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**2003 Vol. 105 (3) Bom. L. R. 354**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
*Before Mr. Justice A. P. Shah and Smt. Justice Ranjana Desai*
**Writ Petition Nos. 3310, 3311, 3312, 3313, 3616 of 2002 and Writ Petition No. 1637 of 2002 (O.S.), decided on 29/30.7.2002**

NARSINGRAO GURUNATH PATIL
*v.*
SHRI ARUN GUJARATHI, SPEAKER & ORS.

**[A] Constitution of India, 1950 - Tenth Schedule - Para 6(1) - Disqualification of a Member - Defection - Rules framed by Speaker of the State Legislative Assembly -Mere breach of rules not a ground for setting aside order of Speaker.**

***Held :*** *In the light of the decisions of the Supreme Court in Kihota Hollohan and Ravi Naik it is held that a mere breach of Rules framed by the Speaker cannot constitute a ground for setting aside the order of the Speaker passed under sub-para (1) of para 6 of the Tenth Schedule.* [Para 25]

**[B] Constitution of India, 1950 - Tenth Schedule - Para 2(1)(a) - Disqualification of a member - Member's letter of withdrawal of support to the D. F. Government duly signed by him and received by the Governor - Sufficient opportunity given to the member by the**

1. 2002 (3) Mh. L. J. 921 : 105 (1) Bom. L. R. 87.
* Here italicised.



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**Speaker - Proceedings of disqualification properly conducted - No violation of principles of natural justice.**

***Held :*** *It being admitted fact that the letter of withdrawal of support was written, signed and received by the Governor, the Speaker has given more than sufficient opportunity to consider the narrow issue involved for deciding the question whether the petitioners have incurred disqualification under para 2(1)(a) of the Tenth Schedule. Therefore, the manner in which the proceedings were conducted, as a result of which action has been taken against the petitioners cannot be condemned as bad for any violation of principles of natural justice.*

*[Para 39]*

**[C] Constitution of India, 1950 - Tenth Schedule - Para 6(1) - Members of the Maharashtra Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986 - Rule 7 - Disqualification of Member - Order passed by the Speaker - Duty cast on the Speaker to decide the issue of disqualification himself - Grant of reasonable opportunity to the member by the Speaker - Constitutional mandate for the Speaker to decide the matter before the motion of confidence - Mere procedural irregularities do not disclose bias - Allegation of bias against the Speaker devoid of merit.**

***Held :*** *The question of bias has to be seen in the light of the statutory scheme of the Tenth Schedule and the office held by the Speaker. Para 6 of Tenth Schedule requires the Speaker himself to decide the issue of disqualification. It further gives finality to such decision. Rules framed by the Speaker also set out that the decision has to be by the Speaker under rule 7 and even if it is sent to the Committee, the Committee only makes report to the Speaker, who has to take a final decision. In the present case allegation of bias is founded solely on the ground of irregularities in procedure. Mere procedural irregularities do not disclose any bias. In fact as noticed earlier the Speaker has given reasonable opportunity to the petitioners to make out their case. Therefore, the argument that the Speaker had acted in hurry is without any substance and it was part of the constitutional mandate for the Speaker to have decided the matter before the motion of confidence. The allegation of bias is thus devoid of any merit.*

*[Para 40]*

**[D] Constitution of India, 1950 - Articles 105, 194 - Tenth Schedule - Para 2(1)(a) - Powers and privileges of members of the Houses of Parliament/Legislature - Freedom of speech of a member - Not an absolute freedom - Voting against the party is disloyalty- Legislator whose party is in the Government to vote against the Government is to vote against the party and to rebel against the Government is to leave the party - Object of Tenth Schedule is to discourage unprincipled defections - There is nothing in the language of the Tenth Schedule to suggest that Parliament intended to exclude the operation of para 2(1)(a) in respect of coalition Government.**

***Held :*** *The freedom of speech of member is not an absolute freedom. The electorate essentially votes for a party and legislature mainly consists of parties. It is the party which decides whether they sit on the Government side or opposition side. It is because of the party that the members are in the House. To abstain from voting when required by the party is to suggest degree of unreliability. To vote*



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*against the party is disloyalty. To join with others in abstaining or voting for other side smacks of conspiracy. For legislator whose party is in the Government, to vote against the Government is to vote against the party; to rebel against the Government is to leave the party.*

*The avowed object of the Tenth Schedule is to discourage unprincipled defections which is political and social evil.*

*The evil which was sought to be remedied by the Parliament was the one resulting from widespread practice of unprincipled floor crossing by the legislators. This evil was sought to be remedied by inserting the Tenth Schedule in the Constitution. The anti-defection law must be so interpreted as to eliminate the mischief rather than to promote it. If interpretation of para 2(1)(a) of the Tenth Schedule as suggested by the petitioners' Counsel is accepted it would virtually defeat the very object of the Tenth Schedule.*

*The submission of the learned Counsel that para 2(1)(a) of the Tenth Schedule has no application to multi party house is without any basis. There is nothing in the language of the Tenth Schedule to suggest that the Parliament intended to exclude the operation of para 2(1)(a) in respect of coalition Government. Coalition Governments are not uncommon in democratic countries. In this country coalition Governments have ruled in the States and Centre. The High Level Committee report also takes into consideration the multi party system prevailing in this country.* [Paras 50,51,51A,52]

**[E] Constitution of India, 1950 - Article 226 - Writ jurisdiction - Power of judicial review is limited - Decision of the Speaker reasonable, rational and not perverse - No interference in the decision of the Speaker.**

***Held :*** *The power of judicial review is very limited one and court will not interfere unless decision of the Speaker is perverse. The view taken by the Speaker is a possible view and it is difficult to hold that the said decision is any way unreasonable, irrational or perverse. No interference is, therefore, warranted with the said decision of the Speaker.* [Para 53]

**[F] Constitution of India, 1950 - Tenth Schedule - Paras 2 and 3 - Disqualification of a member of a House - Burden of proof - Burden of proof on person claiming disqualification of a member - Burden of proof on member claiming split in his original political party.**

***Held :*** *In Ravi Naik's case, the Supreme Court has pointed out that burden to prove the requirement of para 2 is on the person who claims that the member has incurred disqualification and burden to prove the requirement of para 3 is on the member who claims that there has been split in his original political party and by virtue of the said split disqualification under para 2 is not attracted. The requirement of para 3 is that member of the House who makes a claim must establish that he and other members of the Legislature party constitutes a group representing a faction which has arisen as a result of split in the original political party and such group consists of not less than one-third of the members of such Legislature party.*

*Thus member claiming benefit of para 3 has to prove prima facie that there has been a split in the original political party. The submission that such proof is not necessary must stand rejected.* [Paras 57, 59]



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**[G] Constitution of India, 1950 - Tenth Schedule - Para 2(1)(a) - Indian Evidence Act, 1872 - Secs. 60, 63 - Disqualification of a member of a House - News item without any proof - Hearsay evidence - Inadmissible in evidence - Degree of proof required under Indian Evidence Act not applicable to disqualification proceedings before the Speaker - Speaker functions as a Tribunal and not as a Court - Non-participation of the member in his disqualification proceedings - Not open to him to complain about breach of natural justice - No interference in the Speaker's Order.**

***Held :*** *It is true that the Supreme Court has held that the news item without any further proof of what had actually happened is only hearsay evidence and is inadmissible under sections 60 and 63 of the Evidence Act. However, strictly speaking, the degree of proof required under the Indian Evidence Act does not ipso facto apply in the disqualification proceedings before the Speaker as the Speaker functions as a Tribunal and not as the Court.*

*Moreover, in the entire written statement there was no pleading to the effect that the petitioner had not given up the membership of Congress (I) Party and he continues to be a member of the said party. Although initially, the petitioner participated in the proceedings he abruptly left the chamber of the Speaker in the midst of hearing and did not return.*

*Even in the ordinary course of law, if a party chooses to be absent inspite of notice, evidence is recorded ex parte and party who chooses to remain absent cannot be heard to say that he had no opportunity to represent or of cross-examining the person whose statements were recorded by the Court. After all, what natural justice requires is that the party should have an opportunity of adducing all relevant evidence and that he should have an opportunity of evidence of his opponent being taken in his presence. Such an opportunity was given to the petitioner. It is not now open for him to complain about breach of natural justice. There is no ground to interfere with the Speaker's order in exercise of powers under Article 226.* [Para 63]

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**In Writ Petition No. 3310 of 2002 :**

Mr. V. A. BOBDE, Sr. Advocate, i/b Mr. G. S. GODBOLE and Mr. A. B. BORKAR, for Petitioner.

Mr. ASHOK DESAI, Sr. Advocate with Mr. S. C. DHARMADHIKARI, Mr. S. C. NAIDU, Mr. RUI RODRIGUES, Mr. HARSH DESAI, Mr. B. V. PHADNIS and Mr. DARYAN WADHWA i/b Mr. PRASHANT NAIK, for Respondent No. 2.

Mrs. J. S. PAWAR, A.G.P., for State.

**In Writ Petition No. 3311 of 2002 :**

Mr. A. S. OKA i/b Mr. RAJESH DATAR, for Petitioner.

Mr. R. A. DADA, Sr. Advocate with Mr. NITIN JAMDAR, Mr. RUI RODRIGUES, Mr. S. C. NAIDU, Mr. M. M. GUJAR i/b Mr. PRASHANT NAIK, for Respondent No. 2.

Mrs. J. S. PAWAR, A.G.P., for State.

**In Writ Petition No. 3312 of 2002 :**

Mr. VIRENDRA TULZAPURKAR, Sr. Advocate i/b Mr. P. S. DANI, for Petitioner.

Mr. V. R. MANOHAR, Sr. Advocate with Mr. SUNIL MANOHAR, Mr. VINEET NAIK, Mr. Y. C. NAIDU, Ms. C. A. SALGAONKAR i/b Mr. PRASHANT NAIK, for Respondent No. 2.

Mrs. J. S. PAWAR, A.G.P., for State.

**In Writ Petition No. 3313 of 2002 :**

Mr. V. A. THORAT, Sr. Advocate with Mr. RAJESH DATAR, for Petitioner.

Mr. V. R. MANOHAR, Sr. Advocate with Mr. SUNIL MANOHAR, Mr. VINEET NAIK, Mr. Y. C. NAIDU, Ms. C. A. SALGAONKAR i/b Mr. PRASHANT NAIK, for Respondent No. 2.

Smt. J. S. PAWAR, A.G.P., for State.

**In Writ Petition No. 3616 of 2002 :**

Mr. Y. S. JAHAGIRDAR, Sr. Advocate i/b Mr. ATUL KARAD and Mr. A. M. KANADE and Mr. ABHINANDAN VAGYANI, for Petitioner.

Mr. ASPI CHINOY, Sr. Advocate with Mr. S. C. DHARMADHIKARI, Mr. S. C. NAIDU, Mr. RUI RODRIGUES, Mr. A. L. GORE and M. A. V. CHATUPHALE i/b Mr. PRASHANT NAIK, for Respondent No. 2.

Mrs. J. S. PAWAR, A.G.P., for State.

**In Writ Petition No. 1637 of 2002 (O. S.) :**

Mr. B. P. APTE, Sr. Advocate with Mr. YATIN SHAH, for Petitioner.

Mr. S. G. ANEY, Sr. Advocate with Mr. RUI RODRIGUES, Mr. L. M. ACHARYA, Mr. B. V. PHADNIS and Mr. A. V. CHATUPHALE, i/b Mr. PRASHANT NAIK, for Respondent No. 2.

**ORAL JUDGMENT (Per A. P. Shah, J.)**

These writ petitions under Article 226 challenge the orders passed by the Speaker of the Maharashtra Legislative Assembly on 13th June, 2002 disqualifying the petitioners from membership of the Assembly under Art. 191(2) read with Tenth Schedule of the Constitution of India.

2. The elections to the Maharashtra Legislative Assembly were held in September, 1999. The Assembly is composed of 289 members of which 288 members are elected and 1 is nominated. The 1999 Assembly elections did not give a clear mandate to any single political party. After the elections the position of the parties was as under :

| | |
|---|---|
| Indian National Congress | 75 |
| Shiv Sena | 69 |



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| | |
|---|---|
| N.C.P. | 61 |
| B.J.P. | 56 |
| P.W.P. | 05 |
| B.S.P. | 03 |
| C.P.M. | 02 |
| Janata Dal (s) | 02 |
| G.G.P. | 01 |
| N.P.P. | 01 |
| R.P.I. | 01 |
| S.J.P.(M) | 01 |
| Independent | 12 |

The Indian National Congress and N.C.P. with the support of Janata Dal (S), P.W.P., C.P.M., B.B.M., M.P.P., R.P.I. and ten independent Legislators joined together to form Democratic Front (DF for short) and elected Mr. Vilasrao Deshmukh as its leader. As DF was a single largest group in the Maharashtra Legislative Assembly, the Governor of Maharashtra invited Mr. Vilasrao Deshmukh to form Government in the State and accordingly DF Government was installed.

