.P., was not consonant with the record of the Assembly Secretariat and therefore, until the claim of the petitioners was proved, the Hon''ble the Speaker did not find it proper to make any change in the existing sitting arrangement.

4. The contention of the petitioners is that the impugned decision of the present Speaker to allot seats to the seven petitioners with the M.J.P., on the assumption and basis that they are members of the M.J.P., and not of the B.J.P., is virtually a decision under paragraph 6 of the Tenth Schedule. It is their case that they have never been with the M.J.P., and have all along continued to be with the B.J.P. Five of the petitioners have denied their signatures and have alleged forgery and two of the

petitioners have while not denying their signatures, disputed the voluntariness by pleading duress. The alleged verification of signatures by the then Speaker as reflected in the letter of the Secretary of the House addressed to the Private Secretary to the Governor, confirmed that all the signatures except at Sr. No. 40 which could not be verified, were similar to the admitted signatures on the record of the Assembly.

It is submitted by the petitioners that they have been elected as the members of the Legislative Assembly as B.J.P. candidates and until it is finally proved that they have voluntarily given up the membership of their original party B.J.P., they have to be treated as B.J.P. members and they cannot be treated as members of the M.J.P. Treating them as the members of the M.J.P. would be virtually deciding and accepting the defence of "split" in the disqualification proceedings, according to the petitioner. It is further submitted on their behalf that since the Speaker himself (who is the Tribunal under the Tenth Schedule) has taken this decision, it should be treated as a decision under the Tenth Schedule. Since the said decision is taken without any hearing and without recording any evidence, it is wholly and utterly illegal. It is also submitted that such decision is void because of violation of principle of natural justice and is biased and mala fide which makes it subject to judicial review in view of the ratio of the decision of the Supreme Court in Kihota''s case (supra).

The Learned Counsels appearing for these petitioners have contended that the impugned action of the Speaker of branding these petitioners as members of the. M.J.P., and part of the group led by Dilipbhai Parikh was an action relatable to the provisions of Schedule X of the Constitution. It was submitted that the said action was motivated and aimed to bringing about a situation where these petitioners could be disqualified as members under Schedule X. It was submitted that the impugned action of the Speaker, was not a simple arrangement of allotment of seats to the petitioners, but it amounted to telling the petitioners that they belonged to the M.J.P., while according to them, they always belonged to the B.J.P. It was submitted that the impugned orders made by the Deputy Speaker were wholly without jurisdiction, because the Deputy Speaker in the absence of the Speaker could only conduct the routine business of the House and had no authority to discharge functions of the Speaker acting as a Tribunal under Schedule X. It was submitted that the question of split in a political party contemplated in Schedule X could be decided only by the Speaker acting under Schedule X and not by Deputy Speaker. It was also submitted that on the very day on which the memorandum was submitted to His Excellency the Governor, i.e., on 18-8-1996 itself, as many as 18 members who were said to have crossed over to the M.J.P., had declared that they were with the B.J.P., and had not defected. It was, therefore, submitted that when declaration was made on 3-9-1996 by the Deputy Speaker while chairing the House in absence of the Speaker, it was a mala fide declaration not borne out by the facts. It was submitted that the Deputy Speaker could not have decided that these

