
(2007) 06 KAR CK 0060

Karnataka High Court

Case No: Writ Petition No. 10686 of 2006

Sri. A.K. Subbaiah

APPELLANT

Vs

The Chairman,
Karnataka Legislative
Council and Sri. Arun
Machaiah, Member,
Karnataka Legislative
Council

RESPONDENT

Date of Decision: June 8, 2007

Acts Referred:

- Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 - Rule 6, 6 (2)

Citation: AIR 2007 Kar 145 : (2007) 5 KarLJ 554 : (2007) 4 KCCR 255 SN

Hon'ble Judges: H.V.G. Ramesh, J

Bench: Single Bench

Advocate: B.A. Bellappa, for the Appellant; Ramesh. B. Annappanavar, AGA for R-1, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

H.V.G. Ramesh, J.

In this petition, petitioner has sought for issuance of writ of certiorari to quash the order passed by the 1st respondent dated 16.6.06 at Annexure "B" and also to issue writ of mandamus declaring Sub-rule (2) of Rule 6 of The Karnataka Legislative Council (Disqualification of members on the ground of defection) Rules, 1986 ("Rules" for short) as violative of the Tenth schedule of the constitution in so far as the petitioner is concerned and for such other reliefs.

2. The petitioner is said to be a former member of the Karnataka legislative Council and a practicing Advocate and has been in public life raising several social issues since 45

years; he said to have filed a petition dated 11.1.06 before the 1st respondent i.e., the Chairman of the Karnataka legislative Council seeking suo-motu action on the question of disqualification of 2nd respondent from being a member of the house on the ground of having defected by joining a political party as per paragraph 2(2) of the Tenth schedule of the Constitution since the 2nd respondent said to have contested the elections for being elected as a member in the Karnataka Legislative Council from the local authorities" constituency as an independent candidate and was declared elected in the said elections and after being so elected as an independent candidate in the elections held on 30.11.03, joined the Janatha Dal (S) party on 12.11.05 and also its party National President has announced his induction into the party fold on 13.11.05. According to the petitioner, after filing the petition before the 1st respondent/Chairman of the legislative council he did not hear anything from him and on 17.6.06 from the media he noticed that petition filed by him has been dismissed by the 1st respondent and the same was conveyed to the press and to the visual media by the 1st respondent himself; on enquiry, he came to know that on 16.6.06 1st respondent had passed an order rejecting his petition on merits and also on the ground of maintainability stating that petitioner has no locus standi to file the petition. According to the petitioner, the 1st respondent has predetermined to dismiss the petition filed by him and proceeded to pass an impugned order on an erroneous understanding of the rules and the mandate of the provisions of the Tenth schedule of the Constitution. It is alleged that the term of the 1st respondent speaker was to expire on 17.6.06 and was seeking re-election to the house from the assembly constituency and the voters are the MLA"s and accordingly, the 1st respondent was reelected and he was the official candidate of the congress party and it was announced that the 1st respondent is the 4th candidate whereas the congress party had the strength to elect merely 3 candidates. According to the petitioner, since the 1st respondent had to rely upon the votes of Janata Dal (S) in his endeavor to please them he has favoured the 2nd respondent by passing the impugned order which is actuated by malafides; the 1st respondent without issuing any notice to the petitioner and without giving an opportunity to him of being heard has acted merely on the letter issued by the National President of Janata Dal (S) wherein it is stated that 2nd respondent has not joined his party. According to the petitioner, he had clearly stated in his petition that he has evidence to produce and will produce the same whenever he is called upon to do so and that he is in possession of video tapes to show the public statements made by the 2nd respondent which would clearly indicate that he had joined the Janatha Dal(S) party. He submits that without affording an opportunity to produce the material evidence available with him, the 1st respondent rejected the petition on the ground that petitioner not being a sitting member of the house lacked the locus standi to maintain the petition for disqualification as per the provisions of Sub-rule (2) of Rule 6 of The Karnataka Legislative Council (Disqualification of members on ground of defection) Rules 1986. Further, while referring to the judgment of the Gauhati High Court in the case of Banjak Phom and Ors. v. The Nucho and Ors. the petitioner submitted that the Gauhati High Court held that the said rule is in total violation of paragraph 6 of the Tenth schedule of the Constitution and it is aimed at destroying the very objective of 52nd Amendment of the Constitution and the impugned

order passed is wholly impermissible and detrimental to the interest of the petitioner. Accordingly, on various grounds the petitioner has filed this petition seeking the above prayers.