3. In May, 2002, the P.W.P. decided to withdraw the support to DF Government owing to certain differences. On 4th June, 2002, Narsingrao Patil, Narayan Pawar and Shivajirao Naik, the Legislators belonging to N.C.P. personally presented letters to the Governor of Maharashtra that with effect from 4th June, 2002, for the remainder of the term of Maharashtra Legislative Assembly, they withdrew the support to the Government headed by Chief Minister Vilasrao Deshmukh. It is said that they were accompanied by the Leader of Opposition Narayan Rane and Gopinath Munde. Gangadhar Thakkarwad of Janata Dal (s) also submitted a letter to the Governor on the same day withdrawing the support of Government headed by Mr. Vilasrao Deshmukh. On 5th June, 2002, Shirish Kotwal another legislator belonging to N.C.P. sent a similar letter to the Governor by fax at about 11.30 a. m. On the same evening around 6 p. m., the Governor called upon the Chief Minister to prove his majority on the floor of the Assembly within ten days and accordingly a special session of the Assembly was convened on 13th June, 2002. On 5th June, 2002 the Deputy Chief Whip of N.C.P. Sachin Ahir filed petitions under Article 191 read with paras 2 and 6 of the Tenth Schedule seeking to disqualify Narayan Pawar, Narsing Patil and Shivajirao Naik. These petitions were numbered as Disqualification Case Nos. 1 of 2002, 2 of 2002 and 3 of 2002. Disqualification Case No. 5 of 2002 for disqualification of Shrish Kotwal was filed by Sachin Ahir on 6th June, 2002. A legislator of Janata Dal (s) Dada Jadhavrao filed on 6th June, 2002 Disqualification Case No. 6 of 2002 for disqualification of Gangadhar Thakkarwad. On 7th June, 2002, the Chief Whip of Indian National Congress Rohidas Patil filed Disqualification Case No. 8 of 2002 against Desmond Yetas who was nominated as member of the Assembly by the Governor of Maharashtra on the recommendation of Indian National Congress. It was alleged that Desmond Yetas has joined the Opposition and this news has been widely published in various newspapers. The Speaker



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issued show cause notices to these legislators calling upon them to show cause within two days and notices were duly served on them.

4. On 7th June, 2002 four N.C.P. Legislators viz. Narsing Patil, Narayan Pawar, Shivajirao Naik and Shirish Kotwal filed Writ Petitions before this Court contending, *inter alia*, that the Speaker by issuing two days notice has violated Rule 7 of the Members of Maharashtra Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986. On the same day the said legislators applied to the Speaker to grant one week's time. Similar applications were made to the Speaker by Desmond Yetas and Gangadhar Thakkarwad. The Speaker extended the time to file replies till 11th June, 2002 in the case of Narsing Patil, Narayan Pawar, Shivajirao Naik and Gangadhar Thakkarwad. In so far as Desmond Yetas and Shirish Kotwal are concerned, the Speaker extended the date till 12th June, 2002. Further applications requesting to adjourn the hearing till 14th June, 2002 were rejected by the Speaker. Thereupon Writ Petitions were amended and amended Writ Petitions were placed before the Division Bench presided over by the learned Chief Justice. All the Writ Petitions were dismissed. S.L.Ps. filed against the order of this Court were also dismissed. Janata Dal (S) Legislator Gangadhar Thakkarwad filed a similar Writ Petition on 10th June, 2002 but it was not moved. Thereafter hearing proceeded before the Speaker. Written statements were filed and evidence was led. The Speaker by passing separate orders declared the petitioners as disqualified under para 2(1)(a) of the Tenth Schedule read with Article 191(2) of the Constitution of India.

5. *We propose to deal with Writ Petition Nos. 3310, 3311, 3312 and 3313* of 2002 of the N.C.P. legislators together as the facts in these petitions are almost identical and common questions of law and facts are raised. Writ Petition No. 3616 of 2002 of Gangadhar Thakkarwad and Writ Petition No. 1637 of 2002 of Desmond Yetas be dealt with separately.

6. Before we do so, we may notice the relevant provisions of the Tenth *Schedule of the Constitution of India. The Tenth Schedule was inserted in* the Constitution by the Constitution (Fifty second Amendment) Act, 1985. What impelled the Parliament to insert the Tenth Schedule can be seen from the Statement of Objects and Reasons appended to the Bill which ultimately resulted in the Constitution (Fifty-second Amendment) Act, 1985, quoted in *Kihota Hollohan v. Zachilhu and Ors.*,[1] (at page 423). It is *to the following effect* :

"The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current Session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance."

7. The provisions of the Tenth Schedule apply to members of either House of Parliament or the State Legislative Assembly or, as the case may be, either of the House of the Legislature of a State. Para 1(b) of the Tenth

1. AIR 1993 SC 412 : 1992 Supp. (2) SCC 651 : 1992 (1) J.T. 600 : 1992 (1) Scale 338.



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Schedule defines "Legislature party" in relation to a member of a House belonging to any political party in accordance with the provisions of para 2 or para 3 or, as the case may be, para 4, to mean the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions. Para 1(c) defines "original political party" in relation to a member of a House, to mean the political party to which he belongs for the purposes of sub-para (1) of para 2. Para 2 of the Tenth Schedule makes provision for disqualification on the ground of defection. Para 2 in so far as it is material for our purpose reads as follows:

"2. *Disqualification on ground of defection.*- (1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House -

(a) if he has voluntarily given up his membership of such political party; or

(b) .....

*Explanation.*- For the purposes of this sub-paragraph -

(b) a nominated member of a House shall -

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188.

(2) .....

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188.

(4) ....."

8. Para 3 removes the bar of disqualification in case of split in a political party provided the group representing a faction which has arisen as a result of a split consist of not less than one-third of the members of such Legislature party. Para 3 is reproduced below.

"3. *Disqualification on ground of defection not to apply in case of split.* - Where a member of a House makes a claim that he and any other members of his Legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such Legislature party -

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground :

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and



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(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purpose of this paragraph.

9. Para 4 removes the bar of disqualification on the ground of defection in case of merger of a political party with another political party. In sub-para (1) of para 6 the question as to whether a member of a House has become subject to disqualification under this Schedule, is required to be referred to the decision of the Chairman or, as the case may be, the Speaker of such House as the House may elect in this behalf and his decision shall be final. Under sub-para (2) of para 6, all proceedings under sub-para (1) of para 6 in relation to any question as to disqualification of a member of a House under this Schedule are 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. Para 7 bars the jurisdiction of all courts in respect of any matter connected with the disqualification of a member of a House under this Schedule. Para 8 empowers the Chairman or Speaker of a House to make rules for giving effect to the provisions of the Schedule and such rules may provide for matters specified in clauses (a) to (d) of sub-para (1) of para 8 of the Tenth Schedule.

10. It may be noted at this stage that under para 8 of the Tenth Schedule, the Speaker of the Maharashtra Assembly, has framed Rules called the Members of the Maharashtra Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986. Rule 6 provides that no reference to any question as to whether any member has been subject to disqualification under para 6 of the Tenth Schedule shall be made except by a petition in relation to such member in accordance with the provisions of Rule 6. Sub-rule (4) provides that every petition shall contain a concise statement of material facts on which the petitioner relies and shall be accompanied by the copies of the documentary evidence, if any, on which the petitioner relies and when the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such persons and gist of such information as furnished by each person. Sub-rule (5) provides that every petition shall be signed by the petitioner and verified in the manner laid down in the C.P.C. for the verification of pleadings. Sub-rule (6) provides that every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

11. Rule 7 provides for procedure which is to this effect.

(1) On receipt of a petition under Rule 6, the Speaker shall consider whether the petition complies with the requirements of that rule.

(2) If the petition does not comply with the requirements of Rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of Rule 6, the Speaker shall cause copies of the petition and of the annexures there to be forwarded,-

(a) to the member in relation to whom the petition has been made; and

(b) where such member belongs to any Legislature party and such petition has not been made by the leader thereof, also to such leader; and such member



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or leader shall within seven days of the receipt of such copies, or within such further period as the Speaker may for sufficient cause allow, forward his comments in writing there on to the Speaker.

(4) After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary to expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him.

(5) The Speaker shall, as soon as may be after referring a petition to the Committee under sub-rule (4), intimate the Petition accordingly and make an announcement with respect to such reference in the House, or if the House is not then in Session, cause the information as to the reference to be published in the Bulletin.

(6) Whether the Speaker makes a reference under sub-rule (4) to the Committee, he shall proceed to determine the question as soon as may be after receipt of the report from the Committee.

(7) The procedure which shall be followed by the Speaker for determining any question and the procedure which shall be followed by the Committee for the purpose of making a preliminary inquiry under sub-rule (4) shall be so far as may be, the same as the procedure applicable for the determination by the Committee of any question as to breach of privilege of the Assembly by a member, and neither the Speaker nor the Committee shall come to any finding that a member had become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case to be heard in person."

12. The constitutional validity of the provisions contained in the Tenth Schedule came up for consideration before the Constitutional Bench of the Supreme Court in *Kihota Hollohon v. Zachilhu*. The validity of the provisions of Tenth Schedule excluding para 7 has been upheld by majority and it has been held as under :

"That the Tenth Schedule does not, in providing for an additional ground for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

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

That the deeming provision in paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in *Keshav Singh's* case to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the Legislature of a State" confines the scope of the fiction accordingly.



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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 of 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."

13. We would now proceed to deal with the petitions.

***Writ Petition Nos. 3310, 3311, 3313 & 3512 of 2002.***

14. These petitions have been filed by Narsing Patil, Narayan Pawar, Shrish Kotwal and Shivajirao Patil who were elected to the Maharashtra Legislative Assembly on the ticket of N.C.P. They have been disqualified from membership of the Assembly under separate orders of the Speakers dated 13th June, 2002 passed under para 2(1)(a) of the Tenth Schedule. The said para provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given up his membership of such political party". In *Kihoto Hollohan's* case, Supreme Court while considering the validity of paras 2, 3 and 4 observed : (at page 425)

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

In *Ravi Naik v. Union of India and others*,[1] the Supreme Court held that a person may voluntarily give up the membership of a political party even though he has not tendered his resignation from the membership of that party. Even in absence of formal resignation from membership, an inference can be drawn from the conduct of the member that he has voluntarily given up his membership of the political party to which he belongs. This was reiterated in *G. Vishwanathan v. Speaker, T. N. Legislative Assembly*,[2] where the Court observed that the act of voluntarily giving up membership of the political party may be either express or implied.

1. 1994 Supp. (2) SCC 641 : AIR 1994 SC 1558.
2. AIR 1996 SC 1060 : 1996 (2) SCC 353 : 1996 (1) J.T. 607 : 1996 (1) Supreme 609.



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15. In the present case the N.C.P. Legislators submitted to the Governor letters withdrawing the support of DF Government headed by Chief Minister Vilasrao Deshmukh. Following is the text of the letter addressed by Narsing Patil.

"To 4th June, 2002

Hon'ble Governor
Maharashtra State
Raj Bhavan,
Mumbai.

Respected Sir,

I, the undersigned, Shri Narsingrao Gurunath Patil have been elected as a Member of Legislative Council in the General Elections of the Maharashtra Legislative Assembly in 1999 from Chandgad Constituency through Nationalist Congress Party. I am the Member of the presently Constituted Assembly.

From today i. e. 4th June, 2002 for the remainder of the term of the Legislative Assembly, I am withdrawing my support to the existing Democratic Front Government headed by Hon'ble Chief Minister Shri Vilasrao Deshmukh.

You are kindly requested to take note of this and take necessary action.

Thanking you,

Yours sincerely,
Sd/-"

The letters addressed by the three others *viz.* Narayan Pawar, Shivajirao Naik and Shirish Kotwal were identical, the only difference being that Shirish Kotwal sent his letter by FAX whereas the other three presented the letters personally.

16. The petitions that were filed by Sachin Ahir for disqualification of these petitioners were identical. The following averments were made with regard to disqualification of Narsingh Patil on the ground of defection under paragraph 2(1)(a) of the Tenth Schedule. Other petitions made identical averments.

"4. Petitioner respectfully brings to your notice that the Opponent Shri Narsingrao Gurunath Patil personally went to the Hon'ble Governor of Maharashtra State on 4.6.2002, between 04.30 hrs and 0.5.30 hrs and gave him a representation to the effect of withdrawing the support to the Government. He was accompanied by the Leader of Opposition. In this regard detailed news was given on DoorDarshan and E. TV. (Enclosed herewith a copy of representation dated 4th June, 2002 tendered to the Hon'ble Governor as proof).

