IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2018	Delivered on : 25.10.2018

CORAM
The HON'BLE MR.JUSTICE M.SATHYANARAYANAN

W.P.Nos.25260 to 25267 and
25393 to 25402 of 2017 & connected miscellaneous petitions

W.P.No.25260 of 2017:

P.Vetrivel .. Petitioner

Vs.

1. Mr.P.Dhanabal,
Speaker,
Tamil Nadu Legislative Assembly,
Fort St. George, Chennai - 600 009.

2. Mr.S.Rajendiran, MLA,
Chief Government Whip,
Tamil Nadu Legislative Assembly,
Fort St. George, Chennai - 600 009.

3. Mr.K.Palanisami,
Chief Minister,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

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4. The Secretary,
Legislative Assembly Secretariat,
Secretariat, Chennai - 600 009. .. Respondents

PRAYER in W.P.No.25260 of 2017: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records of the impugned order dated 18.9.2017 published vide Gazette Notification No.294, dated 18.9.2017, passed by the

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Respondent Nos.1 and 4 as unauthorized, illegal and is without jurisdiction as per the binding law in ***Balachandra L.Jarikholi and others v. B.S.Yeddyurappa and others, reported in (2011) 7 SCC 1*** and quash the same and consequently forbear the respondents from interfering with the petitioner's right as an elected representative.

For Petitioners in W.P.Nos.25260 to 25267 of 2017 and 25398 to 25402 of 2017

Mr.P.S.Raman
Senior Counsel
for Mr.C.Seethapathy
Mr.Gautham S.Raman
Mr.Umashankar
Mrs.B.Bhuvaneswari
Mr.S.V.R.Subramaniam
Mr.P.Praveen Santhanam
Mr.B.Brace Milton
Mrs.Maithili Canthasamy Sharma
Mr.K.Harishankar

For Petitioners in WP.Nos.25393 to 25397/2017

Mr.Mohan Parasaran, Senior Counsel for
Mr.N.Raja Senthoor Pandian
Mr.Amit Anand Tiwari
Mr.Vivek Singh
Mr.Harsavardan Ganesan
Mr.S.V.R.Subramaniam

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For Respondents 1 and 4 in all writ petitions

Mr.C.Aryama Sundaram
Senior Counsel
for Mr.K.Gowtham Kumar
Ms.Rohini Musa
Mr.Athiban Vijay A.K.
Ms.Poorvaja P.R.

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For Respondent No.2 in all writ petitions

Mr.Mukul Rohatgi
Senior Counsel
for Mr.C.Thirumaran
Mr.Sameer Rohatgi
Mrs.Deeksha Ravi
Mr.Muthu Thangadurai

For Respondent No.3 in all writ petitions

Mr.C.S.Vaidhyanathan, Senior Counsel
for Mr.S.R.Raghunathan
Mr.V.Anil Kumar
Mr.Harish V.Shankar

COMMON ORDER

INTRODUCTORY:-

The writ petitioners were the elected Members of the Tamil Nadu Legislative Assembly, which consists of 234 Assembly Constituencies. The General elections to the 15th Legislative Assembly of Tamil Nadu was held on 16.05.2016. Elections were postponed in respect of two Assembly Constituencies, viz., Aruvakkurichi and Tanjavur Assembly Constituencies, and subsequently, election in respect of the said Constituencies was also held.

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2 In the present Legislative Assembly, "All India Anna Dravida Munnetra Kazhagam" [AIADMK] got elected to 136 Assembly

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Constituencies ; "Dravida Munnetra Kazhagam" [DMK] got 89 Assembly Constituencies ; "Indian National Congress" [INC] got 8 seats and "Indian Union Muslim League" [IUML] got 1 seat.

3 Ms.J.Jayalalitha got elected as the leader of "AIADMK" Party, which secured majority and on her demise, Thiru O.Panneerselvam, was elected as the leader of "AIADMK" and was sworn in as the Chief Minister of Tamil Nadu on 06.12.2016.

4 On 29.12.2016, the General Council of "AIADMK" Party met and elected Tmt.Sasikala Natarajan as the General Secretary. Thiru O.Panneerselvam, resigned as the Chief Minister and it was informed to the Court that Tmt.Sasikala made a claim to be sworn in as the Chief Minister of Tamil Nadu and till such time, Thiru O.Panneerselvam, was requested to continue as the Care-taker Chief Minister.

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5 Ms.J.Jayalalitha, Tmt.Sasikala and others faced prosecution under the provisions of the Prevention of the Corruption Act, 1988, for having acquired assets disproportionate to the known source of income in a Special Court at Chennai and on the petition for transfer filed, the trial

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of the case was transferred to the State of Karnataka and ordered to be tried at Bengaluru. The learned Special Judge, had convicted the accused in the said case and challenging the legality of the conviction and sentence, appeals were preferred before the High Court of Karnataka and the accused were acquitted.

6 The State of Karnataka as well as "DMK" Party filed Special Leave Petitions before the Hon'ble Supreme Court of India, challenging the said acquittal and those Special Leave Petitions were entertained. Arguments were advanced in the said appeals and the Hon'ble Supreme Court of India, vide common Judgment dated 14.02.2017, had convicted Tmt.Sasikala and others. It is to be noted at this juncture that pendency of the said appeals, Ms.J.Jayalalitha, breathed her last on 05.12.2016.

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7 On 16.02.2017, Thiru Edappadi K.Palanisami (third respondent) was elected as the leader of "AIADMK" party and he was sworn in as the Chief Minister of the Tamil Nadu. Thiru O.Panneerselvam, who originally sworn in as the Chief Minister of Tamil Nadu on 06.12.2016, had difference of opinion and took a stand that he

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was forced to tender his resignation and opposed Tmt.Sasikala Natarajan and Thiru Edappadi K.Palanisami.

8 His Excellency, The Governor of Tamil Nadu, after swearing in Thiru Edappadi K.Palanisami as the Chief Minister of Tamil Nadu, requested him to prove the majority of the ruling party in the floor of the Legislative Assembly and accordingly, a Confident Motion was moved on 18.02.2017, wherein Thiru Edappadi K.Palanisami, has proved his majority with the support of 122 MLAs of his Party. The floor test, which took place on 18.02.2017 and the result of the same was also the subject matter of challenge in WP.Nos.4390, 4500 and 4869/2017 and WP.[MD] No.3033/2017 [Madurai Bench].

9 In the floor test held on 18.02.2017, the writ petitioners herein had voted in favour of Thiru Edappadi K.Palanisami, in terms of the directions issued by the Chief Government Whip – the 2nd respondent herein. Tvl.O.Panneerselvam and 10 other MLAs, voted against Mr.Edappadi K. Palanisami. One of the Members of the Legislative Assembly, supporting Thiru O.Panneerselvam, abstained from voting. As already pointed out, Thiru Edappadi K. Palanisami, won the floor test

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and proved his majority and at present, continuing as the Chief Minister of Tamil Nadu.

10 The group headed by Thiru O.Panneerselvam, raised a dispute on 16.03.2017 before the Election Commission of India [in short "ECI"], under Paragraph 15 of the The Election Symbols (Reservation and Allotment) Order, 1968 [in short "Symbols Order"] claiming that they represent the true "AIADMK" Party against the majority group headed by Thiru T.T.V.Dinakaran, who was acting as the Deputy General Secretary of the said Party and Thiru Edappadi K.Palanisami, as the Chief Minister of Tamil Nadu. ECI has passed an interim order on 22.03.2017, freezing the "Two Leaves" Symbol and also directed that the neither group/faction, viz., "AIADMK [Puratchithalaivi Amma]" nor the group of Thiru T.T.V.Dinakaran and Thiru Edappadi K.Palanisami – "AIADMK [Amma]" could use the "Two Leaves Symbol".