3. Statement of objections has been filed by the Government stating that the petition is not maintainable and the petitioner is not entitled for the relief as sought for. The petitioner in the present case did not make a petition as contemplated under Rule 6 of the Rules. However, referring to the rules, it is stated that Sub-clause 13, 6 and 7 of the Rules are not complied with by the petitioner by his letter dated 11-1-2006 addressed to the first respondent. Therefore, the first respondent cannot exercise his power under Rule 6 of the said Rules and suo-motu disqualify the second respondent. It is stated that the petitioner has not made any petition as required under the provisions of Rule 6 of the said Rules to the first respondent. As such the question of giving an opportunity of hearing to the petitioner before passing the impugned order does not arise and the first respondent has no jurisdiction to take action on the letter written by the petitioner, which is not in conformity with Rule 6 of the Rules. Further it is stated that the petitioner was not a member of Legislative Council as required by the relevant rules, as such, he had no right to raise the question of disqualification against the second respondent.

The first respondent, in his order recorded a finding in that there is a reference to the grievance of the petitioner and also having noticed the letter issued by the President of Janata Dal (S) to the effect that the second respondent neither joined the Janata Dal (S) party nor an associate member of Janata Dal (S) rejected the petition as there is no prima facie case against the second respondent. Further, according to the first respondent, an enquiry on the letter written by the petitioner does not arise and admittedly when the alleged incident has taken place outside the house, there is no provision under the Rules to take cognizance of the same and initiate action for disqualification against the second respondent as requested by the petitioner and the petitioner has not produced any document like payment of membership fee for joining the political party nor produced any document relating to the involvement in the said party. As such, the first respondent could not pass any disqualification order, merely based on some news items appeared in the press. Therefore, the complaint cannot be entertained under Rules and the order passed by the first respondent is in accordance with law and the petitioner is not entitled for any relief as sought for. It is stated that there is neither arbitrariness nor violation of principles of natural justice or fundamental rights nor there is violation of any provisions of the Rules and the second respondent has not suffered any disqualification as per Article 102 of the Constitution of India.

Accordingly justified the action of the first respondent.

Referring to Articles 102 and 191 of the Constitution of India it is stated that even breach of oath by a member or a minister is not a ground for disqualification under the said rules and under Article 191, no writ can be issued to remove him on that ground in view of the law laid down by the Punjab Haryana court in the case of [Hardwari Lal Vs. Ch. Bhajan Lal](#)

[and others](#), In view of the articles stated above and in the absence of any discrimination or unreasonableness shown by the petitioner, the petitioner is not entitled for any relief and the petition is also not maintainable. Accordingly, resisted the petition.

4. On behalf of the second respondent, Sri. Nataraj, learned Counsel has submitted that the order of the first respondent does not suffer from any infirmity nor the order is ill-motivated or perverse. The complaint filed by the petitioner is based on the press report in which there is no authenticity in the allegation made in the petition. As per the Rules framed under the above said rules only a member of the Legislative Council would file a petition as per Rule 6 of the Rules, 1986 holds that it is only intelligible differentia to avoid vexatious complaints and it is subject to satisfaction of the Speaker either to give an opportunity to the complainant/petitioner to have his say in the matter. Moreover the petitioner is not a member of Legislative Council as contemplated under Rule 6 of the Rules. The complaint is ill-motivated and even the National President of Janata Dal (S) has given a letter in support of the case of the second respondent to the effect that the second respondent has not joined Janata Dal (S) as such the question of suffering any disqualification or defection does not arise to disqualify the second respondent from his membership and the petition submitted by the petitioner has been rightly rejected by the first respondent/Speaker, as the Rule mandates that only a MIC to file a petition and it does not enable any other person to file such petitions and rule is not violative to the Tenth schedule and does not suffer from any arbitrariness as it is only in the form of reasonable classification and it does not suffer from any vice or discrimination.