5. The petitioner further wishes to submit that as per the constitution of the Nationalist Congress Party, the existing Disciplinary Committee has taken a decision on 23rd April, 2002 that no member of the Nationalist Congress Party should do such act, and that such acts would be treated as act against the party and such act would tantamount to an act against the instruction of the party.

6. Considering all the aforesaid events, the petitioner is satisfied (has become sure) that the aforesaid act of the opponent comes under the purview of Article 191 of the Constitution and paragraph-2 of 10th Schedule of Disquali-



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fication on the ground of defection (c) and his act tantamount to quit his membership of Nationalist Congress Party, as such the Opponent has become disqualified on the ground of defection, as provided in the Constitution."

17. The replies that were filed by the petitioners were also identical. In the said replies it was contended that the petitions filed by Sachin Ahir were not in accordance with Rule 6 of the Rules framed by the Speaker. It was also contended that there was violation of Rule 7 of the said Rules. In regard to the averments made in para 4 of the petition concerning the letter addressed to the Governor it was stated in para 5.

"The averments in para 4 of the petition are made by twisting facts. The only averment in para 4 of the petition which is factually correct is that the Respondent has submitted a letter to the Hon'ble Governor on 4.6.2002. However, it is denied by the respondent that the respondent has submitted the said letter between 4.30 to 5.30 p.m. on 4th June, 2002."

It was stated in para 6 :

"The respondent submits that the said letter is qualified and conditional and speaks for itself. By no stretch of imagination, it can be said or an inference can be drawn from the reading of the said letter that submission of the said letter amounts to voluntarily giving up the Membership of the Political Party to which the Respondent belongs."

Finally, it was stated in para 12.

"The Respondent submits that no cause of action has arisen for filing and entertaining the present petition. The Petition is devoid of any merits. The letter submitted by Respondent to the Hon'ble Governor is being completely misinterpreted and misread by the Petitioner. The Petition is therefore liable to be dismissed and the Petitioner may be directed to pay heavy cost to the Respondent for unnecessary filing such a false and frivolous petition."

18. The Speaker considered the petitions in detail and disposed of the same by separate but similar orders dated 13th June, 2002. In para 15 thereof the Speaker stated thus :

"After carefully considering the provisions of the Tenth Schedule, the provisions of the said Rules and also all the authorities mentioned above, in the light of the arguments advanced before me, I find :-

(a) that the ruling in *Kihota's* case that the provisions of the Tenth Schedule *of the Constitution are salutary and are intended to strengthen the fabric of* Indian Parliamentary Democracy by Curbing Unprincipled and Unethical Political Defections is followed in all the subsequent rulings of the Supreme Court;

(b) that in the case of *Dr. Kashinath Jalmi*, it was held that the action under Rule 6 mentioned above could be brought by anybody, although the sub-rule (2) thereof specifically refers to any other member only; thus in other words the rules are directory rather than mandatory;

(c) that in the case of *Ravi S. Naik* the Supreme Court further held that the rules are only procedural in nature and any violation of them would amount to an irregularity in procedure and not any illegality as such, and certainly not any violation of constitutional mandate, and, therefore, cannot, by themselves, be fatal to the Petition itself :

(d) That procedure is only a hand-maid of justice and certainly not the mistress of justice;



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(e) That, therefore, what is most crucial is the consideration of substance rather than form, consideration of whether or not there is fair and reasonable opportunity to the Respondents to defend themselves; and

(f) that the said fair and reasonable opportunity of defence should not and cannot be protraction of time be extended and allowed to defeat the ends of justice and fair play in the context of maintaining and strengthening the fabric of Indian Parliamentary Democracy by curbing Unprincipled and Unethical Political Defections."

19. In the light of the admitted facts and the view of law held by him, the Speaker entered the following findings :

"17. Regarding the crucial issue on merits I find that the basic issue is a very narrow one. The respondents have admitted in their Written Statement of Defence itself that they signed and delivered the letter dated 4th June, 2002 in person to His Excellency the Governor of Maharashtra. Whether or not at that time, they were accompanied by the Leaders of Opposition is according to me not very material in view of the following text material of the said letter."

"मी आज दिनांक ४ जून २००२ रोजी पासून विधानसभच्या उर्वरित कार्यकालाकरीता म. मुख्यमंत्री श्री. विलासराव देशमुख यांच्या नेतृत्वाखाली अस्तित्वात असलेल्या लोकशाही आघाडी सरकारचा पाठिंबा काढून घेत आहे. आपण कृपया याची नोंद घ्यावी व योग्य ती कार्यवाही करावी ही नम्र विनती'.

18. According to me this letter does in effect and substance mean that the Respondents have withdrawn their support to the Government in which their original party is a constituent member. This is the only possible interpretation, at least, in the context of the present functioning of our Democracy. That verily is the reason why His Excellency, the Governor of Maharashtra was thereupon pleased to direct the Government to prove their majority on the floor of the House latest by 14th June, 2002. In my opinion the respondents are trying to misconstrue, distort, or disown their own letter. That is impermissible. The distinction that they are trying to draw in unreal. There is no distinction in fact between withdrawal of support from a ruling Government and relinquishment of membership of the party, which has formed the Government at that time. In *Kihota's* case, the Supreme Court has explained the whole basis of anti-defection law. The same has been accepted by it in its subsequent rulings also. It has been recognised by the Supreme Court that political parties fight elections on the basis of principles and programmes stated in their manifestos and formed Governments, if elected, to implement them. It is certainly a contradiction in terms to allege that a person withdraws his support to the Government and nonetheless continues to be a member of the party, which has formed the Government at the material time. To accept the arguments of the Respondents regarding the said letter is, in my opinion, making a mockery of anti-defection law introduced by constitutional amendment. I have to adopt the interpretation, which furthers, rather than destroys the intention of the Parliament. According to me giving of the said letter by the Respondents to the Governor certainly amounts to voluntarily giving up their membership of their original political party, as contemplated in paragraph 2(1)(a) of the Tenth Schedule of our Constitution.

19. I cannot persuade myself to accept that the reports in so many of the T. V. channels and English and Marathi language newspapers that the Oppo-



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sition Leaders accompanied the Respondents to His Excellency, the Governor, when they delivered that letter to him is not true but is false, fraudulent and implanted. In the case of *Ravi Naik*, the Speaker in his order referred to photographs as printed in the newspapers showing the respondents with the opposition M.L.As. when they had met the Governor, and on that basis drew his conclusions. The Supreme Court upheld that also. However, according to me even without going into this aspect of the matter, the said letter by itself is sufficient to hold that the Respondents have voluntarily given up their membership of the original political party.

20. Paragraph 2(1)(a) of the Tenth Schedule of our Constitution do not necessarily require and explicit resignation of membership of party. They cover conduct also which by necessary implication amount to voluntarily giving it up. This is the law settled by the Supreme Court and followed by our High Court in *Pandurang v. Ramchandra*.[1]. If those provisions are read down the very purpose of the Constitutional amendment would be defeated."

The Speaker thus concluded that the petitioners had incurred disqualification for being a member of the Maharashtra Legislative Assembly under Article 191(2) of the Constitution of India read with clause (a) of sub-para (1) of para 2 of the Tenth Schedule and they ceased to be members of the Assembly with immediate effect.

20. On behalf of the petitioners submissions were made by Mr. Bobade, Mr. Tulzapurkar, Mr. Thorat and Mr. Oka. The first ground of attack by the learned Counsel was that there was violation of the provisions of the Rules framed by the Speaker. It was contended that Rule 7 framed by the Speaker under the Tenth Schedule is mandatory, not directory. The Speaker is under a legal duty to allow 7 days time and he has no power to reduce the period. Violation of Rule 7 is *per se* a violation of principles of natural justice. Consequent proceedings and orders are, therefore, void and without jurisdiction. Where the rule provides for observance of natural justice in a particular manner, natural justice will have to be observed in that manner and no other. In this connection reliance was placed on the oft-cited decision in *Howard v. Bodington*,[2] where a Bishop received a complaint against a clergyman but failed to send a copy of it to the clergyman within the statutory period of twenty-one days. Reliance was also placed on the decisions in *Swadeshi Cotton Mills v. Union of India*,[3]; *Nazir Ahmad v. Emperor*,[4]; *State of Uttar Pradesh v. Singhara Singh and others*,[5] *Shiv Kumar Chadha v. Municipal Corporation of Delhi and others*.[6] It was submitted that the view that prejudice must be shown or that if no prejudice will be caused no notice need be given has been decisively rejected by the Supreme Court

1. AIR 1997 Bom. 387 : 1997 (2) Mah. L.J. 759 : 1997 (3) All M. R. 578 : 1997 (2) Mah. L.R. 862.
2. (1877) 2 P.D. 203.
3. (1981) 1 SCC 664 : 1981 (2) S.C.R. 533 : AIR 1981 SC 818 : 1981 (58) F.J.R. 190 : 1982 (1) Com. L.J. 309.
4. 1936 P.C. 253 (1) : 38 Bom. L. R. 698.
5. AIR 1964 SC 358 : 1964 (4) S.C.R. 485 : 1964 (1) Cr. L.J. 263 (2).
6. (1993) 3 SCC 161 : 1993 (3) J.T. 238 : 1993 (2) Scale 772 : 1993 (2) U.J. 381 : 1993 (1) Rent L.R. 792.



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in S. L. Kapoor v. Jagmohan and others,[1] and approved later by 3 Judges bench in *Swadeshi Cotton Mill's* case (supra). It was submitted that non observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. Number of decisions were also cited which considered the question as to when the rule can be said to be mandatory and when it can be said to be directory. Reference was made to *M/s. Rubber House v. M/s. Excelsior Needle Industries Pvt. Ltd.*,[2]; *Raza Buland Sugar Co. Ltd., Rampur v. The Municipal Board, Rampur*,[3]; *State of Uttar Pradesh and others v. Babu Ram Upadhya*,[4]; *Haridwar Singh v. Bagun Sumbrui and others*,[5]; *Jaswant Singh Mathurasingh and another v. Ahmedabad Municipal Corporation and others*,[6]. Reliance was also placed on the decision of the Supreme Court in *Sadashiv H. Patil v. Vithal D. Teke and others*,[7] where the Supreme Court held that the provisions of Maharashtra Local Authority Members' Disqualification Act and Rules framed thereunder are mandatory.

21. In our opinion, the issue is no more *res-integra* in view of the decision in *Ravi Naik's* case. In the case of *Ravi Naik*, petitioners Sanjay Bandekar and Chopdekar were served with show cause notices on 11th December, 1990 calling upon them to appear before the Speaker on 13th December, 1990. They made a grievance about short notice and not to go by default filed their reply and at the same time prayed for more time to file detailed reply as also to lead evidence. The request for further time was rejected by the Speaker and after hearing an order for disqualification was passed on the same day. Before the Division Bench of this Court it was contended that violation of Rule 7 has rendered the proceedings invalid. The Division Bench relying upon the decision in *Kihota Hollohon* and the Full Bench decision of the Orissa High Court in *Bhajaman Bobera v. Speaker, Orissa Legislative Assembly and others*,[8], held that the order of disqualification of the Speaker is not vitiated nor rendered illegal for any procedural irregularity or illegality. The judgment of the Division Bench in so far as Bandekar and Chopdekar are concerned was confirmed by the Supreme Court in *Ravi Naik's* case. The relevant observations of the Supreme Court are reproduced below : (at pages 652, 653)

"18. The submission of Shri Sen is that the petitions that were filed by Khalap before the Speaker did not fulfil the requirements of clause (a) of sub-rule (5) of Rule 6 in as much as the said petition did not contain a concise statement of the material facts on which the petitioner (Khalap) was relying and further that the provisions of clause (b) of sub-rule (5) of Rule 6 were also not

1. (1980) 4 SCC 379 : AIR 1981 SC 136 : 1981 (1) S.C.R. 746 : 1981 (1) S.C.J. 372.
2. AIR 1989 SC 1160 : (1989) 2 SCC 413 : 1989 (1) S.C.R. 986.
3. AIR 1965 SC 895 : 1965 (1) S.C.R. 970.
4. AIR 1961 SC 751 : 1961 (2) S.C.R. 679 : 1961 (1) Cr. L.J. 773 : 1970 (1) L.L.J. 670.
5. (1973) 3 SCC 889 : AIR 1972 SC 1242 : 1972 (3) S.C.R. 629.
6. AIR 1991 SC 2130 : 1991 Supp. (1) S.C.R. 226 : 1992 Supp. (1) SCC 5.
7. AIR 2000 SC 3044 : 2001 (1) Mah. L.J. 312 : 2000 (8) SCC 82 : 2000 (1) All M. R. 282.
8. AIR 1990 Ori. 18.