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11 Some of the writ petitioners had filed petitions before the Speaker of the Tamil Nadu Legislative Assembly – first respondent herein, seeking disqualification of Thiru O.Panneerselvam and 10 MLAs belonging to his group from the Membership of the Tamil Nadu

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Legislative Assembly under paragraph 2[1][b] of the Tenth Schedule of the Constitution of India for having voted against the Party Directive issued by the Whip / second respondent and thereby, expressed their dissent and however, the Speaker / first respondent is yet to take action. The petitioner in WP.No.25260/2017 and others had also filed WP.Nos.27853 to 27856/2017, praying for issuance of a Writ of Mandamus and for appropriate direction, directing the Speaker to initiate disqualification proceedings against 7 MLAs of AIADMK Party for having gone against the direction issued by the Whip / second respondent, in the Floor Test held on 18.02.2017 and it is brought to the knowledge of the Court that subsequent to the entertainment of these writ petitions, the said writ petitions were also dismissed.

12 During August 2017, Thiru O.Panneerselvam and Thiru Edappadi K. Palanisami, had settled the differences between them and as a consequence, the two factions got united. Thiru O.Panneerselvam was sworn in as the Deputy Chief Minister and Thiru K.Pandiarajan – one of the MLAs, who supported him, was also sworn in as a Minister on 21.08.2017.

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13 Thiru T.T.V.Dinakaran, made a call to all the MLAs of "AIADMK [Amma]", to lodge a protest to His Excellency, The Governor of Tamil Nadu [hereinafter referred as "The Governor"] against the continuance of Thiru Edappadi K. Palanisami as the Chief Minister and his Government and accordingly, on 22.08.2017, the petitioner in WP.No.25260/2017, viz., Thiru P.Vetrivel, has submitted a representation to the Governor and it is relevant to extract the same:-

> *"In the month of February 2017, myself and 121 MLAs AIADMK had duly signed and submitted a memorandum to your Excellency Governor of Tamil Nadu by conveying our support to Mr. Edapadi K. Palanisami to form the government. Thereby I had supported Mr. Edapadi K.Palanisami at the time of floor test in order to prove the majority.*
>
> *While this is so, slowly I got disillusioned with the functioning of the Government headed by Mr.Edapadi K. Palanisami as there has been abuse of power, favoritism, misusing of government machinery, widespread corruption. For the past four months allegations of corruption against Mr.Edapadi K.Palanisami is leveled from various sectors vehemently.*
>
> ......

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Mr.Edapadi K.Palanisami as the Hon'ble Chief Minister have forfeited the confidence of the people and in the interest of the State of Tamil Nadu and the people of Tamil Nadu, I hereby express my lack of confidence on Mr. Edapadi K. Palanisami. As such I withdraw my earlier support given to him vide this communication. I further submit that I have not given up my membership of AIADMK and I am only doing my duty as a conscious citizen to expose the abuse and misuse of the constitutional provision."

14 Similarly, the group of MLAs supporting Mr.T.T.V.Dinakaran, had also submitted similarly worded representations to the Governor. The second respondent / Chief Government Whip of the Tamil Nadu State Legislative Assembly has submitted a petition dated 24.08.2017 to the first respondent / Speaker, praying for initiation of proceedings under the Tenth Schedule of the Constitution of India read with Rule 6 of the Members of the Tamil Nadu Legislative Assembly [Disqualification on the ground of Defection] Rules, 1986, [*in short "the Disqualification Rules"*] for the disqualification of 19 MLAs including the writ petitioners herein from the membership of the Tamil Nadu Legislative Assembly and along with the said representation, also

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enclosed the representation dated 22.08.2017 submitted by the writ petitioners to the Governor of Tamil Nadu.

15 The first respondent / Speaker took it on file and issued notices to all the 19 MLAs which include the writ petitioners, calling upon them to submit their response/comments to the petition/representation dated 24.08.2017 submitted by the second respondent / Whip, within seven days from the date of receipt of the letter and simultaneously, forwarded the said petition of the second respondent / Whip to the Hon'ble Chief Minister of Tamil Nadu, Thiru Edappadi K. Palanisami (third respondent), for his comments/reply/response. The writ petitioners, upon receipt of the notices from the first respondent/Speaker, submitted their interim reply [first interim reply] and requested the first respondent to permit them to orally examine the second respondent and other witnesses and they also prayed for Leave to be represented by a legal practitioner / Advocate. It is relevant to extract the contents of the first reply for better appreciation:-

> i. Annexure I of the petition filed by S.Rajendiran, being the alleged representation made by the writ petitioners to the Governor, was

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inadmissible and improper documentary evidence, as it neither contained the name nor the signature of the person making the representation.

ii. Mr.Rajendiran lodged the petition in the capacity as Chief Government Whip and a member of AIADMK. Mr.Rajendiran had not been appointed as Chief Government Whip by the Governor of Tamil Nadu and therefore, had no authority or *locus standi* to lodge the petition in the capacity of Chief Government Whip.

iii. The case did not fall within the ambit of Section 2(1)(a) of the Tenth Schedule of the Constitution, since Section 2(1)(a) envisages only two situations that could lead to disqualification of a member of a House i.e., voluntarily giving up membership of one's political party or voting against the direction issued by the political party to which he belongs.

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iv. The writ petitioners neither voluntarily gave up membership of the political party, nor voted against any direction issued by the political party. A representation to the Governor expressing loss of confidence in the Chief Minister does not amount to resignation from the party.

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v. The representation submitted by the writ petitioners to the Governor was identical to the representation to the Governor in the case of ***Balachandra L.Jarikholi and others v. B.S.Yeddyurappa and others,*** reported in ***(2011) 7 SCC 1***, where the decision of the Speaker was set aside. The judgment in Yeddyurappa, supra, was squarely applicable.

vi. Reliance by the Chief Government Whip on Rule 5 of AIADMK Bye-laws was misplaced as the petitioners had not acted against the interest of the party, but had only expressed lack of confidence in the present Chief Minister bearing the party's interest in mind.

vii. The petition of the Chief Government Whip smacks of jurisdictional infirmity and abuse of process. The petition ought to have been dismissed for non-compliance of Rule 6(5)(b) and for being beyond the scope of jurisdiction of the Hon'ble Speaker.

viii. Mr.O.Panneerselvam, who had till a short while ago openly been accusing the Government of corrupt practices, had been rewarded with the post of

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Deputy Chief Minister whereas the writ petitioners were facing charges of defection.

ix. The covert intention behind the present disqualification proceedings was to increase the majority of the ruling party in the legislative assembly by reducing the number of members through disqualification.

x. Proceedings are vitiated by mala fides, bias, procedural irregularities and want of jurisdiction.

xi. Unanimous resolution supporting Mr.E.K.Palanisami on 18.2.2017 was as per the advise of the General Secretary Mrs.V.K.Sasikala.

xii. The writ petitioners admitted having met the Governor and having submitted individual letters to intervene and institute the constitutional process, but contended that four page letter was not the exact letter the petitioners had written and did not carry the name, constituency, address or signature. The petition should have been dismissed on the above ground alone.

xiii. The writ petitioners denied the averments in paragraph 5 of the petition of S.Rajendiran of

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meeting the press and making elaborate statements regarding their alleged motive behind their representations.

xiv. The writ petitioners had in the media releases, claimed to withdraw their support to the Chief Minister E.K.Palanisami as he had chosen to include Mr.O.Panneerselvam as Deputy Chief Minister and Mr.Pandiarajan as a Minister in the Cabinet. Media release was admitted.

xv. In the CD relied by Mr.S.Rajendiran, the writ petitioners had not mentioned the intention either directly or indirectly or voluntarily to give up membership of the political party.

xvi. Internal dissent was prevailing within the party and a case is pending before the Election Commission of India, which had passed an interim order dated 22.3.2017 restraining either group from using the name of All India Anna Dravida Munnetra Kazhagam simplicitor or using Two Leaves symbol reserved for AIADMK.

xvii. Parent party itself was facing the legal process pertaining to the use of party name and symbol.