5. In the light of the arguments advanced by both the advocates for the respective parties, let me to consider:

1. Whether Rule 6 of the Rules is violative of mandate of Tenth schedule in restricting the other persons to file a petition except the member of the Legislative Council?

2. Whether the impugned order passed by the first respondent is justified?

6. The learned Counsel for the petitioner, in support of his arguments has relied upon a decision reported in [Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others](#), in which the Apex Court has held that

Goa Legislative Assembly (Disqualification on Grounds of Defection) Rules (1986) have been framed under paragraph 8 of the Tenth Schedule 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 to the Constitution. 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. Moreover, the field of judicial review in respect of the order passed by the Speaker under sub-paragraph (1) of Paragraph 6 is confined to breaches of the constitutional mandates, male fides, non-compliance with Rules of

Natural Justice and perversity. The violation of the Disqualification Rules does not amount to violation of constitutional mandates. If it be held otherwise it would be elevating the Rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under Paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule.

It is further held that -

Principles of natural justice have an important place in modern Administrative Law. They have been defined to mean "fair play in action". An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairman by Paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.

7. In the decision reported in [Shri Kihota Hollohon Vs. Mr. Zachilhu and others](#), wherein the Apex Court with reference to the validity of 52nd amendment to the Constitution, Articles 105, 194 and 19 read with Tenth Schedule, it has held that Paragraph 2 of the Tenth Schedule to the Constitution is valid and its provisions do not suffer from vice or subverting democratic rights of elected member Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience and also upheld the validity of the Tenth Schedule and held that the provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections. Further, in the said decision, the Apex Court with reference to paragraph 6(1) of the Tenth Schedule has held 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 or constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned.

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 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 or 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.

The scope of judicial review under Articles 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

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 any 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."

8. In the petition, the petitioner has referred to the judgment of Gauhati High Court in Banjak Phom and Ors. v. The Nucho and Ors. , which is extracted hereunder:

There is nothing in paragraph 6 or any of the other provisions in Tenth Schedule to limit the jurisdiction of the Speaker to decide a question of disqualification only on a petition filed by a Member of the House. There is nothing in these provisions to indicate that Speaker cannot act suo-motu if the conditions requisite for disqualifications come to his notice by some process or the other. To hold otherwise would, we are afraid, amount to reading something into Tenth Schedule which is not there and would also amount to frustrating the very object of 52nd Constitutional amendment. The object is to preserve democratic structure of the legislature and safeguard political morality in legislators. If motion by the member of the House is pre-requisite for an order of disqualification being

passed by the Speaker all that is necessary is that there should be a gentleman's agreement between the members not to complain to the Speaker about any member incurring disqualification. Such a narrow interpretation of the provisions of paragraph 6 of Tenth Schedule cannot be accepted.

9. Let me extract Paragraphs 6 and 8 of the Tenth Schedule of the Constitution of India and the provisions of Rules viz., the Karnataka Legislative Council (Disqualification of members of the ground of defection) Rules 1986 for reference.

Paragraph 6 of Tenth Schedule to the Constitution reads thus:

6(1) If any question arises as to whether a member of a House has become subject to disqualification under the Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which, has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212.

The Commentary in Shorter Constitution by Durga Das Basu reads as under:

Power conferred on Chairman/Speaker: The power conferred on the Chairman of the Rajya Sabha the Speaker of the Lok Sabha to decide whether a Member of either House of Parliament has incurred any disqualification does not make him an authority competent to remove such a Member.