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complied with in as much as the petitions were not accompanied by copies of the documentary evidence on which the petitioner was relying and the names and addresses of the persons and the list of such information as furnished by each such person. It was also submitted that the petitions were also not verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings and thus there was non compliance of sub-rule (6) of Rule 6 also and that in view of the said infirmities the petitions were liable to be dismissed in view of sub-rule (2) of Rule 7. We are unable to accept the said contention of Shri Sen. *The Disqualification Rules have been 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 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 as construed by this Court in Kihoto Hollohan's case. Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in Kihoto Hollohan's case is confined to breaches of the constitutional mandates, mala fides, non compliance with Rules of Natural Justice and perversity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the rules to the status of the provisions of the Constitution which is 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 mandate 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 as construed by this Court in Kihoto Hollohan's case.*

19. Shri Sen next contended that there has been violation of principles of natural justice in as much as in disregard of the provisions of Rule 7(3)(b) of the Disqualification Rules which provides for the comments being forwarded by the member concerned to the Speaker within a period of seven days of the receipt of the copy of the petition and annexures thereto; the appellants were given only two days' time to file their reply to the petition. Shri Sen has urged that there has been violation of the principles of natural justice also for the reason that in the impugned order the Speaker has referred to certain extraneous materials and circumstances, namely, the copies of the newspapers that were produced by Dr. Jhalmi at the time of hearing and the talks which the Speaker had with the Governor. Another grievance raised by Shri Sen was that the appellants were denied the opportunity to adduce their evidence before the Speaker passed the impugned order.

20. Principles of natural justice have an important place in modern Administrative Law. They have been defined to mean "fair plan in action".

(See *Maneka Gandhi v. Union of India*, Bhagwati, J.) as laid down by this Court : "They constitute the basic elements of a fair hearing, having their roots



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in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men" (*Union of India v. Tulsiram Patel*). 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/Chairmen 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". (Emphasis supplied)*

22. The Court then after referring to commentaries of Prof. Wade and Clive Lewis and decision in *A. M. Allison v. B. L. Sen.*[1] went on to observe : (at pages 654, 655).

"24. It is no doubt true that under Rule 7(3)(b) of the Disqualification Rules, it has been provided that the members concerned can forward their comments in writing on the petitions within seven days of the receipt of the copies of the petition and the annexures thereto and in the instant case the appellants were given only two days' time for submitting their replies. The appellants, however, did submit their replies to the petitions within the said period and the said replies were quite detailed. Having regard to the fact that there was no denial by the appellants of the allegation in paragraph 11 of the petitions about their having met the Governor on December 10, 1990 in the Company of Dr. Barbosa and Dr. Wilfred D'souza and other Congress (I) M.L.As. and the only dispute was whether from the said conduct of the appellants, an inference could be drawn that the appellants had voluntarily given up their leadership (*sic* membership) of the M.G.P., it cannot be said that the insufficient time given for submitting the reply was resulted in denial of adequate opportunity to the appellants to controvert the allegations contained in the petitions seeking disqualification of the appellants.

26. The grievance that the appellants have been denied the opportunity to adduce the evidence is also without substance. The appellants were the best persons who could refute the allegations made in the petitions. In the impugned order the Speaker has mentioned that the appellants were present before him but they did not come forward to give evidence. Moreover, they could have sought permission to cross-examine Dr. Jhalmi in respect of the statement made by him before the Speaker that the appellants had given up their membership of their political party and had said so openly to him and to others, in order to refute the correctness of the said statement. They, however, failed to do so."

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1. AIR 1957 SC 227 : 1957 S.C.R. 359 : 1957 S.C.J. 268 : 1957 (1) L.L.J. 472 : 1956-57 (ii) F.J.R. 466.

* Here italicised.



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23. We may mention that two learned Judges in *Ravi Naik*'s case have adopted the reasoning of the Constitution Bench in *Kihota Hollohan*'s case on this aspect. In *Kihota Hollohan*'s case in para 42 (page 451) it is recorded as under :

"That the deeming provision in Para 6(2) of the Tenth Schedule attracts an immunity analogous to Articles 122(1) and 212(1) of the Constitution as understood and explained in *Keshav Singh i. e.* AIR 1965 SC 745 to protect the validity of the proceedings from mere irregularities of procedure. The deeming provision having regard to the words being deemed to be proceedings in the Parliament or proceedings in the Legislature of the State confine to the scope of the fiction accordingly."

This conclusion must be held to be based upon the following passage extracted from para 39 (page 448) which reads as under :

"The fiction under Para 6(2) indeed placed in the first clause of Articles 122 or 212, as the case may be. The words "proceedings in Parliament" or proceedings in the Legislature of a State" in para 6(2) have their expression in Articles 122(1) and 212(1) respectively. This attracts an immunity from were irregularities from procedure."

24. In *Bhajaman Bobera's* case the Orissa High Court while holding that the breach of procedure or Rules cannot be subject to judicial review under Article 226 adopted the following statement from a decision of 8 Judges Bench in *M.S.M. Sharma v. Dr. S. Krishna,*[1].

"Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature, itself, which has the power to conduct its own business."

25. In the light of the decisions of the Supreme Court in *Kihota Hollohan* and *Ravi Naik* we hold that a mere breach of Rules framed by the Speaker cannot constitute a ground for setting aside the order of the Speaker passed under sub-para (1) of para 6 of the Tenth Schedule. It is, therefore, not necessary to consider various judgments cited before us by the Counsel. The argument based in Rule 7 must stand rejected.

26. The next contention raised by the learned Counsel appearing for the petitioners is that the short and illusory notice of hearing itself was an empty formality. Hearing was even worse and flagrant violation of natural justice. The Speaker did not allow examination in Chief of the petitioners nor allowed any witnesses to be produced. He prevented the advocates for the petitioners from properly cross-examining the witnesses produced by the applicant. He did not give sufficient time to the advocates for the petitioners to make their submissions. He allowed the amendments to be made to the disqualification petition against Shirish Kotwal in the midst of the cross-examination without compliance with the procedure under sub rules (1) to (3) of Rule 7. He refused adjournment to Shirish Kotwal who was hospitalised and thus deprived him of basic opportunity to depose before

1. AIR 1960 SC 1186 : 1961 (1) S.C.R. 96 : 1961 (2) S.C.J. 73.



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him. He wrongly allowed the affidavits to be produced and did not give opportunity to cross examine the deponent Chhagan Bhujbal and that the entire proceeding was wound up in great haste. It is submitted that the Speaker's action of initiating proceedings and wanting to disqualify the petitioners in unseemly haste in total disregard to law and in gross violation of natural justice was motived by a single factor that is the deadline of 13th June for the vote of confidence. The said motivation or reason is totally extraneous to the Tenth Schedule which is concerned with the deterrence or punishment for defection and is wholly unconcerned with protection of Government. It is submitted that the object of the Tenth Schedule is not to protect any particular Government. The object is to ensure that the member seeks fresh mandate of the electorate if after the elections changes his party. The purpose and object of the Tenth Schedule is to ensure loyalty of the member to the electorate and not stability of a particular Government.

27. It is emphasised that the requirement of compliance of rules of natural justice is implicit under para 6 of the Tenth Schedule. It is submitted that proof of prejudice is not required to establish breach of the principles of natural justice. Reliance is placed on the observations of the Supreme Court in *S. L. Kapoor v. Jagmohan*,[1] (at page 395).

"In our view the principles of natural justice know of no exclusory view dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

Reliance is also placed on the observations of Bhagwati, J. as he then was in Gujarat High Court cited with approval in *Swadeshi Cotton Mills* (at page 689)

".....The person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not empty public relation exercise".

It is contended that natural justice is a condition for exercise of power because it was understood to ensure the fairness and justice of the proceedings. It is no answer to say that the act for which the proceeding is vitiated speaks for itself and anything could not possibly be said if due opportunity is given. It cannot also be said that no prejudice was, in fact, caused because the guilt of a person is ex-facie clear.

The following passage from *John v. Rees*,[1] (at page 309) which was quoted with approval in *S. L. Kapoor v. Jagmohan* was heavily relied upon:

"As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not: of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to

1. (1969) 2 All E. R. 274.



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underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

The Counsel contended that whole purpose of *audi alteram partem* is to afford opportunity to consider what is stated in the reply and evidence. Full opportunity to examine and cross-examine ought to been allowed to the petitioners and evidence on record has to be duly considered by the Speaker. Reliance was placed on the decision of the Supreme Court in the case of *State of Madhya Pradesh v. Chintaman Sadashiv*,[1] wherein the Court held that the right to cross-examine the witnesses who give evidence against the party is a very valuable right and if it appears that effective exercise of this right has been prevented by Enquiry Officer by not giving to the employee relevant documents to which he is entitled, that inevitably would mean that the enquiry had not been held in accordance with the rules of natural justice.

28. Before adverting to the allegations of breach of natural justice we would deal with the submission that the Speaker is not concerned with the stability of the Government and he committed impropriety in setting out the deadline for disposal of the cases. The Tenth Schedule has been introduced by the Fifty-second amendment to remedy the mischief of defection. In *Kihota Hollohon*, the Supreme Court described such defection as political and social evil which was so perceived by the Parliament. The report of the High Level Committee on defection noted the problems of defections as under :

"Following the Fourth General Election in the short period between March, 1967 and February, 1968, the Indian political scene was characterised by numerous instances of change of party allegiance by legislators in several States. Compared to roughly 542 cases in the entire period between the First and the Fourth General election, at least 438 defections occurred in these 12 months alone. Among independents, 157 out of a total of 376 elected joined various parties in this period. That the lure of office played a dominant part in decisions of Legislators to defect was obvious from the fact that out of 210 defecting legislators of the State of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were included in the Councils of Ministers which they help to bring into being by defections. The other disturbing features of this phenomenon were : multiple acts of defections by the same person or set of persons (Haryana affording a conspicuous example) few resignations of the membership of legislature or explanations by individual defectors; indifference on the part of defectors to political proprieties constituency preference or public opinion and the belief held by the people and expressed in the Press that corruption and bribery were behind some of these defections. The Resolution in Parliament :

*In this situation it was natural for wide spread concern to be voiced by leaders of opinion and the press all over the country for the preservation of political stability and safeguarding interests of the people."* (Emphasis supplied)*

1. AIR 1961 SC 1623.
* Here italicised.



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The High Level Committee further recorded as follows :

"India has adopted the parliamentary system of Government. Parliamentary system of Government is only another name for party system of Government. Party system of Government in practice operates by one of the parties being assured of a majority support of its members entering as representatives in the legislatures. Election is primarily a contest among parties to have their candidates returned by the electorate from as many constituencies as possible depending on their organisation and resources. For this purpose, parties field candidates who are bound to them by the very fact of sponsorship and by their allegiance to their programme. *This tie and this allegiance is what confers predictability on the functioning of representative bodies, and without this predictability, Governments formed by parties cannot be strong and stable. The rationale of parliamentary system being to provide a stable Government by a party and its representatives committed to policies endorsed by electorates to the extent the conduct of a representative ignores this rationale, he fails in his duty and obligation."* *(Emphasis supplied)**

29. In *Prakash Singh Badal v. Union of India,*[1] the Full Bench of Punjab & Haryana High Court while rejecting the challenge to the constitutional validity observed : (at page 277).

*"The purpose in enacting the Fifty-second Amendment, therefore, was not only to stabilise the legally elected Governments and to prevent the political immorality and corruption, but also to make them effective.* If the provision is read down, as suggested, the main purpose of the amendment would be defeated. The making of the Government formed by the majority party would serve no purpose if it is not able to work effectively and carry out the party's policies' on social and economic issues for which they are supposed to have been voted to power by the electorate. The provision shall also fail to prevent the political immorality and corruption because corruption is not confined only to the lure of ministerial berths or some other public offices, but .can also take place for other considerations. What would be the use of a member remaining in the party if by joining hands in voting with the opposition he gets a prestigious measure on the avowed economic policy of the party defeated on accepting considerations other than the ministerial berth or public office."