petitioners belonged to the M.J.P. It was also submitted that without deciding the question as to whether the signatures were forged and some of them were obtained under duress, the Deputy Speaker could not have even asked the petitioners to sit with the M.J.P. in the House. The Learned Counsel for the petitioners placed reliance on a decision of the Bombay High Court in Pramod Murlidhar Jagtap and Etc. Vs. State of Maharashtra and Others, , in which it was held, in context of notice of resignation from Zilla Parishad, that even assuming that the resignation letters were signed by the members, they could change their mind before their delivery and withdraw the resignations and that voluntariness was not sufficient to be expressed only qua signing the resignation letter, but it must be apparent even thereafter till their delivery and acceptance by the competent authority. The Learned Counsel for the petitioners also relied upon the decision of the Supreme Court in Shri Kihota Hollohon Vs. Mr. Zachilhu and others, , in support of their contention that the power to resolve the question of disqualification due to defection vested in the Speaker and that it was judicial power, the exercise of which was amenable to judicial review under Articles 136, 226 or 227 of the Constitution. It was submitted that there was no immunity from judicial scrutiny available to any order made under 10th Schedule. It was submitted that the impugned order at Annexure "A" was not merely a procedural matter but it substantively affected the petitioners'' right by their being grouped with the M.J.P. It was also argued that the recognition of the M.J.P. group was on the basis of the allegation that there were not less than l/3rd of the members of the B.J.P. who had constituted the group known as M.J.P., and this was germane to the considerations that would arise in a disqualification petition under the Tenth Schedule of the Constitution. It was further submitted that since the Hon''ble the Speaker did not produce on the record of these petitions the original documents including forms allegedly containing the signatures of the petitioners, an adverse inference should be drawn to the effect that the petitioners had never signed those documents and that they continued to remain with the B.J.P. Relying upon the decision of the Supreme Court in Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, it was contended by the Learned Counsel for the petitioners that judicial review is permissible if an order was passed under paragrapgh 6(1) of the Tenth Schedule in violation of the principles of natural justice. Reliance was also placed on the decision of the Supreme Court. In re: Under Article 143, Constitution of India reported in In the matter of: Under Article 143 of the Constitution of India, in support of their contention that no privilege could be claimed in respect of the impugned action under the provisions of Article 194(3) of the Constitution and that the Rules made under Article 194(3) must be subject to the fundamental rights of the citizen.

5. On the other side, it is submitted that on the question being raised in the House regarding the sitting arrangement, the Presiding Officer has to decide that question. The Presiding Officer has to take some decision one way or the other regarding allotment of seats to 46 members said to be the signatories and seven members

disputing the same. Whatever be that decision, it would be a decision to allot the seats and make sitting arrangement only for the purpose of the proceedings, conduct and regulation of the business of the House. The decision can be either way. These seven petitioners could have been allotted seats either with the B.J.P., or with the M.J.P., or separately, but, such a decision would not in any way mean that the Speaker has decided as a Tribunal under the Tenth Schedule that they continue to be with the B.J.P., or that they ceased to be in the B.J.P., or that they had become members of the M.J.P.

The learned Additional Advocate General appearing for the Hon''ble Speaker, contended that the Speaker has not taken any decision on the question of disqualification of any member under Schedule Tenth. It was submitted that the impugned action has no nexus with any question of disqualification that may arise under Schedule Tenth in the petitions pending before the Speaker for the disqualification of the members. It was submitted that the impugned action of requiring.the petitioners to sit with the group of the M.J.P. in the Assembly was merely an order of the Presiding Officer issued in context of Direction 30(3) under which he had recognised the legislative group. It was submitted that the Directions by the Speaker as Presiding Officer have been issued in view of Rule 56 of the Gujarat Legislative Assembly Rules, which empowers the Speaker to issue Directions relating to the detailed working of the Rules. It was submitted that the Assembly Rules were framed under Article 208 of the Constitution by the Assembly for its procedure and conduct of business. Therefore, an order recognising a group passed by the Speaker or the Deputy Speaker acting as a Speaker under Article 180(2) of the Constitution was essentially a matter pertaining to the internal proceedings of the House and conduct of its business. Therefore, the orders issued by the Speaker which are challenged in these petitions, cannot be enquired into, by the Court, in view of the provisions of Article 212 of the Constitution read with Article 194(3) thereof. It was submitted that in such matters of internal proceedings, the Speaker and the Legislature are privileged and their action cannot be scrutinised by the Court. Reliance was placed in support of this contention on the decision of the Allahabad High Court in Kailash Nath Singh Yadav Vs. Speaker, Vidhan Sabha, Lucknow and another, , in which it was held that when the Speaker accords recognition to a member of the House as leader of the opposition, he exercises power with respect to conduct of business of the House and 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 Article 212 (2) of the Constitution. He also relied on the decision of the Punjab and Haryana High Court in Parkash Singh Badal and Others Vs. Union of India and Others, in which it was held that an order recognising a splinter group on an application made by that group, was not an order under paragraph 6 of the Tenth Schedule and that the Speaker would have jurisdiction under para 6 only if any question arises as to whether a member of the House incurred disqualification.