Judicial review of Speaker's decision: It is now settled that, notwithstanding the finality clause in Clause 6(1) or the nonobstante clause in Clause (7) of Schedule X, the decision of the Speaker under Paragraph 6 is open to judicial review by the Supreme Court under Article 136 on the ground of jurisdictional errors, e.g. -

(a) That it is ultra vires, i.e., in contravention of a mandatory provision of the Constitution which confers the power on the Speaker to make the impugned decision (paragraph 4)

The Rules framed by the Speaker under Paragraph 8(1) to provide the procedure for exercising the power conferred on him by Paragraph 6(1) do not constitute any mandatory provision of the Constitution.

(b) That it is vitiated by mala fides or colourable exercise of the power, being based on extraneous or irrelevant considerations [Para 41].

(c) That the decision is perverse, or based on no evidence.

(d) That it is violative of the rules of natural justice (Para 41)

The breach of procedural Rules, as such, do not constitute rules of natural justice, in this context (Para 20)

On the other hand, the Speaker's decision disqualifying a member cannot be challenged on the ground -

(i) That the order of the Speaker was passed in the face of an interlocutory order from the Court to maintain the status quo, when that order was not passed at the instance of or for the benefit of the petitioner.

(ii) That the Speaker has merely made an error of law which does not affect its jurisdiction or render his decision a nullity (Para 41)

Procedural Rules made under Para 6 (1) (Para 20)

(iii) That the Speaker referred to newspaper photographs in order to determine whether the petitioner had, by his conduct, voluntarily given up the membership of his party (Para 27).

II. It is to be noted, in this context, that the Constitution Bench in Kihota's case (Paras 41, 42, pp.451, 70, 65, 92) has opined that the Speaker's decision shall be subject to judicial review on the grounds as specified before, not only by the Supreme Court under Article 136 but also by the High Court under Articles 226, 227.

Where in the case of defection of some of the members of a political party and Speaker giving recognition to the split group and there being difference of opinion among the members of the Bench, the matter was referred to the Constitutional Bench.

Speaker's power to Review - While functioning under Schedule X, para 6 as a statutory authority, the Speaker has no power to review his decision on the question of disqualification of a member.

Onus - 1. The burden under Para 2 lies on the person who claims that an M.L.A. has incurred disqualification (para 38).

2. The burden under Para 3, on the other hand, lies on the Member who claims that because of a split in the Party, Para 2, is not attracted and, therefore, he has not been disqualified (para 38). Paragraph 8 of the Tenth schedule reads as under:

(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for -

(a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in Clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the reports which a political party shall furnish with regard to admission to such political party of any member of the House and the officer of the House to whom such reports shall be furnished; and

(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of Article 105 or, as the case may be, Article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.

Rule 6 of the Karnataka Legislative Council (Disqualification of members of the ground of defection) Rules 1986 reads as under:

(1) No reference that a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member.

(2) The petition may be made in writing to the Chairman by any other member.

(3) The petition should contain a concise statement of material facts on which the petitioner relies.

(4) It should be accompanied by copies of documentary evidence on which the petitioner relies.

(5) If the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person should be given.

(6) The petition shall be signed by the petitioner and verified in the manner laid down in the CPC for verification of pleadings.

(7) Every Annexure to the petition shall be signed by the petitioner and verified in the same manner, as the petition.

10. These Rules are framed acting under paragraph 8(1) of Tenth Schedule to the Constitution, which came into force on 2nd April 1987 made by the Chairman of the Karnataka Legislative Council. The definition Clause 2(g) refers to member means a member of the Karnataka Legislative Council.