(Emphasis supplied)*

30. The primary duty of the Speaker is to ensure that the House should function at all time in the interest of the Country/State. He is the custodian of the House and has constitutional responsibility to protect interest of the democracy. Whatever powers have been conferred by the rules on the Speaker are intended to serve one purpose *i. e.* the House should be enabled to function at all times in the interest of the country and the power conferred on the Speaker should be used by him in the interest of the House. (See Practice and Procedure in Parliament by Kaul and Shakdhar (at p. 123). The Speaker when he sits as a tribunal to hear petitions under the Tenth Schedule cannot be unmindful of his active role and duty under the Constitution. The objective of entrusting the responsibility of determining

1. AIR 1986 P. & H. 263.
* Here italicised.



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disqualification etc. under the Tenth Schedule were the need for (i) expedition in determination of defection cases; (ii) ensuring impartial, objective and non-partisan decisions. In *Brundaban Nayak v. Election Commission of India and others.*[1] the Supreme Court observed that it is of utmost importance that complaints under Article 192(1) must be disposed of as expeditiously as possible. Kashyap in his book on "Parliamentary Procedure" has noted (at page 2187) that some of the cases in the Courts of the Speaker have taken "too long" and the objective of getting quick decisions have been defeated. It is, therefore, difficult to accept the submission that the Speaker was not right in setting out the deadline for deciding the cases. Granting of any requests to postpone the hearing beyond 13th June would have amounted to allowing petitioners to delay and protract the matter beyond Assembly Session. This would have frustrated the very object and purpose of the Tenth Schedule. In fact, in our opinion, the Speaker would be failing in his duty if he had not decided the matter with promptitude. However, this does not mean that the Speaker is not obliged to follow the rules of natural justice. Whether he has complied with the rules of natural justice is a question which will be adverted hereinafter.

31. In *Kihota Hollohan's* case the Supreme Court held that inspite of the finality imparted to the decision of the Speaker by para 6(1) of the Tenth Schedule, such a decision is subject to the judicial review on the ground of non compliance of rules of natural justice. But while applying the principles of natural justice it must be borne in mind what was said *Russel v. Duks of Norflok*,[2] way back in 1949, that these principles cannot be put in strait jacket. Their applicability depends upon the context and facts and circumstances of each case. In *Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee*,[3] the Supreme Court observed : (at page 262)

"Natural justice is no unruly horse, no lurking land min, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt- that is the conscience of the matter."

In *Ravi Naik's* case the Supreme Court cited with approval following passage from Administrative Law by Prof. Wade, 6th Edn. (p. 53) :

"The judges, anxious as always to preserve some freedom of manoeuver, emphasis that 'it is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the subject-matter'.[4]The so-called rules of natural justice are not engraved on tablets of stone. Their application, resting as it does upon statutory

1. AIR 1965 SC 1892 : 1965 (3) S.C.R. 53.
2. (1949) 1 All E. R. 109.
3. (1977) 2 SCC 256 : AIR 1977 SC 965 : 1977 (2) S.C.R. 904 : 1980 (40) F.L.R. 132 : 1980 (1) L.L.W. 284.



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implication, must always be in conformity with the Scheme of the Act and with the subject matter of the case. 'In the application of the concept of fair play there must be real flexibility'. There must also have been some real prejudice to the complainant, there is no such thing as merely technical infringement of natural justice."

In the same judgment the Supreme Court made a reference to what Clive Lewis has stated in Judicial Remedies in Public Law, (1992) p. 290:

"The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the Courts may decide that the breach has caused no injustice or prejudice and there is no need to grant relief.

That courts may, for example, refuse relief if there has been a breach of natural justice but where the breach has in fact not prevented the individual from having a fair hearing."

32. In *M/s. Fedco (P) Ltd. and another* v. *S. N. Bilgrami and others*,[1] the Constitution Bench, while considering the question as to whether reasonable opportunity had been given prior to the cancelling the import licence on the ground of fraud, held that there was no invariable standard for "reasonableness" except that the Court's conscious must be satisfied 'that fair chance of convincing the authorities was given. It was further held that decision would necessarily depend upon the facts and circumstances of each case including the nature of the action proposed, the grounds on which the action is proposed, the material on which allegations are based, the attitude of the party, the nature of the plea raised in the reply, the request for further opportunity that has been made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question. The Court concluded that the omission to give further particulars of the fraud or denial of inspection of the papers did not deprive the petitioner of a fair chance of convincing the authority.

33. In *K. L. Tripathi* v. *State Bank of India and others*,[2] (at page 281) the Court observed :

"29 .....

So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries."

32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified is, in dispute, right

1. AIR 1960 SC 415 : 1960 (2) S.C.R. 408 : 1960 S.C.J. 235.
2. AIR 1984 SC 273 : 1984 (1) S.C.R. 184 : 1984 (1) SCC 43 : 1983 L.I.C. 1680 : 1984 (48) F.L.R. 38 : 1984 (1) L.L.J. 2.



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of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. *When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order by absence of any formal opportunity of cross examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.*

33. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. *Where there is no dispute as to the facts or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.*

34. *The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case....."* (Emphasis supplied)*

34. In *State Bank of Patiala and others v. S. K. Sharma,*[1] the Court held that it would not be correct to say that for any or every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. Where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (*i. e.* adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice. The test is whether the party had or did not have any fair hearing. The Court noted that the decision in *S. L. Kapoor v. Jagmohan* was a case of total absence of notice as in the case of *Ridge Baldwin* and the observations made in *S. L. Kapoor's* case have to be understood in the context of the facts of the case. The Court observed : (at page 1683).

The interests of justice equally demand that guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat ends of justice. The principles of natural justice are but means of achieving ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter productive exercise".

35. In *M. C. Mehta v. Union of India,*[2] the Supreme Court pointed out that there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. The court observed

1. (1996) 3 SCC 364 : 1996 AIR S.C.W. 1740 : AIR 1996 SC 1669 : 1996 (2) L.L.J. 296.
2. (1999) 6 SCC 237 : AIR 1999 SC 2583 : 1999 (5) J.T. 114 : 1999 (4) Scale 267.

* Here italici sed.



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that at one time, it was held in *Ridge Baldwin* that breach of principles of natural justice was in itself treated as prejudice and that no other '*de facto*' prejudice needed to be proved. But since then the rigour of the rule has been relaxed not only in England but also in our country. In *Aligarh Muslim University v. Mansoor Ali Khan*,[1] the Court after referring to the earlier decisions in *K. L. Tripathi v. State Bank of India and M. C. Mehta v. Union of India* observed : (at page 2788)

"Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala and others v. S. K. Sharma*,[2]. In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in *Rajendra Singh v. State of M. P.*,[3].

36. The decisions cited above make one thing clear that the principles of natural justice cannot be reduced in hard and fast formulae. These principles cannot be put in strait jacket. Their applicability depends upon the context and the facts and circumstances of each case. The objective is to ensure fair hearing and fair deal to the person whose rights are going to be affected. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the party in defending himself properly and effectively.

37. Before we examine the facts of the present case in the light of the decided cases we may briefly refer to the procedure which the Speaker is required to follow in determining the question of disqualification under the Tenth Schedule. Rule 7(1) framed by the Speaker under para 8 of the Tenth Schedule states the procedure to be followed for determining any question. This shall be the same as the procedure applicable for determination by the Committee of any question as to breach of privilege. It also provides for giving reasonable opportunity to the member to represent his case. Rule 179 of the Legislative Assembly Rules deals with examination of witnesses. Rule 179 provides that the Committee shall, before a witness is called for examination, decide the mode of procedure, and the nature of questions that may be asked to the witnesses. Rule 277 provides that the Committee shall examine every question referred to it and after giving an opportunity to the persons concerned to explain their cases determine with reference to the facts of each case whether a breach of privilege is involved and make a report to the Assembly. Rule 278 lays down procedure for summoning the witnesses and production of documents as are required for the use of committee. Rule 281 says that the Speaker may issue such directions as he may consider necessary for regulating the procedure in connection with

1. AIR 2000 SC 2783 : 2000 (7) SCC 529 : 2000 AIR S.C.W. 2916 : 2000 (5) S.L.R. 67 : 2001 (98) F.J.R. 93.
2. (1996) 3 SCC 364 : 1996 AIR S.C.W. 1740 : AIR 1996 SC 1669 : 1996 (2) L.L.J. 296.
3. (1996) 5 SCC 460 : 1996 AIR S.C.W. 3424 : AIR 1996 SC 2736 : 1996 (5) Scale 793 : 1996 (6) Sup. 658.



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all matters connected with the consideration of the question of privilege either in the Committee or in the Assembly.

38. Coming to the facts of the case it is required to be noted that there is no dispute that the petitioners had addressed letters to the Governor withdrawing the support of DF Government led by Mr. Vilasrao Deshmukh. The plea of violation of rules of natural justice will have to be considered *in the light of the fact that the said letter dated 4th June, 2002 and its* contents are not disputed, on which solely, at any rate, principally the Speaker has based his decision. There was a show cause notice issued by the Speaker to each of the petitioners separately. Instead of replying to the notice, the petitioners chose to approach this Court by filing Writ Petitions. The petitioners simultaneously applied to the Speaker for extension of time which applications were accepted by the Speaker and time was extended. In fact, if we consider the record, it would be seen that the petitioners were practically given six days time to file their replies. Further applications were made for extended time but still no reply was filed to the show cause notice. Ultimately, Writ Petitions came to be dismissed by this Court on 10th July, 2002. The Supreme Court was moved on 11th July by filing S.L.Ps. It is pertinent to note that in the S.L.Ps. a ground was raised that the petitioners have a right to persuade other members to join their legitimate cause and share their feelings and translate them into split as contemplated in para 3 of the Tenth Schedule and in the event of such consent being endorsed by other party members, there would be legitimate split on the floor of the Assembly. The S.L.Ps. were dismissed by the Supreme Court. Finally, the petitioners filed their written statements before the Speaker. In the written statement, which runs into several pages, it is not even remotely stated that they continue to belong to N.C.P. The fact that the letter withdrawing the support of the Government was submitted to the Governor was admitted but its interpretation was disputed. One of the Legislators *viz.* Shirish Kotwal claimed that he was unable to attend the hearing as he was admitted in I.C.U. and advised one weeks bed rest. Surprisingly, he came out of the Hospital immediately after hearing was over on 13th June, 2002. This action speaks volume as to his *bona fides*. Having perused the original proceedings before the Speaker, it is seen that preliminary objections on the ground of violation of Rules 6 and 7 were argued for several hours and then evidence of Sachin Ahir was led who deposed about the letter and news cuttings. Sachin Ahir was cross-examined. It appears that in the petition against Shirish Kotwal the date of letter was erroneously mentioned as 4th instead of 5th and it was stated erroneously that he approached the Governor along with the Leader of Opposition on 4th June, 2002. Actually, *Shirish Kotwal sent the letter on 5th June, 2002* by fax and this fact was disclosed in his reply. The Speaker allowed the amendment to correct the date and the portion which stated that Shirish Kotwal accompanied the Leader of Opposition was scored of. Surely, this amendment could not have prejudiced him in any manner. The Speaker while issuing notices to the petitioners also issued notice to Chhagan Bhujbal as Leader of N.C.P. and called for his comments. An affidavit was filed by Bhujbal in response to the notice. The prayer for cross-examination of Bhujbal was rejected by the



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Speaker obviously because he was a co-noticee and his affidavit was not relied upon by the applicants. The Speaker gave opportunity to each of the Legislators to explain their stand in respect of the letter. The statements of 3 Legislators, Narsing Patil, Narayan Pawar and Shivajirao Naik were recorded by the Speaker. The Speaker showed his willingness to examine Shirish Kotwal on commission as his Advocate claimed that he was hospitalised. This suggestion was turned down by the Advocate appearing for Shirish Kotwal. The Speaker finally decided the matter principally on the basis of the letters addressed by the petitioners to the Governor.

39. The principles of natural justice will depend upon the facts and circumstances of each particular case. We have set out hereinabove actual facts and circumstances of the case. The fact that the petitioners had submitted letters to the Governor withdrawing support of D. F. Government led by Mr. Vilasrao Deshmukh is not denied or disputed. They sought to give their explanation in respect of letters but they did not dispute that the letters were sent to the Governor. The explanation given by the petitioners was duly recorded. The petitioners had not alleged that their version has been improperly recorded. In short they had accepted the factual basis of allegations made in the disqualification petitions. Though examination in chief of the petitioners was not formally recorded the Speaker gave them opportunity to explain their stand with regard to the letters addressed to the Governor. The request for calling the Leader of Opposition Narayan Rane and Gopinath Munde and the Secretary of the Governor was rightly declined as the testimony of these witnesses have no bearing on the real controversy before the Speaker. The learned Counsel for the petitioners have no doubt contended that it has prejudiced the petitioner's case but except merely mentioning the same, they were unable to specify in what manner and in what sense were the petitioners prejudiced in their defence. We are satisfied that on account of the alleged violation it cannot be said that the petitioners did not have a fair hearing or that the enquiry conducted by the Speaker was not a fair enquiry. We have set out herein before in extenso the findings recorded by the Speaker. The issue involved before the Speaker was a narrow one *i. e.* interpretation of the contents of the letter. It being admitted fact that the letter of withdrawal of support was written, signed and received by the Governor, the Speaker has given more than sufficient opportunity to consider the narrow issue involved for deciding the question whether the petitioners have incurred disqualification under para 2(1)(a) of the Tenth Schedule. Therefore, in our opinion, the manner in which the proceedings were conducted, as a result of which action has been taken against the petitioners cannot be condemned as bad for any violation of principles of natural justice.