The Learned Counsel appearing for the respondent No. 3 - leader of the splinter group, contended that Direction 30(3) of the Directions issued by the Speaker, empowered the Speaker to give recognition to a new party or group and even if any error was committed by the Speaker in recognising the group or allotting the seats in the Assembly, that was not subject to any judicial review. It was submitted that the impugned action under the letter dated 24-2-1997 or the recognition under the order dated 3-9-1996 of the group of the M.J.P. reiterated on 16-9-1996 were all protected from judicial review in view of Article 212(2) of the Constitution inasmuch as these actions of the Speaker pertained to regulation of the procedure or the conduct of business in the legislature. He relied upon the decision of the Bombay High Court in Surendra Vassant Sirsat of Mapusa, Goa Vs. Legislative Assembly of State of Goa, and the decision of the Allahabad High Court in Mohammad Yasin Vs. The Dist. Magistrate, Kanpur and Another, , in support of his contention.

6. Under Article 208(1) of the Constitution, rules of procedure can be made by a House of Legislature of a State for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business. Under Article 194(3) the House of Legislature of a State and its members have powers, privileges and immunities as may be defined by the legislature by law and until so defined those which prevailed immediately before the coming into force of Section 26 of the Constitution (Forty-Fourth) Amendment Act, 1978. Prior to that amendment, under Article 194(3), the power, privileges and immunity of the House of Commons of Parliament of United Kingdom and its members at the commencement of the Constitution were incorporated by reference. In re: Under Article 143 of the Constitution of India (supra) the Supreme Court held that if the legislature of the State were to make a law in pursuance of the authority conferred on it by Clause (3) of Article 194, it would be law within the meaning of Article 13 and Clause (2) of Article 13 would render it void if it contravenes or abridges the fundamental rights guaranteed under Part III. It was held that Article 208(1) makes it perfectly clear that if the House were to make any rules as prescribed by it, those rules would be subject to the fundamental rights guaranteed by Part III. In context of Article 212(1) it was held that the said provision seems to make it possible for a citizen to call in question in the appropriate Court of law, the validity of any proceedings inside the legislative chamber, if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a Court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular (See paragraph 62 of the judgment of the Supreme Court).

7. The Gujarat Legislative Assembly Rules framed under Article 208(1) of the Constitution came into force from 1st January, 1966. Under Rule 8 it is provided that the members shall sit as the Speaker may determine. Rule 13 provides that the Deputy Speaker and any Chairman of the Assembly shall, when presiding over the

Assembly, have the same powers as the Speaker when so presiding and all references to the Speaker in the Rules shall, in the circumstances, be deemed to be references to any such person so presiding. By Rule 56 it is provided that all matters not specifically provided for in these Rules and all questions relating to detailed working of the Rules shall be regulated in such manner as the Speaker may, from time to time, direct. The Directions by the Speaker have been published by the Secretariat of the Gujarat Legislature and Direction No. 30 which is relevant for the purpose of these petitions relating to recognition of legislature party or group reads as under:

30.(1) The Speaker may accord recognition as a legislature party to any political party which has been recognised by the Election Commission as an All India Party or a State Party if the number of members of such Party in the Legislature is not less than one-tenth of the total number of members of the House.

(2) The Speaker may accord recognition as a legislature group to any political party which has been recognised by the Election Commission as an All India Party or a State Party if the number of members of such party is not less than 10.

(3) In respect of members who are not covered by (1) and (2) above and who desire to form an association and be recognised as such, the Speaker may recognise them as a party if their strength is not less than one-tenth of the total number of members of the House, or as a group if their strength is not less than 10:

Provided that such members:

(a) shall give an undertaking to the Speaker that they shall function in the House as an organised party or a group having a common approach on the problems arising in the House,

(b) shall supply a copy of the Constitution of the party or group including its aims and objects,

and

(c) shall communicate to the Speaker the names of the office-bearers.