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xviii. Notwithstanding the interim order, Mr.Rajendiran had used the name AIADMK at various places in his petition.

xix. The writ petitioners had approached the Governor only after the efforts to address the party regarding their grievance against the Chief Minister's conduct ended in failure. Addressing the Governor regarding the conduct of a Chief Minister cannot be termed as voluntary relinquishment of membership of the party.

xx. No bar in law to MLAs meeting the Governor or the President of India in the interest of public welfare and the representation to the Governor is protected under Article 19(1)(a) of the Constitution of India.

xxi. The letter was addressed outside the House and not within the precincts of the House.

xxii.Cross-examination of reporter, cameraman and news editor of Thanthi TV as witnesses of the writ petitioners be permitted and DVD be marked under the provisions of the Indian Evidence Act.

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xxiii. Leave be granted to run DVD relied by Mr.Rajendiran and the DVD relied by the writ petitioners at the time of enquiry to cross-examine Mr.Rajendiran and to examine the witnesses.

xxiv. Speaker was biased. No action was taken on the disqualification application of the writ petitioners against Mr.S.Semmalai and Mr.O.K.Chinnaraj.

16 The Secretary of the Legislative Assembly, Secretariat, - fourth respondent herein, sent a communication dated 31.08.2017 to the writ petitioners, informing them that the first respondent / Speaker had granted extension of time for submission of final comments/reply till 5.00 p.m. on 05.09.2017 and further indicated that hearing would take place between 3.00 p.m. and 4.00 p.m. on 07.09.2017. It was also specifically stated in the said communication that in the event of failure on the part of the writ petitioners to submit their final comments / response, a presumption would be drawn that they have nothing further to offer and decision would be taken based on available records.

17 The Hon'ble Chief Minister of Tamil Nadu – third respondent herein, had submitted his comments/response dated

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30.08.2017 and the first respondent / Speaker, in turn, forwarded the comments/response of the third respondent to the writ petitioners.

18 The writ petitioners filed their second interim reply dated 05.09.2017 praying for furnishing of certain documents and upon receipt of the same, indicated that they would require 15 days further time to submit their final reply and a petition for adjournment was also filed praying for deferment / postponement of the personal hearing scheduled to be held on 07.09.2017. The writ petitioners, in their second interim reply dated 05.09.2017, also took a stand that the first respondent / Speaker was constitutionally disqualified to adjudicate the issue regarding disqualification of the writ petitioners, as he has acted with *mala fide* and also exhibited bias and they also made a request to refer the dispute to a Committee constituted under Rule 7[4], for conducting a preliminary enquiry to find out as to whether any merits are available in the allegation levelled by the second respondent / Whip and also drawn the attention to the judgment rendered by a Division Bench of Bombay High Court reported in ***1999 [1] Bom CR 594 [Dr.Wilfred D'Souza and others V. Shri Tomazinho Cardozo Hon'ble Speaker of the Legislative Assembly and others]***. The second respondent/Whip sent a notice dated

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07.09.2017 to the writ petitioners informing them that the date of filing of further comments and personal hearing has been fixed on 14.09.2017 and the contents of the same are extracted below:-

> "I am directed by the Hon. Speaker to inform you that the personal hearing fixed today is adjourned to Thursday, the 14th September, 2017 between 11.00 A.M. and 12.00 Noon in his Chamber at Secretariat, Chennai 600 009 as the date, time and place for the personal hearing. I am also directed to inform you that further comments, if any, in writing may also be furnished at the time of personal hearing.
>
> I am further directed by the Hon. Speaker to inform you that if you fail to appear in person before the Hon. Speaker on the above said date, time and place, it would be presumed that you have nothing further to offer on the issue and decision will be taken based on available records."

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19 The petitioner in WP.No.25260/2017, viz., Thiru P.Vetrivel, MLA, appeared along with his Advocate and submitted a further interim reply on his behalf and also on behalf of 17 other MLAs by drawing the attention of the first respondent / Speaker to the representation dated 22.08.2017 submitted to the Governor and in the said interim reply, he

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has stated that a request has been made to the first respondent / Speaker to furnish the documents cited / sought for by them in their interim reply, to permit them to cross-examine the Chief Minister of Tamil Nadu and other witnesses and pass appropriate orders for police protection to them, so as to enable them to attend personal enquiry, as they were staying at Kudagu, State of Karnataka.

20 The writ petitioners would contend that in the morning hours on 18.09.2017, a media report was released stating that 18 out of 19 MLAs had been disqualified and however; no copy of the said order was furnished to the writ petitioners and however, it was uploaded in the website at around 8.30 p.m. on that day. The first respondent / Speaker in the impugned order dated 18.09.2017, has dismissed the petition for disqualification made against Thiru S.T.K.Jakkaiyan, by placing reliance on the letter dated 07.09.2017 submitted by him to the Hon'ble Governor and yet another letter of Thiru S.T.K.Jakkaiyan dated 14.09.2017 submitted to the first respondent / Speaker retracting his allegation/statement made against the Hon'ble Chief Minister of Tamil Nadu, contained in the letter dated 22.08.2017. The present writ petitions came to be filed on 19.09.2017, challenging the impugned order

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of disqualification dated 18.09.2017 passed by the first respondent / Speaker and on 20.09.2017, the writ petitions were entertained and notices were directed to be issued to the respondents and pending disposal of the writ petitions, an interim order also came to be passed to the effect that there shall not be any Election Notification for conducting the election for the 18 (Eighteen) Legislative Assembly Constituencies, pursuant to the impugned order dated 18.09.2017, which are the subject matter in the writ petitions, until further orders of this Court.

21 SUBMISSIONS MADE BEFORE THE HON'BLE FIRST BENCH:-

{A} It was argued on behalf of the writ petitioners that the time limit granted to submit the response is too short.

{B} The documents sought for by the writ petitioners, especially, the original letter/representation dated 22.08.2017 submitted by them to the Hon'ble Governor and the response of the Hon'ble Chief Minister dated 30.08.2017, have been unjustly denied.

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{C} The writ petitioners though prayed, have been denied the opportunity to examine the witnesses, especially the Hon'ble Chief Minister / the third respondent herein and the second respondent / Whip. Denial for request of adjournment in an unjustifiable manner, would amount to gross violation of the principles of natural justice.

{D} It was further argued that before approaching the Hon'ble Governor in the form of representation dated 22.08.2017, the writ petitioners had also availed the Internal Grievance Redressal Mechanism, by meeting the Hon'ble Chief Minister and since no response was forthcoming, they were left with no other option except to meet the Hon'ble Governor and submitted representations for invocation of the Constitutional Process.

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{E} The Hon'ble Chief Minister has denied about the availment of "Internal Grievance Redressal Mechanism" on the part of the writ petitioners and therefore, it became absolutely necessary to cross-examine the Hon'ble Chief Minister and also the officers and staff attached to the office of the Chief Minister, Secretariat. The impugned order also refers to the Retraction Letter of one of the MLAs, viz., Thiru

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S.T.K.Jakkaiyan, who initially supported the writ petitioners and a copy of the said letter, has not been furnished to the writ petitioners and have been denied of fair and reasonable opportunity to rebut and reliance has also been placed upon the said Retraction Letter and the representation of Mr.S.T.K.Jakkaiyan and passed the impugned order and as such, the said act on the part of the first respondent / Speaker also amounts to undermining the principles of natural justice and fair play and good conscience.