40. It was also argued before us that the manner in which the Speaker conducted himself and the proceedings clearly points to a biased decision, bias in fact or at least appearance of bias, either of which is sufficient to render the order of the Speaker invalid. It is submitted that the Speaker had acted in hurry and he deliberately curtailed the period of notice. It is submitted that the Speaker belongs to the N.C.P. His name for election for the post of Speaker was proposed by Mr. Vilasrao Deshmukh and



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supported by late Sudhakarrao Naik and he became the Speaker. The case also concerns the alleged disqualification of legislators who belong to the N.C.P. and who have withdrawn the support to the Chief Minister Vilasrao Deshmukh and his coalition Government. It is submitted that the Speaker's interest was in survival of the coalition Government and consequently his own survival as a Speaker. His sole purpose was to prevent the petitioners from voting in the motion on 13th June, 2002. It is, therefore, urged that after the petitioners' letter on 8th June, 2002, expressing apprehension of bias, the Speaker ought to have recused himself and in that event the House would have elected a member for the purpose of deciding the cases, as is contemplated in a situation arising under the proviso to para 6(1) of the Tenth Schedule. We are unable to accede to the submissions made by the learned Counsel. The question of bias has to be seen in the light of the statutory scheme of the Tenth Schedule and the office held by the Speaker. Para 6 of Tenth Schedule requires the Speaker himself to decide the issue of disqualification. It further gives finality to such decision. Rules framed by the Speaker also set out that the decision has to be by the Speaker under rule 7 and even if it is sent to the Committee, the Committee only makes report to the Speaker, who has to take a final decision. In the present case allegation of bias is founded solely on the ground of irregularities in procedure. Mere procedural irregularities do not disclose any bias. In fact as noticed earlier the Speaker has given reasonable opportunity to the petitioners to make out their case. Therefore, the argument that the Speaker had acted in hurry is without any substance and it was part of the constitutional mandate for the Speaker to have decided the matter before the motion of confidence. The allegation of bias is thus devoid of any merit.

41. It was next contended by the learned Counsel for the Petitioners that it was perverse to take a view that withdrawing the support of DF Government amounts to giving up the membership of political party. The constitutional mandate is that disqualification under clause (a) of para 2(1) is incurred only if there is voluntary giving up the party membership. In so far as coalition Governments are concerned where the Chief Minister belongs to different party, withdrawal of support to him and his cabinet can never fall under this clause. Therefore, when a party member withdraws the support to the Chief Minister belonging to different party, para 2(1)(a) would not apply. Para 2(1)(b) might apply to a multi party house but not para 2(1)(a). The petitioners as legislators owe a duty to their electorate and do not owe any duty to support coalition Government which is headed by a Congressman, a Government in which Congress, N. C. P., and others are all included. Therefore, the letters given to the Governor that the petitioners withdraw the support to the present coalition Government can never be encompassed by para 2(1) (a) of the Tenth Schedule. The reason is that the legislators remain true to the mandate from the people, who elected them, are not concerned with the survival in power of a particular Government or Chief Minister; their allegiance is to the people. The sole evil which the Tenth Schedule is aimed at is that those legislators who get elected on a party ticket ought not to be allowed to betray the trust of the people or party either by giving membership of the party or voting against its



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directions. The Tenth Schedule is not intended to cover parties who have given up their original manifesto to which they took to the people during elections and they allied together to make a coalition Government.

42. The learned Counsel urged that Articles 105 and 194 expressly grant absolute freedom of speech to the Legislators and is made immune for liability for anything said while functioning as Legislator. Our attention was drawn to the observations of Bharucha, J., as he then was, in *P. V. Narsimha Rao v. State*,[1] (at page 708) :

"This is recognition of the fact that the Members need to be free of all constraints in the matter of what they say in Parliament if they are effectively to represent their constituencies in its deliberations."

Our attention was also drawn to a passage from Seervai's Constitutional Law of India, 4th Edition, Volume 2 at page 2156.

"The next and most important privilege of the House is the freedom of speech, debate and proceedings. These freedoms are now so well established that it is difficult to realise that they were won after a hard and bitter struggle. Freedom of speech is primarily the privilege of an individual member of the House and indirectly of the House since it is necessary for the proper functioning of the House."

Then reference was also made to the decision of the Privy Council in *Prebble v. Television NZ Ltd.*,[2] (at page 417) :

"There are three such issues in play in these cases: first, the need to ensure that the Legislature can exercise its powers freely on behalf of its electors, with access to all relevant information: second, the need to protect freedom of speech generally: third, the interests of justice in ensuring that all relevant evidence is available to the Courts. Their Lordships are of the view that the law has been long settled that, of these three public interests, the first must prevail."

It is contended that the petitioners still stand true to their mandate from the people and remained loyal to the party manifesto of N.C.P. and have only exercised their freedom of speech in telling the Governor that they do not support the Government headed by the Chief Minister. No such acts or speeches of Legislators which are consistent with the due discharge of their functions in a parliamentary form of Government can form the foundation for inference that the legislator has given up membership of political party.

43. In *Kihota Hollohon's* case the Supreme Court expressly rejected the argument that rights and immunities under Articles 105(2) and 194 are even higher than the fundamental right under Article 19(1)(a). The Court observed : (at page. 431)

"The freedom of speech of a Member is not an absolute freedom. That apart, the provisions of the Tenth Schedule do not purport to make a Member of a House liable in any 'Court' for anything said or any vote given by him in Parliament. It is difficult to conceive how Art. 105(2) is a source of immunity from the consequences of unprincipled floor-crossing."

The Court further observed : (at pages 432 and 435)

1. (1998) 4 SCC 626 : AIR 1998 SC 2120 : (1998) 3 J.T. 318 : 1998 (1) S.C.J. 529 : 1998 Cr. L.J. 2930.
2. 1994 (3) All E. R. 407.



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"But a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its Members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay, indeed, its very survival. Intra party debates are of course a different thing. But a public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable state of things."

"Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the Legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor crossing belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti defection law seeks to recognise the practical need to place the proprieties of political and personal conduct whose awkward erosion and grotesque manifestations have been the base of the times-above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation."

44. The High Level Committee appointed by the Parliament negatived the concept of absolute freedom of the Legislators in following terms :

"An extremely theoretical view is that a legislator is answerable only to the electorate, that he should be free to make whatever decisions he likes and that if he makes the wrong decisions, his electorate will extract the price if and when he next offers himself before it during election to the Assembly or Parliament. This is not a sound view. It is the commonly accepted axiom in the operation of all democratic political systems that :-

(a) a representative should act in such a manner that the people at large have confidence in the elected bodies;

(b) the very process of the election creates a tie or allegiance in the eyes of the electorate between the representative and what he stood for at the time he contested elections. In other words, he has a mandate which it is his duty to fulfil.

Defections in any context violate these general principles. In the Indian context they have become manifestly objectionable because of :

(a) the unprincipled nature of the alliances entered into by the defector;

(b) the obvious lure of power behind most cases of defections;

(c) the widespread belief in the role of dishonourable inducements ;

(d) the creation of conditions of political instability with its adverse impart on administration; and

(e) deriving from all this, the erosion of the confidence of the people in the Parliamentary democratic system of Government."

45. In *Kihoto Hollohon's* case the Court cited with approval the following passage from JAG Griffith and Ryle (Parliament - Functions and Procedures, 1989 Edn. pages 118-119) :



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"Of all the factors that go to make up the general characteristics of the House of Commons, party is the strongest. It is because of the party that members are in the House. Party determines whether they sit on the Government side or on the opposition side. Party indicates where their support lies in the country. Party will decide whether they are re-selected. The Leader of the Party in the House may exercise the greatest influence on their future political careers and party Whips on their day today activities.

But it is mistaken to suppose that Members, especially new Members, always find so called party discipline irksome and oppressive. On the contrary the structures of party can be helpful. Loyalty to the party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for members to accept the opinion of their Leaders and Spokesmen on the wide variety of matters on which those Members have no specialist knowledge. Generally Members will accept majority decisions in the party even when they disagree. It is understandable therefore that a Member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy. *To abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other side smacks of conspiracy."*

(Emphasis supplied)*

46. In *Kihoto Hollohan*'s case a reference was also made to the following passage from Rodney Brazier's Constitutional Reform - Reshaping the *British Political System, 1991 Edn. (pages 48 and 49)* :

"Once returned to the House of Commons, the Member's party expects him to be loyal. This is not entirely unfair or improper, for it is the price of the party's label which secured his election. But the question is whether the balance of a Member's obligations has tilted too far in favour of the requirements of party. The nonsense that a Whip-even a three-line whip is no more than a summons to attend the House, and that, once there, the Member is completely free to speak and vote as he thinks fit, was still being put about, by the Parliamentary Private Secretary to the Prime Minister, as recently as 1986. No one can honestly believe that. Failure to vote with his party on a three line whip without permission invites a party reaction. This will range (depending on the circumstances and whether the offence is repeated) from a quiet word from a whip and appeals to future loyalty, to a ticking off or a formal reprimand (perhaps from the Chief Whip himself), to any one of a number of threats. The armoury of intimidation includes the menaces that the Member will never get ministerial office, or go on overseas trips sponsored by the party, or be nominated by his party for Commons Committee Memberships, or that he might be deprived of his party's whip in the House, or that he might be reported to his constituency which might wish to consider his behaviour when rselection comes round again ..... Does the Member not enjoy the Parliamentary Privilege of freedom of speech? How can his speech be free in the face of such party threats? The answer to the inquiring citizen is that the whip system is part of the conventionally established machinery of political organisation in the house, and has been ruled not to infringe a Member's parliamentary privilege in any way. The political parties are only too aware of the utility of such a system, and would fight in the last ditch to keep it."

* Here italicised.



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47. In Sir Ivor Jennings' "Cabinet Government", 3rd Edn. 1961, the learned author at pages 17 and 18 states as under :

"Moreover, the electors do not vote for a candidate but for a party. An unusually feeble candidate may lose some votes; a particularly able candidate may secure some votes on his personality. But the ablest candidate cannot win a seat which is, from the party point of view, "hopeless" nor can the feeblest candidate lose a seat which is 'safe'. There is a core of voters who would think it treachery to vote against the party. Even the so called *'floating vote', which* possesses no fixed party affiliations, is affected more by the reputation of a party than by the reputation of a candidate.

But the House of Commons is not composed of individual members, each of whom takes thought about the desirability of each proposal and votes accordingly. The House of Commons consists of parties. The Government, as a party authority, has control over one or more of them. It appoints 'whips' and pays many of them out of public funds. It is their function to see that the members of the party attend the House and support the Government. If the Government has a majority, and so long as that majority holds together, the House does not control the Government but the Government controls the House.

The Government's control over its majority is substantial. *To vote against the Government is to vote against the party, to rebel against the Government is to leave the party.* To leave the party is to lose the party support at the next election; and, since the average elector votes for the party label, this means, probably, that the member will not be re-elected. Membership of the House and accession to office alike depend on party service and party support. Self-interest dictates support even when reason suggests opposition. Moreover, to vote against the Government is to vote with the enemy. *To assist in defeating the Government is to risk the coming into office of the opposition, a result which is, ex-hypothesi, worst than keeping the Government in office*".

(Emphasis supplied)*

48. The same author on pages 473 and 474 says :

*"The successful candidate is almost invariably returned to Parliament not because of its personality nor because of his judgment or capacity but because of his party label.* His personality and his capacity are alike unknown to the great mass of his constituents. A good candidate can secure a number of votes because he is good; a bad candidate can lose a few because he is bad. Local party organisations, therefore, do their best to secure a candidate of force and character. But his appeal is an appeal on his party's policy. He asks his constituents to support the fundamental ideas which his party accepts. His own electioneering is far less important than the impression which his party creates *in the minds of the electors. They vote for or against the Government or for or* against the party to which he belongs. The 'national' speaker who comes into a constituency to urge electors to support the candidate probably knows nothing of him. He commends the candidate because he supports the party; he would condemn him with equal pleasure if he did not. Many of the posters are prepared and circulated by party headquarters. The candidate's own posters emphasize his party affiliation. He possesses an "Organisation" because the party supports in the locality -stimulated, if necessary, by the party headquar

* Here italicised.