8. Tenth Schedule was added in the Constitution of India with the object of combating the evil of political defections as per the Statement of the Objects and Reasons for these provisions. Paragraph 2 of the Tenth Schedule provides for disqualification on the ground of defection. Under paragraph 6, the Speaker is authorised to decide the question about disqualification of a member under the Schedule. It also provides that where the question about disqualification of the Speaker arises, it shall be referred for the decision of such member of the House as the House may elect in that regard. Under paragraph 6(2) the proceedings under sub-paragraph (1) of para 6 in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in

Parliament, within the meaning of Article 122 or as the case may be, proceedings in the legislature of a State within the meaning of Article 212. Paragraph 7 provided a bar on the jurisdiction of the Courts. Para 8 authorises the Speaker to make rules for giving effect to the provisions of the Tenth Schedule, inter alia, for the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong. These rules must be laid before the House and can become effective only on its approval, as provided by sub-paragraph (2) of paragraph 8. In exercise of the powers conferred by paragraph 8 of the Tenth Schedule, the Speaker of the Gujarat Legislative Assembly has framed rules called "The Gujarat Legislative Assembly Members (Disqualification on Ground of Defection) Rules, 1990". Under Rule 5(2) of these Rules particulars and declarations as in Form HI are required to be furnished by every member who takes his seat in the House before making and subscribing an oath or affirmation under Article 188 of the Constitution. Under Rule 6, the Secretary of the House has to maintain, in Form IV, a register based on the information furnished under Rule 3 to the Speaker by the political parties and under Rule 5 by members to the Secretary. As provided by Rule 7(1), 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 Rule 7. Rule 8 prescribes the procedure for deciding the petition for disqualification. The disqualification if ordered under the Tenth Schedule, would be a disqualification for membership under Article 191(2) of the Constitution. Article 191(1) also enumerates the disqualification for members but the decision on any of the disqualifications mentioned in Clause (1) of Article 191 is to be taken by the Governor on the question being referred to him, as provided by Article 192. So far the disqualification under Article 191(2) is concerned, the matter is within the domain of the Speaker when the question is referred to him under para 6(1) of the Tenth Schedule. Therefore, the question of disqualification under the Schedule which can be raised before the Speaker under para 6(1) thereof, cannot be referred to the Governor and the Governor will have no power to decide that question which falls under Article 191(2) of the Constitution.

9. The power of the Speaker to adjudicate upon the disqualification of a member of the House on the ground of defection is regulated by the provisions of the Tenth Schedule. When the Speaker decides that question on a reference being made to him, he does not undertake a mere procedural exercise but deals with a substantial matter affecting rights of a member of the House, which may lead to his disqualification under Article 191(2) and a consequent vacancy in the House. When the exercise to decide the question as to disqualification of a member on the ground of defection is undertaken by him under paragraph 6(1), the Speaker acts as a Tribunal, as held by the Supreme Court, in Kihota Hollohon (supra) and the concept of statutory finality embodied in paragraph 6(1) will not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as

infirmities based on violations of Constitutional mandates, mala fides, non-compliance with rules of natural justice and perversity are concerned. There is no immunity under Article 212 of the Constitution from judicial scrutiny of any decision of the Speaker under paragraph 6(1) of the Tenth Schedule. The Supreme Court, however, held that judicial review should not cover any stage prior to the making of a decision by the Speaker, and having regard to the Constitutional scheme 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 consequences. The scope of such judicial review would be confined to jurisdictional errors only. If there is mere procedural irregularity in arriving at such decision, the protection of Article 212(1) would extend to such proceedings and the Courts will be debarred from examining the validity of the decision on the grounds of procedural lapse. In Ravi Naik''s case (supra) the Supreme Court in paragraph 18 of its judgment, in context of the Disqualification Rules, observed that they are framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6.

10. The Tenth Schedule does not provide for recognition of a group or party. Therefore, there is no question of Speaker recognising any group or party under the Tenth Schedule. Under Schedule Tenth, the Speaker does not give recognition to a group or party but only decides that aspect for ascertaining whether a particular member was disqualified on the ground of defection. In case where there is no reference made regarding disqualification of any member, mere recognition of group by the Speaker or his requiring the members to sit with a group recognised by him would not by itself amount to a proceeding under paragraph 6(1) for declaring a member to be disqualified. It is only when the question regarding disqualification of a member on the ground of defection is referred to the Speaker under paragraph 6(1) and a defence is taken by him under para 3(1) by the member that he and others constituting not less than l/3rd of the members of the legislative party have split from the original political party that the occasion arises for the Speaker to examine whether in fact there was such split. If after the enquiry into that claim the Speaker holds that there was such split of not less than l/3rd of the members of the legislative party at certain point of time, from the time that the new faction had arisen, it will be deemed to be, a political party to which such member belongs. Therefore, if such member again defects, that would be a defection from the deemed political party, which will be treated as his original party for deciding any further question that may arise under paragraph 3 of the Tenth Schedule in context of such member who claims that there is a further split of that new faction