{F} The first respondent / Speaker, in the impugned order also relied upon some material in the form of a newspaper report as to the meeting between the leader of the Opposition Party - Thiru.M.K.Stalin, and the Hon'ble Governor with a request to conduct Floor Test and though no materials are available that the writ petitioners had acted in support of the leader of the Opposition or in collusion with him, heavy reliance has been placed upon the alleged act to conclude that the writ petitioners had suffered the disqualification under Para 2[1][a] of the Tenth Schedule.

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{G} The suit filed by one of the writ petitioners restraining the conduct of the General Council Meeting of "AIADMK", cannot be a bar for the reason that Freedom of Speech guaranteed under the Constitution of India, is also available to him and expressing dissent with regard to a particular act, cannot be construed as an Anti Party activity or adopting a different ideology. In any event, the request made for replacement of the Hon'ble Chief Minister cannot lead to an inference that the writ petitioners had quit or acted against the ideology of "AIADMK" Party and the first respondent / Speaker has totally misconstrued the factual aspects and the legal position.

{H} The first respondent / Speaker also exhibited bias and acted with *mala fide* motive for the reason that admittedly, in the Floor Test held on 18.02.2017, Thiru O.Panneerselvam and 10 other MLAs, had voted against the third respondent – Chief Minister and despite representations submitted to disqualify them as they acted against the directives of the second respondent, so far no action has been taken and whereas, in the case on hand, immediately after the submission of the petition / representation by the second respondent / Whip, the first respondent / Speaker had exhibited utmost urgency and in undue haste,

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proceeded with great speed and passed the impugned order of disqualification, which apart from total non-adherence to the principles of natural justice, also suffers on account of perversity, actuated by *mala fide* motives, which also resulted in Breach of Constitutional Mandate.

{I} It is also the submission of the writ petitioners that the decision rendered by the Hon'ble Supreme Court of India reported in ***2011 [7] SCC 1 [Balachandra L.Jharikholi and others Vs. B.S.Yeddyurappa and others]*** [hereinafter referred as ***"Yeddyurappa's case"***] is fully applicable to the facts of this case, as the factual aspects and the legal submission made in the said decision, are almost identical to the present case and the subsequent decision rendered by the Constitution Bench of this Court reported in ***2016 [8] SCC 1 [Nabam Rebia and Bamang Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly]*** [hereinafter referred as ***"Nabam Rebia's case"***], cannot said to be impliedly overruling the ***Yeddyurappa's case***, and however, the first respondent / Speaker has misconstrued the said position and reached a totally erroneous and perverse finding. The writ petitioners had repeatedly asked for permission to cross-examine the second respondent / Whip, the third respondent / Chief Minister as well

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as Press and TV Reporters to sustain their case and however, the said request has been unjustly and unfairly denied and it also amounts to denial of fair hearing and gross violation of principles of natural justice.

{J} The arguments advanced on behalf of the writ petitioners were refuted on behalf of the respondents by submitting that ***Yeddyurappa's case*** is distinguishable on facts and the office of the first respondent / Speaker is in the nature of a Tribunal and not bound by Rules of Evidence and the first respondent / Speaker, while arriving at a decision under the Tenth Schedule, has to scrupulously adhere to the principles of natural justice and the records would reveal that despite very many opportunities granted to the writ petitioners, they have failed to submit their final reply and indicated their intention to drag on he proceedings. The office of the first respondent / Speaker is always held in highest pedestal as he is the head of one of the Pillars of the Democracy, viz., the Legislature and in the present case, the allegations of bias and *mala fide* have been freely levelled against him without any substance or material and it is liable to be condemned. It was further argued that the writ petitioners did not deny the contents of their representation dated 22.08.2017 submitted to the Hon'ble Governor and

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also not seriously dispute the crux of the said representation appeared in Print Media and telecasted by Visual Media and the first respondent / Speaker, in all fairness, had granted very many adjournments to submit their final response and they deliberately failed to avail the said benevolence.

{K} The first respondent / Speaker acting in all fairness, has also submitted the response submitted by the third respondent / Chief Minister to the writ petitioners, so as to enable them to come prepared and in order to cause embarrassment and to drag on the proceedings, the petitioners wanted to examine the respondents 2 and 3 in total ignorance of the legal position that the oral examination of a witness, is not a matter of right and adherence to the principles of natural justice, had been complied with scrupulously in letter and spirit by the first respondent / Speaker and in the absence of any prejudice, it cannot be said that the writ petitioners had suffered on account of denial of request to cross-examine the respondents 2 and 3.

{L} It was also argued that admittedly, the writ petitioners prayed for invocation of the Constitutional Process by placing reliance

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upon the ***Yeddyurappa's case*** overlooking the fact that in ***Nabam Rebia's case***, the Constitutional Process on the part of the Hon'ble Governor is outlined, viz., either dismissing the Government or calling for the Floor Test, and therefore, in real sense, the petitioners required the Hon'ble Governor to resort to either of the two methods and thereby, wanted the third respondent / Chief Minister to demit the office and acted against the ideology of the Party.

{M} The Retraction Letter submitted by Mr.S.T.K.Jakkaiyan, has been decided independently after arriving at a decision that the writ petitioners had suffered disqualification under Paragraph 2[1][a] of the Tenth Schedule and as such, the question of eliciting the response of the writ petitioners to the Retraction Letter of Mr.S.T.K.Jakkaiyan, does not arise at all.

{N} Finally, it was submitted that interference of the decision of the first respondent / Speaker in exercise of the power under Tenth Schedule, lies within a very narrow campus and is extremely limited and the contents of the impugned order would disclose that the first respondent / Speaker had applied his mind judiciously and arrived at a

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fair decision by passing an order, disqualifying the writ petitioners under Paragraph 2[1][a] of the Tenth Schedule and it cannot be said that the said findings are based upon 'no evidence' so as to attract the ground of perversity. The first respondent / Speaker has also exercised his Constitutional Mandate and after scrupulously adhering to the principles of natural justice, has reached a fair conclusion and it cannot be interfered with by this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India. Therefore, it is prayed on behalf of the respondents to dismiss all the writ petitions.

22 FINDINGS OF THE HON'BLE CHIEF JUSTICE:-

- In **Para 222,** a question was formulated as to *"whether the act of the Speaker in acting in the present matter which is contrasted by his alleged inaction in the petition filed against Mr.O.Panneerselvam and 11 others after the floor test held on 18.02.2017, is mala fide and whether the proceedings before the Election Commission have any effect in the present proceedings?"*

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- The Hon'ble Chief Justice, after tracing out the history leading to the Constitution 52nd Amendment, which resulted in the Tenth Schedule and the subsequent amendments and after extracting the Tamil Nadu Legislative Assembly [Disqualification on the ground of Defection] Rules, 1986 and the Constitution Bench Judgment of the Hon'ble Supreme Court of India reported in ***1992 Supp [2] SC 651 [Kihoto Hollohan Vs. Zachillhu]***, in and by which, *"vires of the Tenth Schedule"* came to be upheld, found that the Speaker is the only authority to decide the disqualification petition.

- The Hon'ble Chief Justice also dealt with the issue of bias exhibited by the first respondent / Speaker and taking into consideration paragraph 6[1] of the Tenth Schedule, found that the first respondent/Speaker has to decide the disqualification petition and therefore, the Doctrine of Necessity is attached to the said office.