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ters believe in the party policy sufficiently strongly to give time and trouble to its work. The Member of Parliament is thus returned to support a party. He recognises his party obligation by receipt of "the whip" and this means, probably, the loss of party support at the next election. Without that support, he will probably not be elected. Also, his party loyalty as well as his self interest will induce him normally to vote with the party. Sir Austen Chamberlain once referred to the 'almost incredible strength' of party loyalties; and John Bright is reported to have said that not thirty men outside the Irish would have voted for Home Rule in 1885 if any one but Mr. Gladstone had proposed it. *Above all, a supporter of the Government is very unlikely to take any step which will defeat the Government. For, if it is defeated on a major issue, it will resign or dissolve Parliament. If it resigns, he has assisted the formation of a Government by the opposition which is ex-hypothesi worst than that which he was elected to support.* If Parliament is dissolved, he will have to undergo the trouble and possibly the expenses of an election; and it may not be certain that he will be re-elected."

(Emphasis supplied)*

49. Herman Finer in The Theory and Practice of Modern Government at page 97, while discussing the view of John Stuart Mill opined thus :

"What is missing from this analysis? The factor which today is of the most importance; the political party. And much of the essay on Representative Government is stone-deal for the same reason: the omission of political parties.

*It is clear that discussion after the rise of parties must proceed upon entirely* different lines, for the whole relationship of the elector to the legislative has been altered. The parties have become recognisable anmmtitics, secure of a large body of steady loyalty. These are the bodies which have applied themselves to the task Mill ascribes to the constituents; they search out qualities among men and ascertain the value of policies. They make or endorse the nominations. The caucus or the primary nominates on the basis of party membership and party programme. The constituents expect the member to follow the instructions of the party whip. The party organisation itself disciplines the member. The old time discussion is, therefore, out of date.

50. Thus it is clear that the freedom of speech of member is not an absolute freedom. The electorate essentially votes for a party and legislature mainly consists of parties. It is the party which decides whether they sit on the Government side or opposition side. It is because of the party that the members are in the House. To abstain from voting when required by the party is to suggest degree of unreliability. To vote against the party is disloyalty. To join with others in abstaining or voting for other side smacks of conspiracy. For legislator whose party is in the Government, to vote against the Government is to vote against the party; to rebel against the Government is to leave the party.

51. The avowed object of the Tenth Schedule is to discourage unprincipled defections which is political and social evil. In interpreting the Tenth Schedule, we should bear in mind the principles in *Heydon's* case as applied in *Bengal Immunity Company Ltd. v. State of Bihar*[1]; (at page 674)

1. AIR 1955 SC 661 : 1955 (2) S.C.R. 603 : 1955 S.C.J. 672 : 1955 (6) S.T.C. 446.
* Here italicised.



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"(22) It is sound rule of construction of a statute firmly established in England as far back as 1584 when "*Heydon's* case (1584) 3 Co. Rep 7a (V) was decided that :

".....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered :

1st : What was the Common Law before the making of the Act.

2nd : What was the mischief and defect for which the Common Law did not provide.

3rd : What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th : The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and 'pro-privato commodo' and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *'pro bono publico'*."

51. It is clear that the evil which was sought to be remedied by the Parliament was the one resulting from widespread practice of unprincipled floor crossing by the Legislators. This evil was sought to be remedied by inserting the Tenth Schedule in the Constitution. The anti-defection law *must be so interpreted as to eliminate the mischief rather than to promote* it. If interpretation of para 2(1)(a) of the Tenth Schedule as suggested by the petitioners' Counsel is accepted it would virtually defeat the very object of the Tenth Schedule.

52. The submission of the learned Counsel that para 2(1)(a) of the Tenth Schedule has no application to multi party house is without any basis. There is nothing in the language of the Tenth Schedule to suggest that the Parliament intended to exclude the operation of para 2(1)(a) in respect of coalition Government. Coalition Governments are not uncommon in democratic countries. In our country coalition Governments have ruled in the States and Centre. The High Level Committee report also takes into consideration the multi party system prevailing in this country. In this context we may also refer to a passage from JAG Griffith and Ryle (Parliament Functions, Practice and Procedures,) 1989 Edn. at pages 69-70 :

"MEMBERS & CONSTITUENCIES

The relationship

The functions of Members are of two kinds and flow from the working of representative Government. When a voter at a general election, in that hiatus between Parliaments, puts his cross against the name of the candidate he is (most often) consciously performing two functions : seeking to return a particular person to the house of commons as Member for that constituency; and seeking to return to power as the Government of the country a group of individuals of the same party as that particular person. The voter votes for a representative and for a Government. He may know that the candidate he votes has little chance of being elected. He may then consider that his vote will be



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counted as one of the protest against the successful candidate and his party. He may also know that the party he votes for is most unlikely to form a Government. But even if he votes for a party (such as the regional parties in Scotland, Wales and Northern Ireland) which puts forward only a small number of candidates, *he cannot exclude the possibility that the party might participate in the formation of a Government, or might even become part of a coalition.*

*But, secondly, he is also a party man and elected as such. If his party is in office as the Government of the day, his primary duty is to support it and to vote for its measures.* If his party is in Opposition, his primary duty is to support its leaders in their criticism of Government policy. He will also be expected to maintain contact with his local party in his constituency."

(Emphasis supplied)*

53. In the light of the decision in *Kihota Hollohon*, the power of judicial review is very limited one and court will not interfere unless decision of the Speaker is perverse. The concept of perversity is a concept as explained by Lord Diploc in *Council of Civil Service Unions v. Minister for the Civil Services*.[1].

"By" irrationally" I mean what can be now succinctly referred to as "Wednesbury unreasonableness" (see *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

The test was adopted by the Supreme Court in the case of *UOI v. G. Ganayutham*,[2] and it was observed in para 28 as under : (at page 3395).

"(1) To judge the validity of any administrative order or statutory discretion, normally, the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not *bona fide*. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards."

In our opinion, the view taken by the Speaker is a possible view and we are unable to hold that the said decision is any way unreasonable, irrational or perverse. No interference is, therefore, warranted with the said decision of the Speaker.

**Writ Petition No. 3616 of 2002**

54. The petitioner Gangadhar Thakkarwad was elected on the ticket of Janata Dal (S) along with Dada Jadhavrao. There were only two members of Janata Dal (S) in the Assembly. On 4th June, 2002, the petitioner

1. 1985 (1) A.C. 374.
2. AIR 1997 SC 3387 : 1997 AIR S.C.W. 3464 : 1997 SCC (L & S) 1906.

* Here italicised.



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presented a letter to the Governor withdrawing the support of DF Government led by Chief Minister Vilasrao Deshmukh. On the same day, the petitioner filed an application before the Speaker stating that on 4th June, 2002 he has formed a separate group in the Legislative Assembly known as "Maharashtra Janata Dal" by leaving the membership of Janata Dal (S). He claimed that he is the only member of the new Legislature Party which has come into existence in the Legislative Assembly. The Speaker issued a notice to the petitioner on 5th June, 2002 calling upon him to produce the requisite proof regarding split in the original political party Janata Dal (S) and split in the Legislature Party within two days. On 6th June, 2002 Dada Jadhavrao filed Disqualification Petition before the Speaker stating that the petitioner has not even claimed that there was a split in the Janata Dal (S) *i. e.* the original political party. It was stated that there had been no split in Janata Dal (S) political party and that the petitioner had accordingly *incurred disqualification under para 2(1)(a) of the Tenth Schedule.* The Speaker issued a show cause notice to the petitioner to submit his statement of defence within two days. The petitioner filed application for extension of time and accordingly time was extended to 11th June, 2002 *vide* order dated 7th June, 2002. On 10th June, 2002, the petitioner filed a Writ Petition challenging the Speaker's order dated 7th June, 2002. The petition, however, was never moved. On 11th June, 2002 petitioner filed written statement in which he claimed that there had been a split in the political party *i. e.* Janata Dal (S) and resultant split in the Legislature Party of Janata Dal (S). The material portion of the written statement of the Petitioner is reproduced below :

"7. The averments in para 4 of the petition are a matter of record. On account of a split in the political party, *viz.* Janata Dal, there was a resultant split in the Legislature party of Janata Dal (S) and this was communicated to the Hon'ble Governor and Hon'ble Speaker.

8..... In view of the split in the original Political Party, there was a resultant split in the Legislature party and in view of this, neither the provisions of clause (a) or (b) of Rule 1 of para 2 of the 10th Schedule are applicable.

12.... the respondent denies that the Respondent has voluntarily given up the membership of the original political party. As a matter of fact, since there is a split in the political party, there is no question of any disqualification."

55. In his deposition the petitioner had stated that a meeting was held in the office of Janata Dal (S) at Nariman Point around 20th or 22nd May, 2002 where there was a split in the party. However, he was unable to furnish any proof regarding; (a) calling of the meeting; (b) agenda of the meeting; (c) proceedings of the meeting; (d) resolution for split; and (e) any report of the split in Janata Dal (S) in print media or on TV channels. The Counsel for the petitioner, however, argued before the Speaker that there is no need to have split in the original political party and there can be split in the Legislature party without it. The Speaker rejected this submission and held thus :

"Paragraph 3 of the 10th Schedule deals with the split in the original political party of the Members, which is a condition precedent for the Speaker



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to recognise a split in the Legislative Party. The Speaker has to satisfy himself that a split in the original political party of the member has actually taken place before recognising the split in the Legislature party. This is a condition precedent for recognising the split in the Legislature Party. The High Court of Bombay in *Wilfred A. DeSouza v. Cardozo, Hon. Speaker, Goa Legislative Assembly,*[1] has held that mere bare claim would not be sufficient to prima facie prove split resulting in faction/group and that such group consists of not less than 1/3rd members of the Legislative Party. Prima facie proof in support of claim shall have to be adduced before the Speaker. The Speaker has to prima facie satisfy himself that faction/group has arisen as a result of split. So, the question before me is to decide whether there has been a split in the Original Political party and whether Respondent has given sufficient proof to prove that a split has actually occurred in the original political party. But no evidence was produced to prove any split in the original political party and so it cannot be accepted that there is a split in the Original Political Party as contemplated in para 3 of the Tenth Schedule to the Constitution. So, Mr. Gangaram Thakkarwad cannot claim the benefit of the para 3 of the Tenth Schedule to the Constitution.

Now, the question arose on the basis of the petition, and the arguments made by the petitioner that the Respondent has voluntarily given up the membership of his political party and as such he attracts the provisions of para 2(1)(a) of Tenth Schedule, and incurred disqualification under this Paragraph. The respondent has written a letter on 4.6.2002 to me claiming a split in his political party and also he has written a letter to H. E. the Governor of Maharashtra that he is withdrawing the support to the Government led by Shri Vilasrao Deshmukh, Chief Minister and is supporting Shri Narayan Rane, Leader of Opposition in the Maharashtra Legislative Assembly. This very fact is sufficient proof for the Respondent to attract the provisions of Para 2(1)(a) of the Tenth Schedule."

56. Mr. Jahagirdar, learned Counsel for the petitioner contended before us that the Speaker had not given sufficient opportunity to the petitioner to produce the proof of split in the political party. He rejected the request of the petitioner for granting time to produce evidence to establish split in Janata Dal (S). Thus, the Speaker, according to Mr. Jahagirdar, breached the rules of natural justice. Mr. Jahagirdar also submitted that there is no distinction between the original political party and the Legislature party. The words "original political party" as appearing in the Tenth Schedule have absolutely no relevance to the party forum, levels or hierarchy. It is not descriptive in nature but is used to identify a group which sets up the concerned member who is alleged to have given up the membership of such group *i. e.* original political party. Therefore, according to Mr. Jahagirdar, it is not necessary to establish the process of separation or for formation of dissenting group. Even if one member disassociates himself and demands recognition as a separate group, such assertion would amount to sufficient compliance of para 3 of the Tenth Schedule. Investigation and further enquiry as to whether there is a split in the party outside the House and whether such a split caused resultant separation in the Legislature

1. (1998) Vol. 100 (3) Bom. L. R. 194 : 1999 (1) Bom. C. R. 594 : 1998 (2) Goa L.J. 400.



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party is beyond the scope of the enquiry of the Speaker under the Tenth Schedule.