11. The petitioner has sought for initiating suo-motu action against Respondent No. 2. It is clear that action sought against Respondent No. 2 is not in respect of an in-house proceeding to take note of the same and to initiate action. Even otherwise the rules provided under the Rules, 1986 has to be followed to take such action. However, as it is a matter of evidence and proof, the Chairman has to act as Tribunal and it is for the petitioner to prove his case by availing an opportunity on such receipt of notice by Chairman in the course of enquiry to arrive at a decision of disqualification. In that view of the matter, initiation of suo-motu action by the Chairman may not be called for.

12. In Paragraph 6 of the Tenth Schedule as per the Commentary, it is noted that the Speaker has no power to review his decision on the question of disqualification of a member. However, it is for the person who alleges that a member of the house, MLA or MLC suffers disqualification for defection as per the Tenth Schedule, the burden is on him to prove the same. Under such circumstances, asking the Chairman of the House to initiate suo-motu action against Respondent No. 2 for disqualification may not arise. Since, it is held that any voter or citizen can move for disqualification, necessarily the petitioner would be entitled to maintain a petition before the Chairman and the Chairman in turn has to initiate proceedings. However, it is for the Chairman to comply with the principles of natural justice in taking a decision. What can be questioned is only the procedure that would be followed and not the order/decision. However, in the facts and circumstances of the case, if the petitioner is interested in prosecuting the matter further, he can approach the Chairman by filing an application, seeking for an opportunity to prove his case. In the earlier application, the petitioner had sought for initiation of suo-motu action against Respondent No. 2. In the context that may not be possible as it

is for the petitioner to prove the case by availing the opportunity. In a recent decision reported in [Sri Rajendra Singh Rana and Others Vs. Swami Prasad Maurya and Others](#), the Apex Court held that -

A proceeding under the Tenth Schedule to the Constitution is one to decide whether a Member has become disqualified to hold his position as a Member of the Parliament or of the Assembly on the ground of defection. The Tenth Schedule cannot be read or construed independent of Articles 102 and 191 of the Constitution and the object of those articles. A defection is added as a disqualification and the Tenth Schedule contains the provisions as to disqualification on the ground of defection. 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 claim 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 one-third of the Members of the Legislature of that party, or that the party has merged with another political party and hence paragraph 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 cannot be said that under the Tenth Schedule to the Constitution, the Speaker has an independent power to decide that there has been a split or merger of a political party as contemplated by paragraphs 3 and 4 of the Tenth Schedule to the Constitution. The power to recognize separate group in Parliament or Assembly may rest with the Speaker on the basis of 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. The whole proceeding under the Tenth Schedule to the Constitution is initiated or gets initiated as a part of disqualification of a Member of the House. That disqualification is by way of defection. 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 merger. The Speaker acts under the Tenth Schedule only on a claim of disqualification being made before him in terms of paragraph 2 of the Tenth Schedule.

13. The main grievance of the petitioner in the instant case is the decision of the first respondent Chairman in not giving him an opportunity to have his say in the matter on the ground that Rule 6 does not permit any other person to file a petition and it is only the Member who should file a petition is in violation of the Tenth Schedule. He further states that the decision of the Chairman in this regard is not in consonance with the Tenth Schedule in not entertaining his petition.

14. Of course, by majority, the Apex Court in the Five Judges Bench held that the decision of the Speaker/Chairman is amenable to the writ jurisdiction and as such the

petitioner could maintain the petition. The decision taken by the Chairman in that context is amenable to writ jurisdiction, when there is violation of constitutional mandate and when the act suffers from any mala fides, when there is non-compliance of principles of natural justice and also where the order suffers from any perversity having regard to the constitutional intendment and the status of repository of the adjudicatory power i.e. the 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.

15. The first respondent/Chairman of the Karnataka Legislative Council by his impugned order dated 16-6-1986 at Annexure-B at paragraph 14 has opined that suo-motu proceedings are not maintainable under Rule 6 of the Rules. He has expressed that he will become the complainant in the case and also decision maker if suo-motu proceedings are initiated by him as requested by the petitioner. Accordingly, he stated in his order that it would be in violation of principles of natural justice stating that he will become tooth Prosecutor and also the Complainant.