- The Hon'ble Chief Justice, after taking into consideration various decisions rendered by the Apex Court with regard to

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mala fide and bias and found in **Para 263** that *"the Speaker being the repository power to decide the question of disqualification under the Tenth Schedule, has passed the impugned order after giving the writ petitioners, sufficient opportunity, it cannot be said that the order impugned is vitiated by malice in law, malice in fact or mala fides."* The Hon'ble Chief Justice also noted that in the writ petitions, there is no allegation against the Speaker of harbouring any personal enmity against these writ petitioners.

- The Hon'ble Chief Justice further noted that the proceedings before the Speaker under the Tenth Schedule, are deemed to be the proceedings under Article 212 of the Constitution of India, the validity of which, cannot be called in question on the ground of irregularity of the procedure. **[Para 268].**

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- The Hon'ble Chief Justice, having noted that the orders of the Speaker under the Tenth Schedule are amenable to judicial review, has taken note of *Kihoto Hollohan case*, [cited supra] wherein it was held that the decision of the Chairman or the

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Speaker of the House can be challenged on very limited grounds, viz., violation of the Constitution Mandate, *mala fides*, non-compliance with the principles of natural justice and perversity and mere irregularity in procedure, can have no bearing on the decision and found that the Speaker had scrupulously adhered to the principles of natural justice and therefore, there was no jurisdictional error on his part and the rules framed under the Tenth Schedule, being procedural in nature, non-compliance, and / or in violation of the same, would amount to irregularity of any procedure and as such, immune from judicial scrutiny in view of paragraph 6[2] of the Tenth Schedule as held in ***Ravi S.Naik Vs. Union of India*** reported in ***1994 [2] Supp SCC 641*** and found that there was no violation of Disqualification Rules and violation of the Disqualification Rules cannot amount to violation of Constitutional Mandate and there has been substantial compliance with the Disqualification Rules.

[Paras 294 & 295]

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- The Hon'ble Chief Justice has recorded the finding that the leader of the Opposition Party met the Hon'ble Governor and requested for conducting floor test and the facts and materials on record, do not establish that the writ petitioners had colluded and/or were in collusion with the main Opposition Party and also taken note of the submission advanced on behalf of the petitioners that when there was internal turmoil within the Ruling Party, it was no uncommon for the Opposition parties to try and fish in troubled waters and held in their favour. **[Paras 280 & 281]**

- As regards, non-compliance of the Internal Grievance Redressal Mechanism, the writ petitioners have not produced any document to show that they had requested for meeting of the party for selection of some other leader and they also not suggested the name of any alternate leader who will enjoy the support of all the MLAs, either before the Speaker or before this Court. **[Para 283]**

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- The Hon'ble Chief Justice, has dealt with the issue as to the invocation of the Constitutional Mandate by the Hon'ble Governor and found that the Constitutional Process means the Hon'ble Governor could either have recommended imposition of President's Rule or call for Floor Test and in that event, the Legislation Party led by the third respondent / Chief Minister having a very thin majority, would have collapsed. **[Para 282]**

- The Hon'ble Chief Justice also taken note of the pendency of the proceedings before the Election Commission of India under Symbols Order and found that the Speaker has rightly found that such proceedings are inconsequential for the reason that a split in the political party does not save disqualification after omission of Paragraph 3 of the Tenth Schedule by the Constitution 91st Amendment Act, 2003, with effect from 01.01.2004. **[Para 329]**

- The Hon'ble Chief Justice has also taken into consideration the primordial submission made on behalf of the writ petitioners as

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to the applicability of ***Yeddyurappa's case*** [cited supra] and held that the Hon'ble Supreme Court found that the Speaker's action, not only amounted to denial of principles of natural justice to the appellants, but smacked of bias and the decision of the Speaker of the Karnataka Assembly was set aside on the ground that it did not meet the twin test of the natural justice and fair play [**Paras 340 and 346**] and further held in **Para 349** that the said case is distinguishable on facts.

- In **Para 348** the Hon'ble Chief Justice has considered the question as to *"whether the act of submitting representation to the Hon'ble Governor to initiate the Constitutional process, would be construed as an act of defection"* and held that this Court does sit in appeal over a decision of the Speaker and it is for the Court to adjudicate the decision on merits.

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- In **Para 358** the Hon'ble Chief Justice found that if the effect of withdrawal of support and calling for initiation of the Constitutional process meant fall of the Government constituted by the party and it would tantamount to implied

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relinquishment of membership of the party and would attract disqualification under Paragraph 2[1][a] of the Tenth Schedule.

- The Hon'ble Chief Justice also dealt with the Retraction Letter of Mr.S.T.K.Jakkaiyan, and found that it is not necessary to enter into the question whether the disqualification has been rightly or wrongly being dismissed against him by noting that there can be no equality to a wrong and two wrongs do not make a right. **[Para 363]** and further observed that unlike in ***Yeddyurappa's case***, there is no assertion that the writ petitioners would continue to support the political party under any other leader except the third respondent and the petitioners have not even asserted that the withdrawal would not dislodge the Government formed by the party. **[Para 362]**

- The Hon'ble Chief Justice also taken into consideration the scope of judicial review of the order of the first respondent / Speaker passed under Tenth Schedule and held that the power of judicial review is very limited one and the Court will not interfere unless the decision of the Speaker is perverse and

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taking into consideration the judgment rendered in ***Kihoto Hollohan's case,*** the Hon'ble Chief Justice concluded in **Para 371** that the view taken by the Speaker is possible, if not plausible view and as such, unable to hold that the said decision is any way unreasonable or irrational or perverse and the High Court, does not in exercise of its power of judicial review conferred under Article 226 of the Constitution of India, cannot interfere with the decision just because it prefers one of the two views.

23 <u>FINDINGS OF THE HON'BLE MR. JUSTICE M. SUNDAR:-</u>

- The Hon'ble Judge has dealt with the issue with regard to denial of opportunity to cross-examine the witnesses and taken into consideration Rule 150[4] of the Tamil Nadu Assembly Rules read with Rule 7[7] of the Disqualification Rules and found that a perusal of the said provision would indicate that letting in an oral evidence is built as an integral part of any proceedings under the Disqualification Rules and due to the above reasons and the

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peculiar facts of the case, held that it was imperative to have permitted the writ petitioners to let in oral evidence which was sought for by them as that would have answered several crucial and critical questions and the Speaker while acting as a Tribunal under the Tenth Schedule proceedings, has the powers of the Civil Court including summoning of the witnesses and as such, there was no impediment in permitting the writ petitioners to bring their evidences and let in oral evidence, even if the witnesses they had sought for, had not been cross-examined. **[Para 14[r]]**

- The learned Judge in **Para 14[s]** observed that the writ petitioners / 18 MLAs have to answer two questions viz.,**[1]** What at all did writ petitioners expect the Governor to do? And **[2]** Whether they would have voted against a Whip if the Governor had called for a floor test?

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- The learned Judge has taken into consideration the ratio laid down in ***Nabam Rebia's case [cited supra]*** to the effect that it is not within the realm of the Governor to embroil himself in any political thicket and observed that the "*Court is refraining itself*

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from going into the question as to whether Yeddyurappa case stands impliedly overruled by Nabam Rebia as it is not for a High Court to decide whether the judgment of one Bench of the Hon'ble High Court stands impliedly overruled by another." **[Para 14[s]]**

- The learned Judge found that the approach made by the writ petitioners to the office of the Hon'ble Governor for invocation of the Constitutional Mandate, at best, can be treated as invocation of wrong Forum and it will not allow to attract the ingredients of Paragraph 2[1][a] of the Tenth Schedule, unless there is buttressing material. **[Para 14[w]]**

- The learned Judge has taken note of the reason that the Election Commission of India, being in seizin of the matter relating to symbol, especially, the interim order of freezing the "Two Leaves" Symbol, found that pendency of the dispute between 22.03.2017, the date of interim order, i.e., 23.03.2017, till conclusion of the proceedings on 23.11.2017, there was no "AIADMK" political party as an entity in its form and therefore, it is impossible to find an answer whether the writ petitioners have voluntarily given up

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their membership of “AIADMK” Party in whose ticket or for that matter that “AIADMK” in whose ticket they were elected.