of which he and others constitute a group of not less than l/3rd of the members of such deemed legislative party being the first mentioned faction. In the process of his enquiry, under paragraph 6(1) read with paragraph 3, the Speaker would naturally examine as to which was the original political party to which the members whose disqualification due to defection is alleged, belonged. He has also to examine as to whether a faction had arisen as claimed under para 3 and if yes, when. He will have to, on the basis of objective material on record before him produced during such enquiry, ascertain who of the members of the original political party had defected within the meaning of Clauses (a) and (b) of para 2 of the Tenth Schedule and whether they constituted a group of not less than l/3rd of the members of such legislative party.

11. The maintenance of the Register in Form IV under Rule 6 of the Disqualification Rules is only a ministerial act of the Secretary of the Assembly and there is no adjudicatory process involving the Speaker contemplated by Rule 6. Therefore, when a question arises under paragraph 3 read with paragraph 6(1) of the Tenth Schedule, the member against whom defection is alleged, can always point out as to which was the party to which he belonged, as also that the Secretary of the Assembly has not maintained the Register properly or has made an improper change therein. In short, it will be for the Speaker to enquire into the facts and form his decision on the basis of objective material which would be subject to judicial review as held by the Supreme Court.

12. The orders impugned in these petitions have not been made by the Speaker in any proceeding arising under the Tenth Schedule and are not even remotely concerned with any exercise of the power of the Speaker to enquire into the claim of the member about split under paragraph 6(1) read with paragraph 3 of the Tenth Schedule. These orders are essentially in the nature of requiring these members to sit in a particular group and are by their very nature, an interim arrangement and cannot prejudice the claim of the petitioners that they belonged to a particular party and had not defected. That question as and when gone into by the Speaker under paragraph 6(1) read with paragraph 3 will have to be decided by him in a judicial manner, in consonance with the principles of natural justice and independent of the directions issued by him for effecting a sitting arrangement. These orders cannot in absence of a decision under the Tenth Schedule, have any effect on the question of disqualification and no defection can be inferred under the Tenth Schedule merely from the fact that the Speaker had directed them to sit in a particular way. The orders dated 24th February, 1997 should be read only as an internal arrangement asking the members to sit with the group which was recognised by the Speaker on 3-9-1996 under Direction 30(3) of the Directions by the Speaker, issued under Rule 56 of the Assembly Rules. Even if the Speaker had committed an error in recognising a group under Direction 30(3) or in directing the petitioners to sit in that group, that would only be a matter having bearing on the conduct of business and sitting arrangements of the House and will by itself not bring about any split or

disqualification contemplated by the Tenth Schedule. The orders of the Speaker under Direction 30 do not affect any rights of the members of the legislature party. The question of disqualification, however, is a substantive matter to be dealt with under the Tenth Schedule and will affect the rights of the members against whom defection is alleged. Therefore, the question of split arising under paragraph 3 of the Tenth Schedule read with paragraph 6(1) thereof is required to be examined by the Speaker judicially. These orders recognising the group or asking the petitioners to sit with that group issued under Direction 30 would, therefore, be wholly irrelevant for the purpose of the enquiry by the Speaker that may be undertaken under the Tenth Schedule as to whether and when the faction had arisen which obviously would be prior in point of time to the order issued by the Speaker for recognition of the group or of requiring the petitioners to sit in that group. In other words, any order of the Speaker recognising a group or requiring some members who according to him belonged to that group, issued under Direction 30 will be wholly irrelevant for the purpose of adjudicating upon the question whether the faction contemplated by paragraph 3 of the Tenth Schedule had arisen prior to such order made for regulating the sitting of the House and such order can never be a substitute or base for a finding of the Speaker on the question of split while acting as a Tribunal under paragraph 6(1) and considering the question of split in a claim of the member made under paragraph 3 of the Tenth Schedule.