57. We are unable to accept the submission of Mr. Jahagirdar. In *Ravi Naik*'s case, the Supreme Court has pointed out that burden to prove the requirement of para 2 is on the person who claims that the member has incurred disqualification and burden to prove the requirement of para 3 is on the member who claims that there has been split in his original political party and by virtue of the said split disqualification under para 2 is not attracted. The requirement of para 3 is that member of the House who makes a claim must establish that he and other members of the Legislature party constitutes a group representing a faction which has arisen as a result of split in the original political party and such group consists of not less than one-third of the members of such Legislature party. In *Dr. Wilfred A. De Souza and others v. Shri Tomazinho Cardozo Hon'ble Speaker of the Legislative Assembly & others.*[1], it was argued before the Division Bench that mere claim that there was a split in the original political party is sufficient compliance with para 3 of the Tenth Schedule. This submission was expressly rejected by the Division Bench. The Bench observed : (at page 220)

"Applying the principles of statutory construction, in our view, mere bare claim would not be sufficient, to prima facie prove split resulting in faction/group and that such group consists of not less than one third members of the Legislature party. Prima facie proof in support of claim shall have to be adduced before the Speaker. The Speaker has to prima facie satisfy himself that faction/group has arisen as a result of split. It is not at all necessary that it should be a vertical split at all levels or rungs of the political party. It is not for the Speaker to find out the extent or percentage of the split in the political party. However, when it comes to Legislature party, the group claim representing the faction has to be not less than one-third of the members of the Legislature party."

58. In *Mayawati v. Markandeya Chand and others.*[2] Justice M. Srinivasan observed in para 85 thus : (at p. 3357).

"Before referring to *Ravi S. Naik*, (1994 AIR S.C.W. 1214) (supra) I would consider the question on first principles. Para 3 of the Tenth Schedule excludes the operation of para 2(1)(a) and (b) where a member of a House makes a claim that he and any other member of his legislative party constitute the group representing a faction which has arisen as a result of split in his original political party and such group consists of not less than one-third of the members of such Legislature party. The following are the conditions for satisfying the requirements of the para.

(i) A split in the original political party.

(ii) The faction is represented by a group of M.L.As. in the House.

(iii) Such group consists not less than one-third of the members of Legislature party to which they belong. For the purpose of that para all the three conditions must be fulfilled. *It is not sufficient if more than 1/3rd members of a legislative party form a separate group and give to itself a different name without*

1. (1998) Vol. 100 (3) Bom. L. R. 194 : 1999 (1) Bom. C. R. 594 : 1998 (2) Goa L.J. 400.
2. AIR 1998 SC 3340 : 1998 (7) SCC 517 : 1998 (7) J.T. 36 : 1998) 5 Scale 517.



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*there being a split in the original political party. Thus, the factum of split in the original party and the number of members in the 'group' exceeding 1/3rd of the members of the Legislature party are the conditions to be proved."*

(Emphasis supplied)*

Although Justice Thomas deferred on certain other aspects, agreed with the above reasoning which is clear from the following observations in para 68 : (at page 3354)

"The argument of the appellant is that the expression 'political party' in sub-para (b) means "politipal party in the House", in other words, the "Legislature Party". This argument runs counter to the definition contained in para 1(c). According to that definition, "original political party" in relation to a member of a House, means the political party to which he belongs for the purpose of sub-paragraph (1) of paragraph 2."

59. In a recent decision of the Full Bench of Punjab and Haryana in *Ram Bilas Sharma v. The Speaker, Haryana Vidhan Sabha.*[1] the Bench observed : (at page 47)

"Thus, in order to attract paragraph 3 there should be a split in the original political party and one-third members of the Legislature Party of that political party constitutes the group representing the fraction which splits away from the original political party, then only those members of that faction do not incur disqualification under sub paragraph (1) of paragraph 2 of the 10th Schedule."

Thus member claiming benefit of para 3 has to prove prima facie that there has been a split in the original political party. The submission of Mr. Jahagirdar that such proof is not necessary must stand rejected.

60. In the instant case, the petitioner in his written statement provides no particulars whatsoever of the alleged split in Janata Dal (S) political party *i. e.* date, time and place and manner of the alleged split and party members and office-bearers who had split from Janata Dal (S) and formed Maharashtra Janata Dal. In his deposition, the petitioner stated that the minutes had been prepared at the meeting. However, he stated that he had not produced the minutes alongwith the written statement and that the papers were not with him. He stated that he had received an invitation for the meeting but he did not produce the same. He stated that he had not produced the minutes and invitation because he had not been asked to do so. Even after having been granted an extension till the 11th to file his written statement and produce all documents, the petitioner produced no document/material whatsoever in support of his case of a split in the party. Instead at the hearing of 12th petitioner's Advocate filed an application seeking a further 10 days time to record the depositions of persons who had split from the Janata Dal (S) and joined the Maharashtra Janata Dal. No names of such persons were stated in the application. The Speaker stated that he was willing to give the petitioner a further two hours to enable him to produce the record from the party's Nariman Point office and to examine such party workers as were available. Petitioner's Advocate stated that it was not possible and that the record was also not there. In these circumstances, the Speaker was right in holding that the petitioner has failed to

1. 1950-98 SC & F.B. Election Cases 46.

* Here italicised.



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prove the split in the original political party and thus incurred disqualification under para 2(1)(a) of the Tenth Schedule.

**O. S. Writ Petition No. 1637 of 2002**

61. Desmond Yetas, the petitioner in this petition was nominated to the Maharashtra Legislative Assembly on 24th November, 2000 by the Governor of Maharashtra on the recommendation of the ruling party *i. e.* Indian National Congress. At the time of his nomination, the petitioner was a member of Indian National Congress. After the nomination of the petitioner, Leader of the Legislative wing of the said political party submitted Form I as required under Rule 3(1) of the Members of Maharashtra Legislative Assembly (Disqualification on the Ground of Defection) Rules. The petitioner too had filled up Form III as required under Rule 4(I) of the said Rules thereby admitting to the fact that at the time of his nomination, the petitioner was a member of Indian National Congress. The relevant averments for disqualification of the petitioner are found in para 4 of the Disqualification Petition which read as follows :

"I Rohidas Chudamani Patil, Agriculture and Parliamentary Affairs Minister, Government of Maharashtra and Chief Whip of Legislative Congress (I) Party, wish to bring to your notice that Shri Desmand Norman Yetas, the nominated Member of Maharashtra Congress (I) party was seen in yesterday's telecast dated 6.6.2002 on E. TV., Aaj Tak and other Television Networks and according to the news printed today on 7.6.2002 in the prominent newspapers like Nava Kal, Lokmat, Sakal, Samana etc. that Shri Desmand Norman Ross Yatas who is a candidate supported by Congress (I) Party and who is nominated Member appointed by the Governor as a person belonging to Anglo Indian Community has voluntarily left the Congress (I) party by joining the Shiv Sena-B.J.P. Alliance with a view to vote against the Government by disobeying Party WHIP."

62. Summons of the petition was served on the petitioner on 8th June, 2002. The petitioner requested for 7 days time for filing reply. The Speaker partly acceded to the request made by the petitioner and granted him time till 12th June, 2002. Respondent No. 2, the Chief Whip of the party of Indian National Congress Rohidas Patil deposed against the petitioner. He produced newspaper reports and video clippings. He was cross-examined at length by the Counsel appearing for the petitioner. Thereafter the Speaker called for the petitioner to enable him to present his case. However, the petitioner had abruptly left the chambers of the Speaker while Rohidas Patil was being cross-examined and despite call given to him he did not return to the hearing. The petitioner thus did not give any statement in defence. This is recorded by the Speaker in para 6 of his order which reads as under :

"On 12th June, 2002 matter was heard by me.

(i) Shri Rohidas Patil, Chief Whip of Congress (I) Party was present.

(ii) Advocate Shri Balkrishna Joshi was present.

(iii) Shri Desmond Yatas was also initially present but then left the Court abruptly and was not available for recording his deposition and cross-examination."



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The Speaker after considering the arguments of both sides proceeded to hold as follows :

"9. From the press clippings, etc. which have been made available to me it is crystal clear that inference can be drawn that he has joined Sena - B.J.P. group. That thereby he had voluntarily given up the Membership of his original political party, Indian National Congress.

10. I rely upon the judgment of *Zachilhu Khusantho v. State of Nagaland*, (1993). A member can voluntarily give up his Membership in variety of ways. He can formally tender his resignation in writing to his political party or in pray so conduct himself that the necessary inferences can be drawn that he has voluntarily given up his Membership of the Party to which he belongs. No provision in the Tenth Schedule requires that the act of voluntarily giving up Membership of the Party must be express or performed in any particular manner, formally or otherwise. To require such a formality in the act or voluntary giving up Membership of Party would amount to adding non-existent qualification or condition in paragraph 2(1)(a). *Zachilhu Khusantho v. State of Nagland*, (1993).

11. In the case of *Ravi S. Naik v. Union of India*,[1] even in the absence of a formal resignation from Membership also it is held that an inference can be drawn from the conduct of a Member that he has voluntarily given up his Membership. The words "voluntarily given up his Membership" occurring in paragraph 2(1)(a) of the Tenth Schedule are not synonymous with 'resignation' and have a wider connotation in as much as a person may voluntarily give up his Membership of a political party even though he has not tendered his resignation from the Membership of that party."

63. Mr. Apte, learned Counsel for the petitioner, attacked the order of the Speaker basically on two grounds. First, he submitted that the Speaker ought not to have relied upon the newspaper reports the proof of which was not established by leading evidence. In the absence of necessary proof the news paper reports were not admissible in evidence. Therefore, the order is based on no material and is perverse. He relied on the decisions of the Supreme Court in *Samant N. Balkrishna v. George Fernandes*,[2] and *Laxmi Raj Shetty and another v. State of Tamil Nadu*,[3]; *Chintappali Agency Taluka Arrack Sales Co-op. Society Ltd. v. Secretary (Food and Agriculture) Government of Andhra Pradesh and others*[4]; Secondly, Mr. Apte submitted that there was total violation of principles of natural justice. In the first place, Speaker ought not to have curtailed the period of 7 days as provided under Rule 7 and in any event sufficient time ought to have been given to the petitioner to lead evidence in support of his case. We do not find any substance in either of these submissions of Mr. Apte. It is true that the Supreme Court has held that the news item without any further proof of what had actually happened is only hearsay evidence and is inadmissible under sections 60 and 63 of the Evidence Act. However, strictly speaking, the degree of proof required under the Indian Evidence Act does not ipso

1. 1994 Supp. (2) SCC 641 : AIR 1994 SC 1558.
2. AIR 1969 SC 1201 : (1969) 3 SCC 238 : 1965 (2) S.C.R. 603.
3. AIR 1988 SC 1274 : 1988 (3) S.C.R. 706 : 1988 (3) SCC 319 : 1988 Cr. L.J. 1783.
4. AIR 1977 SC 2313 : 1978 (1) S.C.R. 563 : 1977 (4) SCC 337 : 1977 U.J. 651.



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facto apply in the disqualification proceedings before the Speaker as the Speaker functions as a Tribunal and not as the Court. In *Ravi Naik* the Division Bench of this Court expressly rejected similar argument that the newspaper reports are not admissible in evidence. In that case the Speaker drew an inference from the contents of the news paper reports that conduct of two legislators concerned in that case falls within the mischief of para 2 of the Tenth Schedule despite the fact that categorical assertion was made by both the legislators in their written statement that they had not given up the party membership and continued to be the members of Maharashtra Gomantak party. The Division Bench held that the Evidence Act is not strictly applicable to tribunals or quasi-judicial bodies who are required to decide and adjudicate upon rights. The view taken by the Division Bench was affirmed by the Supreme Court. Moreover, in the entire written statement there was no pleading to the effect that the petitioner had not given up the membership of Congress (I) Party and he continues to be a member of the said party. Although initially, the petitioner participated in the proceedings he abruptly left the chamber of the Speaker in the midst of hearing and did not return. In *Ram Krishna Verma and State of U. P.*[1] the Supreme Court held that if the party chooses to remain absent inspite of notice to him he cannot be heard to say that enquiry was made in his absence and is, therefore, bad. Even in the ordinary course of law, if a party chooses to be absent inspite of notice, evidence is recorded *ex-parte* and party who chooses to remain absent cannot be heard to say that he had no opportunity to represent or of cross-examine the person whose statements were recorded by the Court. After all, what natural justice requires is that the party should have an opportunity of adducing all relevant evidence and that he should have an opportunity of evidence of his opponent being taken in his presence. Such an opportunity was given to the petitioner. It is not now open for him to complain about breach of natural justice. We do not see any ground to interfere with the Speaker's order in exercise of powers under Art. 226.

64. In the result, in view of foregoing discussion, all the six petitions are liable to be dismissed and accordingly stand dismissed. Petitioner in each of the petitions shall pay costs to the contesting respondent *i. e.* respondent No. 2 in respective petitions quantified at Rs. 20,000/-.

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1. AIR 1992 SC 1888 : 1992 (2) SCC 620 : 1992 (2) S.G.R. 378.



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