[Para 14[af]]

- The learned Judge recorded the finding that the conclusion reached by the first respondent / Speaker that the writ petitioners have voluntarily given up the membership of the political party, has been arrived at by giving a complete go-by to the Election Commission of India Proceedings and also taken into consideration, paragraph No.62 of the impugned order.

[Para 14[ag]]

- The learned Judge reached the conclusion that since the proceedings before ECI have not been taken into consideration in the aforesaid matter, the finding that the writ petitioners voting in favour of an intra party resolution on 16.02.2017 before seizing of the said matter by ECI, is clearly perverse and such a conclusion had been arrived at without oral evidence and it also enhances the error. **[Para 14[ak]]**

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- The learned Judge had dealt with the Dictionary meaning of "perverse" and case laws and recorded the finding that "*whether the MLAs have voluntarily given up the membership of AIADMK Political Party during the aforesaid period could not have been answered in the impugned order. Furthermore, this is also violation of the Constitutional Mandate [one of the four grounds for judicial review qua Speaker's order] as the Election Commission of India, the ultimate authority in this regard, inter-alia under Article 324 of the Constitution of India was in seizin.*"

[Para 14[an]]

- The learned Judge also dealt with the issue relating to the writ petitioners acting in cahoots with DMK and found that the letter of the Opposition Party meeting the Hon'ble Governor and giving representation, requesting for a Floor Test, should be seen in the light and once a fire has been found in the enemy camp, it is only natural and logical that they would attempt to ambush and further found that in the absence of any corroborating or buttressing material, the said conclusion could not have been reached. It was also found that in the absence of any shred of evidence or even an

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iota of material to suggest that 18 writ petitioners and DMK are acting in tandem, there is no hesitation whatsoever in holding that the conclusion made in the impugned order regarding the two acting in cahoots is not another plausible view and as such, the impugned order clearly suffers from the vice of perversity.

[Paras 14[ao], 14[ar] and 14[as]]

- The learned Judge also reached the conclusion that *"making an assumption without any material before the Tribunal is clearly perverse."* **[Para 14[at]]**

- The learned Judge dealt with the issue of retraction made by Thiru S.T.K.Jakkaiyan and found that Thiru S.T.K.Jakkaiyan after submission of his first interim reply dated 30.08.2017 and the second interim reply dated 05.09.2017 along with the writ petitioners, changed his decision and also taken note of the fact that once the Speaker comes to the conclusion that the moment the representation dated 22.08.2017 is given, the Tenth Schedule is attracted and the Speaker ought to have considered the same as it would apply to Thiru S.T.K.Jakkaiyan also and though he

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subsequently changed his position, it is for the political party in whose ticket he was elected, to re-admit him in the party and from the impugned order, it could be seen that there is different yardstick being applied for the Respondent No.17, i.e, Mr.S.T.K.Jakkaiyan. **[Paras 14[ax] and 14[ay]]**

- The learned Judge has taken note of the finding of the Speaker that the allegations made against Thiru S.T.K.Jakkaiyan are not subsisting one and thereby, dropping further action and further recorded the finding that *"it is unable to brush aside the argument as the impugned order does not give any reason much less compelling constitutional reason for adopting a different yardstick for Mr.S.T.K.Jakkaiyan"* and therefore, was inclined to accept the submissions made on behalf of the writ petitioners that the impugned order is hit by *mala fides,* which is clearly one of the four grounds of judicial review in respect of the Speaker's order and also found that for treating Mr.S.T.K.Jakkaiyan differently, the Speaker has acted in a *mala fide* manner.

[Paras 14[ba], 14[bg & 14[bl]]

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- The learned Judge also dealt with the issue relating to violation of principles of natural justice and recorded the finding that the writ petitioners could have been afforded an opportunity for cross-examining Thiru S.T.K.Jakkaiyan - 17th respondent, or at least, copy should have been given and response of the writ petitioners should have been called for and it was not done and reiterated the finding that once in the light of the representation dated 22.08.2017, the 17th respondent, viz., Thiru S.T.K.Jakkaiyan, also stand disqualified **[para 14[bo]]** and observed in **para 14[bt]** that *"if legislators can avoid disqualification by rescinding their position, it would result in a situation where the legislators can freely cross floors and therefore, in the absence of any provision in the Tenth Schedule regarding rejoining the party [in whose ticket he was elected], there is no scope for dismissing the disqualification complaint against a legislator on the ground that he has rescinded his position. The only way Mr.S.T.K.Jakkaiyan could not have been disqualified is by holding that he has not voluntarily given up the membership. If that be the case, 18 writ petitioners also will be in the same boat, as no disqualification*

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occurred on 22.08.2017" and reached the conclusion that it is a fit case for judicial review on the said ground also.

[Paras 14[bo] & 14[bt]]

- The learned Judge has also considered the plea made on behalf of the respondents as to taking cognizance of the subsequent events and observed that *"in the light of the case laws, subsequent events cannot be looked into in the process of judicial review of the Speaker's order"* and also taken into consideration, *Khihoto's case*, wherein, it is held that the scope of judicial review of Speaker's order is very limited and narrow and that testing of the Speaker's order by way of judicial review will stand frozen on 18.09.2017, when the impugned order was passed. **[Para 14[cb]]**

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- The learned Judge also considered the plea regarding *mala fides* and found that the impugned order is hit by *mala fides* and also noted that one of the grounds of the judicial review *qua* Speaker's order as per constitutional determination made by the Hon'ble Supreme Court and further held that the impugned order of the Speaker is in violation of the Constitutional Mandate also and that

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is also one of the ground of judicial review.

[Paras 14[ch][Lx] & 14[ch][Lxiii]]

- The learned Judge reached the conclusion that the impugned order of the Speaker deserves to be set aside not only on the grounds of perversity, non-compliance of the principles of natural justice which is mala fides [*qua* Thiru S.T.K.Jakkaiyan issue] but also on the ground of violation of Constitutional mandate and allowed the writ petitions, thereby quashing the impugned order dated 18.09.2017.

24 After conclusion of the arguments, orders were reserved on 23.01.2018 and were delivered on 14.06.2018 and in the light of the difference of opinion, the Hon'ble Chief Justice felt that it would not be appropriate for her to nominate the Third Judge and therefore, referred the same to the next Senior most Puisne Judge available [The Hon'ble Mr. Justice Huluvadi G. Ramesh], for nomination of the Third Judge. The Hon'ble Chief Justice, taking note of the submission, passed an order that the interim order earlier passed, would continue till the decision of the Third Judge.

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25 The next Senior most Puisne Judge, namely, the Hon'ble Mr.Justice Huluvadi G. Ramesh, had nominated the Hon'ble Dr. Justice S. Vimala, as the Third Judge to hear and dispose of the cases and it was put to challenge before the Hon'ble Supreme Court of India and vide order dated 17.06.2018 made in Transfer Petition [Civil] Nos.1014/2018 etc., batch, the Hon'ble Apex Court disposed of the said petitions by nominating me (***Justice M.Sathyanarayanan***) as the Third Judge.

26 This Court [The Third Judge] had listed these writ petitions for hearing on 04.07.2018 and after eliciting the views and convenience of the respective learned counsels appearing for the parties, had fixed the date of arguments from 23.07.2018 onwards.