16. In this context, it is to be reminded that the power of the Speaker/Chairman under the constitutional scheme stands altogether on a different footing. Having regard to the powers vested with him while exercising his duties, the Speaker/Chairman has to regulate the business of the House and also exercise his powers over the members as is provided under the Constitution under Articles 102 and 191 regarding disqualification of the members of the Parliament and State Legislative Council respectively. The two solemn provisions are to exercise the power by Speaker/Chairman as the case may be, in regulating the business of the house. The provisions of the Tenth Schedule specifically deals with, in the context as to decide the disqualification of a member of such defection from one political party to another political party and also a member who has been elected otherwise than as a candidate of political party and who suffers disqualification on becoming a member of any other political party.

17. The main grievance of the petitioner in this context is that there was paper publication and also he has got materials to show that the second respondent had joined Janata Dal(S) party in the public function and he has also reference to those documents and submitted to the Chairman by way of petition and his petition has been rejected on the ground that the petitioner is disqualified from submitting his petition as per Rule 6 of the Rules. Further as noted in the reasoning given by the first respondent in paragraph 14 of his order at Annexure-B, he cannot suo-motu exercise his powers in initiating proceedings against the second respondent as requested by the petitioner, it amounts being a Prosecutor and a Judge.

18. Although, Rule 6 Clause (1) read with Clause (2) specifically bars any other person submitting a person invoking disqualification of a member of the Legislative Council, it has not said in many words, and what is being stated here is that no reference should be made as to the disqualification except by a petition and as per the procedure under Rule

6 of the Rules. The procedure provided is that if a petition in relation to the member may be made only in writing to the Chairman by any other member, may be that it is directory in nature against any other person to initiate disqualification proceedings by filing a petition and not mandatory. But in view of specific prohibition contained in the Rules, which enables only the member of the Legislative Council and not any other person and it tantamount to violation of the mandate of Tenth Schedule. In the event, any member of the House does not initiate any such action by filing the petition, although a member of the House suffered disqualification for defection, it goes un-noticed or would be left with no action against such disqualification suffered by a member. As such, under the circumstances when any such petition is filed by any voter (citizen), it is for the Speaker/Chairman to initiate action for the purpose of disqualification and it does not amount to suo-motu action. But, what is contemplated under the Rules is that he has to act as a Tribunal and to give an opportunity to the person who will be affected by taking such decision as it is clear from the ratio laid down by the Apex Court. However, it appears petitioner shown to have sought to initiate suo-motu action in view of the law contained in Rule 6 of the Rules.

19. The observation made in paragraph 14 of the order of the first respondent is that he cannot act suo-motu to take action for disqualification due to defection as per the Tenth Schedule of the Constitution. Of course, he has to give a show cause notice to the person likely to be affected and then he should give him due opportunity to the person alleged to have defected to produce all the material and to defend his case and thereafter to take a decision in the matter. An opportunity has to be given to the petitioner to establish the case on such application/petition being filed along with documents establishing prima facie case to the satisfaction of the Chairman. Since it is not in-house proceedings, it may not call for suo-motu action by the Chairman as sought for by the petitioner. At the most, he can seek for an opportunity by producing prima facie material to establish disqualification.

20. In so far as giving an opportunity to the petitioner is concerned in the case on hand, might be the first respondent under the impression that Rule does not contemplate to entertain the petition by any other person other than a member, has arrived at such a decision. Although in the decision of the Apex Court it is noted that this by-passing of the procedure may not be violation of the constitutional mandate. But, the Speaker did not dare here to violate the Rules framed by himself, where he wanted to stick to the rules framed and thereby he did not entertain the petition filed by the petitioner herein. Of course, Rule so framed read with Rule 6(1) and 6(2) of the Rules only confines the members to file a petition has to be read as ultra vires to the provisions of the Tenth Schedule and such prohibition provided under Rule 6(1) read with Rule 6(2) has to be declared as violative of the provision of the Tenth Schedule to the extent it prohibits any other person from initiating action by filing a petition. Accordingly, those two Rules are held to be ultra vires the Tenth Schedule.