13. It will thus be noticed that a Speaker of the House has two entirely different capacities - one as the Presiding Officer of the sitting of the House, and another as the Tribunal to decide the questions of disqualifications due to defection and the defences to it including the question of split. In view of the pronouncement of the Supreme Court in the case of Kihota Hollohon (supra), there can be no doubt that the final decision of the Tribunal under the Tenth Schedule is subject to judicial review to the extent mentioned therein, and also any interlocutory decision of disqualification or suspension having irreversible consequences. But then, it must be an irreversible decision of disqualification under the Tenth Schedule to enable the Court to judicially review it. To arrive at any such decision under the Tenth Schedule, elaborate procedure is laid down including a notice of one month. After following the judicial procedure in respect of pleadings, examination and cross-examination of witnesses and hearing, the Speaker as a Tribunal will decide the question. This would be a judicial proceeding outside the House and its final or irreversible orders would not be immune from judicial review.

As against that, there are internal proceedings in the House and conduct and regulation of business in the sittings of the House which are to be regulated by the Presiding Officer of the House, who may be the Speaker or the Deputy Speaker or anyone from the panel prepared by the House for such purpose. His decisions and rulings regarding the conduct and regulation of business and sitting arrangement for members are not judicial and cannot be the subject-matter of judicial review. The purpose underlying the procedure and the nature of power in such matters are

entirely different and the ratio of Kihota''s judgment of the Supreme Court does not apply to such internal proceedings.

14. Thus, there are two different areas, viz., (1) the judicial proceedings before the Speaker functioning as the Tribunal under the Tenth Schedule to decide the question of disqualification of a member and (2) the regular internal proceedings inside the House under the Presiding Officer, who conducts and regulates them and makes the sitting arrangements. The first may be subject to judicial review, the second is not.

15. The order recognising a ground or a party under Direction 30(3) can be made at any time during the life of the House. There is no reason to confine that provision only to initial recognitions when the House is formed. The material on record would show that the exercise undertaken for recognition of a group was in context of the Direction 30(3) only, for the purpose of recognition of the group and re-allocation of seats. The question of disqualification does not arise at that stage and certainly not at their own instance. It can arise only in the petition for disqualification against them when filed. As observed above, mere recognition of group or allotment of seats with that group even if erroneous, would not debar a member from putting up his claim that he continues to be a member of the original political party and had not joined the faction that had arisen. To interject at this stage, will in our view, amount to pre-empting any proceedings that may be undertaken by the Speaker under the Tenth Schedule. The orders made under Direction 30 are essentially for regulating the internal proceedings of the House. The matter of recognition of groups and prescribing sitting arrangements by the Speaker for the purpose of conducting the business of the House, is not any direction of the Constitution or the Law, but is a matter left to the House which by its Rules of Business has enabled its Presiding Officer to issue such directions. A rule of Parliamentary law (i.e., the customs and usages of the Parliament), is a rule created and adopted by the legislative body which it is intended to govern. It is different from a provision of the Constitution, which people have set up as defining and limiting powers and duties of the legislature. The former is subject to revocation or modification at the pleasure of the body creating it, while the latter is the law of its being, and prescribes the terms on which it has power to act at all, as considered in Constitutional law. These rules are merely procedural and in nature of bye-laws prescribed for the orderly and convenient conduct of the proceedings of the legislature. Such rules and directions are subject to revocation, modification and waiver at the pleasure of the body adopting them. The proper method of taking exception to any obnoxious ruling of a Presiding Officer would be to approach the Assembly itself. It will not be appropriate for the Court to disturb the orders made under such procedural rules as the Courts generally do not concern themselves with violations of Parliamentary Rules in deliberative proceedings and this would be so whether such Rules are codified in the form of a Manual or formally adopted or whether they consist of a body of unwritten customs or usages preserved by tradition. The legislatures have an

inherent right to conduct their internal affairs without any interference from any outside body. Exclusive jurisdiction of the House in such internal matters is a necessary bulwark of the dignity and efficiency of the House and essential for the discharge of its function and based on necessity. The House should be free to interpret its own rules of proceedings and the Court cannot foist upon it its own understanding of such procedural rules. The Court cannot sit in appeal over such orders of the Speaker for alleged errors in administering the Assembly rules and directions.