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27 It is the endeavour of the respective learned Senior Counsels appearing for the parties to sustain the order / split verdict in their favour and in the process, argued and made submissions afresh on merits of these writ petitions.

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28 Mr.P.S.Raman, learned Senior Counsel assisted by Mr.N.Raja Sendhoor Pandian, learned counsel appearing for the petitioners had submitted the written propositions dated 22.07.2018 and it is relevant to extract the same:-

*"**PROPOSITIONS ADVANCED BY MR.P.S.RAMAN, SENIOR ADVOCATE, ON BEHALF OF THE PETITIONERS;-***

The main points on which the impugned order has been assailed are as follows:-

[A] *The Speaker acting under the Tenth Schedule is functioning as a tribunal and his orders are as amenable to judicial review as of any other inferior tribunal and in this regard, other than noting the high office of a Speaker and the need to maintain neutrality, there is no other legal immunity.*

[B] *The entire proceedings commenced on 24.08.2017 and culminating on 18.09.2017 are vitiated by gross violation of principles of natural justice, which in this case comprise of the following infirmities:-*

[i] *The proceedings were commenced and concluded in great haste in fear of a floor test and a presumption on voting thereby not granting sufficient opportunity.*

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[ii] *The denial of the demand and right of cross examination of certain individuals including the Whip, who was the Petitioner.*

[iii] *Reliance on material that was not on record or otherwise not put to the petitioners to rebut.*

[iv] *The Whip's petition was devoid of any particulars with only reliance on a proforms unsigned representation and unsubstantiated press reports and extracts of electronic media without following the rules of evidence.*

[C] *The impugned proceedings of the Speaker are vitiated by malice in law and malice in fact.*

[D] *The entire proceedings had failed to appreciate the implication of the proceedings before the Election Commission under Para 15 of the Symbol Order.*

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[E] *The order is unsustainable on merits since the representation to the Governor dated 22.08.2017 was only a bona fide voice of dissent and not a defection as contemplated in Para 2[1][a] of the Tenth Schedule. The aforesaid representation is identical to that of the 13 MLAs in the case of*

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Yeddyurappa [referred supra] and the factual matrix of that case is identical to the present case in all respects. All other decided cases by the Apex Court on the Tenth Schedule were on completely different facts.

[F] *The subsequent Constitution Bench Judgment of the Supreme Court in the case of Nabam Rebia and Another Vs. Deputy Speaker, Arunachal Pradesh reported in [2016] 8 SCC 1 dos not in any manner dilute the findings of Yeddiyurapa, let alone render its ratio as either per incuriam or impliedly overruled.*

[G] *The impugned order of the Speaker has to be legally tested only on the basis of the materials on records and facts subsisting on the date of order [18.09.2017] and reliance sought to be placed on alleged subsequent events by the respondents is unsustainable."*

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29 The first ground of attack as to the sustainability of the impugned order passed by the first respondent / Speaker is that the first respondent / Speaker acting under the Tenth Schedule, is functioning as a Tribunal and the orders are as amenable to judicial review as that of any

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other inferior Tribunal and except the immunity relatable to the high Office of the first respondent / Speaker and the need for him to maintain neutrality, there is no other legal immunity and as such, the impugned order passed by the first respondent / Speaker is amenable to judicial review as that of any other Tribunal. The learned Senior Counsel appearing for the petitioners has invited the attention of this Court to the common synopsis of dates and events dated 27.07.2018 and made the following submissions:-

- On 05.12.2016, Selvi J.Jayalalitha, who was the Chief Minister and also the leader of AIADMK Party, breathed her last and on 06.12.2016, Thiru O.Panneerselvam [OPS] was sworn in as the Chief Minister of Tamil Nadu.

- On 14.12.2016, 122 MLAs belonging to AIADMK Party, elected the 3rd respondent as the leader of AIADMK Legislative Party and he was invited by the Hon'ble Governor of Tamil Nadu to form the Government and on 16.12.2016, he was sworn in as the Chief Minister of Tamil Nadu along with his Cabinet Ministers.

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- In the floor test held on 18.02.2017, the third respondent proved his majority and the petitioners had also voted in his favour.

- There was a difference of opinion between Thiru O.Panneerselvam and the third respondent. Thiru E.Madhusudhanan and others, by invoking the provisions of the Election Symbols [Reservation and Allotment] Order, 1968, had filed a case in Dispute Case No.2/2017 before the Election Commission of India for resolving the disputes under Paragraph 15 of the Symbols Order.

- The Election Commission of India [ECI] has passed an interim order dated 22.03.2017 and the same is extracted below:-

> **"12.......**
>
> ***[a]*** *Neither of the two groups led by the petitioners [Shri E.Madhusudhanan, Shri.O.Panneerselvam and Shri. S.Semmalai] and the respondents [Smt.V.K.Sasikala and Shri TTV Dhinakaran] shall be permitted to use the name of the party "All India Anna Dravida Munnetra Kazhagam" simplicitor ;*

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[b] Neither of the aforesaid two groups shall also be permitted to use the symbol "Two Leaves" reserved for "All India Anna Dravida Munnetra Kazhagam".

[c] Both the groups shall be known by such names as they may choose for their respective groups, showing, if they so desire, linkage with their parent party "All India Anna Dravida Munnetra Kazhagam" ; and

[d] Both the groups shall also obe allotted such different symbols as they may choose from the list of free symbols notified by the Election Commission for the purposes of the current bye-election from 11-Dr.Radhakrishnan Nagar Assembly Constituency in Tamil Nadu.

Accordingly, both the groups are hereby directed to furnish latest by 10.00 a.m. tomorrow [23rd March 2017]

[i] the names of their groups by which they may be recognized by Commission ; and

[ii] the symbols which may be allotted to the candidates set up, if any, by the respective groups. They may indicate the names of three free symbols, in the order of their preference, anyone of

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which may be allotted to their candidates by the Commission.

13 *Further, the both the above referred groups are allowed a further and the final opportunity of adducing all such documents and affidavits on which they propose to rely on their respective claims, latest by 17th April, 2017 [Monday]. They may also take notice that the matter will be further heard by the Commission on a date to be intimated later."*

➔ Even prior to the filing of the Dispute Case No.2/2017 by Thiru E.Madhusudhanan and two others against Tmt.Sasikala Natarajan and another [referred to supra], petitions were filed by some of the writ petitioners herein, viz., Tvl.P.Vetrivel, N.G.Parthiban, Thanga Tamilselvan and R.Rangasamy, before the first respondent against 11 MLAs who voted against the third respondent in the floor test held on 18.02.2017 on the ground of defection as they voted against the second respondent / Whip. One of the petitioners, viz., Thiru R.Rangasamy, had also filed WP.No.25400/2017. The substratum of the said petitions is that since Tvl.O.Panneerselvam and 10 other MLAs had voted against the third respondent in the Floor Test held on 18.02.2017, their act would attract para 2[1][b]

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of the Tenth Schedule of the Constitution. The grievance expressed by the writ petitioners herein is that the first respondent / Speaker did not take any action on the said petition.

- The above said 11 MLAs including Thiru O.Panneerselvam not stop with that ; but also made repeated allegations against the Government lead by the third respondent and however, there was a patch up / resolving of the dispute and on 21.08.2017, Thiru O.Panneerselvam, was sworn in as the Deputy Chief Minister and one of the MLAs who supported him, viz., Thiru K.Pandiyarajan, was sworn in as a Minister of the Cabinet headed by the third respondent.