21. In the instant case, of course, the decision taken by the Chairman is based on the letter issued by the President of Janata Dal(S) stating that the second respondent has not joined his party. The first respondent dismissed the petition filed by the petitioner on the question of maintainability of the petition. Of course, Rule 6(3) provides that before making any petition, in relation to any member, the petitioner shall satisfy himself that there are reasonable grounds for him to believe that the question has arisen as to whether such a member has become subject of disqualification under the Tenth Schedule. Of course, as per the said Rule, there must be prima facie case before filing such a petition and apart from that the said petition shall be accompanied by the documentary evidence if any, on which the petitioner relies and whether the petitioner relies on any information furnished to him by any person, he must also furnish the names and addresses of such persons and gist of such information apart from verifying the petition as per the provision of Civil Procedure Code. The petitioner shown to have produced certain paper cuttings and also report of joining the party which is controverted by the second respondent by producing a letter to the effect that the second respondent did not join Janata Dal (S) as certified by the President of Janata Dal (S). Of course, mainly on the ground that the petitioner is not qualified to file a petition and also that the Chairman cannot suo-motu take action, he has considered the case of the petitioner, rather accepting the letter issued by the President of Janata Dal(S), the Chairman has concluded that there is no scope of further enquiry in the matter and also according to him the alleged incident is said to have taken place on the political convention outside the House and accordingly, he is of the view that the incident has allegedly taken place outside the House and there is no provision to take cognizance of the same and initiate action for disqualification. He has also noted that the petitioner has not produced any document like payment of membership fee by the second respondent for joining the political party and also not produced any relevant documents regarding his enrolment in the said party.

22. While exercising the power under Articles 226, what can be reviewed is only the perversity in the order passed or violation of principles of natural justice, and the process of decision making and not the decision itself. Under the circumstances, of course, the documents produced by the petitioner shown to have been considered by the Speaker/Chairman and he has arrived at conclusion that those documents produced by him are not sufficient enough to arrive at a conclusion. The Speaker/Chairman would initiate action on such complaint being filed by any other voter or citizen subject to the procedure provided under Rule 6 of the Rules. However, such Rule prohibiting any other person from filing a petition is to be held ultra vires the Tenth Schedule. The decision arrived at by the Chairman on the petition filed by the petitioner and also having noted that there is no such document to show the enrolment of the second respondent to any political party and also payment made towards membership fee, etc., this Court cannot substitute in its place a different order in the absence of any such documents as observed by the Chairman in his order.

23. However, Rule 6(1) read with Rule 6(2) prohibiting any other person from filing a petition other than a member is held ultra vires the Tenth Schedule of the Constitution. Further, it is held that the Speaker/Chairman can initiate action on such petition being filed and on such satisfaction of prima facie material produced as contemplated under the Rules to examine as to whether any member has suffered disqualification due to defection and pass necessary orders in accordance with law.

24. However, it appears, an opportunity was not given to the petitioner to have his say in the matter on the presumption that Rule 6 of the Rules does not provide for such power. Of course, the said finding of the Chairman cannot be found fault with as he has only tried to comply with the provisions of the Rules. Therefore, the matter is remitted back to the Chairman to give an opportunity to the petitioner to have his say in the matter and reconsider the case in entirety and pass orders in accordance with law. However, the prayer of the petitioner to the Chairman to initiate suo-motu action may not be called for. It is for the petitioner to seek an opportunity to prove his case being a citizen/voter as per the provisions of Representation of People Act to exercise his right available.

25. Accordingly the petition is disposed of by setting aside the impugned order passed by the first respondent and the matter has been remitted back to the first Respondent for disposal in accordance with law as indicated above. No costs.