16. If the petitioners are right in contending that the Speaker having allotted them seats with the M.J.P., has finally decided that they have ceased to be the members of the B.J.P., same situation will arise if the Speaker were to allot them seats with the B.J.P., because in that event, it could be contended that he had finally decided that they continued to be with the B.J.P. The Presiding Officer has to take some decision one way or the other when such changes take place, but, that would only be for the purpose of the sitting arrangements in the House and regulation of its business. If prima facie the signatures tally, and duress is yet to be established, and the present Speaker has followed the earlier decisions dated 3-9-1996 and 16-9-1996 of the previous Presiding Officer regarding allocation of seats to these petitioners, it cannot be said that at this stage any question is decided by him under the Tenth Schedule.

17. In view of the above discussion, we are of the opinion that the impugned orders do not decide or affect any question that arises under the Tenth Schedule in the disqualification petitions which are pending before the Speaker. The apprehensions or the doubts of the petitioners, because of the events and expressions, have no legal basis because it is clear that while making sitting arrangements or allocation of seats in the House, the Presiding Officer does not decide and has not decided any question under the Tenth Schedule. A similar situation had arisen when the previous Speaker late Shri H.L. Patel, had used similar expressions creating similar apprehensions in the minds of the other group and writ petitions (Special Civil Application No. 6599 of 1996 and another) were filed challenging that decision, in which it was made clear by the then Speaker by a statement made in the Court through the learned Additional Advocate General, that the opinion of "no split" of the Speaker in the letter dated 30-8-1996 was only tentative and it had nothing to do with the disqualification petitions which shall be decided in accordance with law. In the present case, the present Speaker has taken care to see that until it is proved as to whether there is a split or not, this new sitting arrangement is made. When a question arises or is raised in the House regarding sitting arrangement, the Speaker as the Presiding Officer has to decide that question as a question in the conduct of business of the House and such decision is not a decision under the Tenth Schedule and it is only a decision under Direction 30(3) which cannot be a subject of interference by This Court in view of the provisions of Article 212 of the Constitution. There are serious questions to be tried as to whether there is forgery, duress or

withdrawal of alleged voluntary signatures, its effect and as to whether, and if so, when and where the split had taken place. Till those questions are decided, the House has to function and the Presiding Officer has to conduct and regulate its proceedings and allot and re-allot seats. These are purely internal matters of the House under full and exclusive control of the Presiding Officer and the Court cannot interfere with the same. Therefore, the preliminary objection raised on behalf of the Speaker against the impugned action is required to be upheld.

18. The Speakers hold a pivotal position in the Constitutional scheme of Parliamentary democracy and are considered to be the guardians of the rights and privileges of the House and its members. It would, therefore, be inappropriate to distrust such high constitutional office merely because some lapses are alleged to have occurred in the past which may create a doubt in the minds of parties that the incumbent did not on some occasion discharge his functions in keeping with the great traditions of that office.

The grievance of the petitioners is that they cannot be compelled to be grouped with the M.J.P. by the Speaker when their case is that they never went to the M.J.P. from the B.J.P. There are serious disputes and doubts about this matter which could be resolved only if a question arises in this regard under the Tenth Schedule. However, if the petitioners say that whatever be the dispute and contentions of the other side, they are B.J.P. members and now want a sitting re-arrangement on that basis without prejudice to the rights and contentions of all the parties, they can even now appropriately request the Presiding Officer to allot them seats accordingly and take the consequences thereof in case the split is established in a proceeding under the Tenth Schedule. If no split is established, obviously, there will be no adverse consequences against the petitioners. In fact, the willingness of the Speaker to consider such request, if made, was conveyed in the Court through the learned Additional Advocate General.

19. We make it clear that we have not gone into the merits of the disqualification petitions pending before the Speaker under the Tenth Schedule and no observation made in this judgment shall prejudice any party in any manner in the proceedings under the Tenth Schedule.

20. In view of the above discussion, the contentions raised on behalf of the petitioners cannot be accepted and these petitions are accordingly disposed of. Notice is discharged in each of them with no order as to costs.