- The trigger point which led to the present litigation is the individual letters/representations dated 22.08.2017 submitted by 19 MLAs which include Thiru S.T.K.Jakkaiyan, to the Hon'ble Governor of Tamil Nadu, alleging abuse of power, favourtism, corruption and nepotism on the part of the third respondent and they lost confidence on the third respondent and went to withdraw their support and however, clearly indicated that they are not

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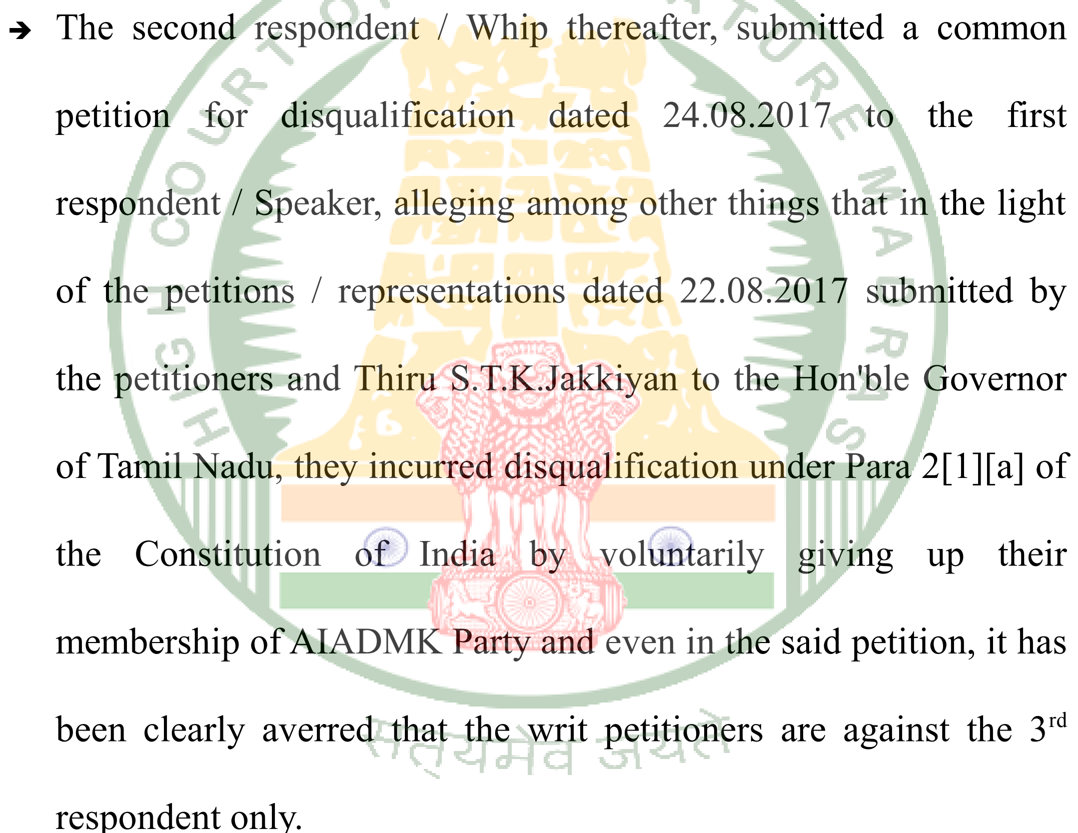
giving up their membership of the party, viz., "AIADMK" and they only want replacement of the Chief Minister and also requested the Hon'ble Governor to institute the Constitutional process under the said circumstances.



- The second respondent / Whip thereafter, submitted a common petition for disqualification dated 24.08.2017 to the first respondent / Speaker, alleging among other things that in the light of the petitions / representations dated 22.08.2017 submitted by the petitioners and Thiru S.T.K.Jakkiyan to the Hon'ble Governor of Tamil Nadu, they incurred disqualification under Para 2[1][a] of the Constitution of India by voluntarily giving up their membership of AIADMK Party and even in the said petition, it has been clearly averred that the writ petitioners are against the 3rd respondent only.

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- The first respondent / Speaker, on receipt of the said petition from the second respondent, has issued notices to the 19 MLAs including Thiru S.T.K.Jakkaiyan to furnish their comments within seven days. The writ petitioners submitted their first interim reply

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dated 30.08.2017 stating among other things that taking cognizance of the petition submitted by the second respondent / Whip, in spite of jurisdictional infirmity and procedural defects, nothing sort of abuse of process and reveals his *mala fide* intention and the said petition also deserves dismissal on account of non-compliance of Rule 6[5][b] of the Disqualification Rules, 1986. The petitioners also took a stand in Para 6 of their first interim reply dated 30.08.2017 that *"the covert intention behind the present proceedings is to increase the majority in the Legislative Assembly by reducing the number of members through disqualification and I therefore, state that this entire proceeding is vitiated by mala fides, bias, procedural irregularities and want of jurisdiction."* The petitioners also took a stand that with regard to the Annexures, the mandatory compliance of Section 65-B of the Indian Evidence Act is required and except one of the petitioners, viz., Thiru P.Vetriel, none of the other MLAs had participated in the said interview and even in the interview, Thiru P.Vetrivel, had nowhere mentioned his intention either directly or indirectly to the effect that he had given up voluntarily his membership of the political party, to which, he belongs. It was once again reiterated

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that the representation given to the Governor was only against the third respondent and either directly or indirectly, the membership of “AIADMK” Party, has not been voluntarily given up. It was also pointed out that in spite of the interim orders dated 22.03.2017 in Dispute Case No.2/2017 before ECI, the second respondent / Whip has mentioned the name of “AIADMK” and in the light of Freedom of Speech guaranteed under Article 19[1][a] of the Constitution of India, they were forced to approach the Governor, since their efforts to address their grievances with regard to the third respondent's conduct ended in failure and approaching the Governor regarding the matter of public interest, cannot be construed as voluntarily giving up of the membership of the party. Therefore, further time has been prayed for to submit the detailed explanation with related documents, with a further request to issue summons to the second respondent / Whip for cross-examination and also permit to examine the witnesses on behalf of the petitioners and to dismiss the petition submitted by the second respondent / Whip as not maintainable.

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- However, the first respondent / Speaker has directed the writ petitioners to file their response by 05.09.2017 and to appear in person before him on 07.09.2017. It is the case of the petitioners that the contents of the interim reply dated 30.08.2017 have not been considered in proper perspective and without even acceding to the genuine request made by the writ petitioners, attempts were made to expedite the hearing of the petition for disqualification.

- The first respondent / Speaker has also invited the comments of the third respondent and the third respondent has given his comments on 30.08.2017. The petitioners, on receipt of the said comments, had submitted their second interim reply dated 05.09.2017 praying for furnishing of the documents based on the comments of the third respondent dated 30.08.2017 and further prayed for 15 days time to submit their final reply on furnishing of the documents required and also prayed for adjournment.

- The first respondent / Speaker has sent a communication dated 07.09.2017 indicating that the date for filing the further comments/response and personal hearing was fixed on 14.09.2017.

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- On 14.09.2017, one of the petitioners, viz., Thiru P.Vetrivel, along with his counsel Mr.N.Raja Sendhoor Pandian, were present for personal hearing and submitted the interim reply on his behalf and on behalf of other 17 MLAs pointing out that the representation dated 22.08.2017 submitted to the Hon'ble Governor was pursuant to the directions of the Deputy General Secretary of the Party, viz., Mr.T.T.V.Dinakaran and they prayed for furnishing of the documents required by them, permitting them to cross-examine the second respondent / Whip, to examine their witnesses, cross-examine the third respondent as to the availment of the Internal Grievance Redressal Mechanism and other issues and to refer the matter to the Committee in terms of Rule 7[4] of the Disqualification Rules, 1986 and also to provide necessary protection through Karnataka Police to attend the personal enquiry as they were stationed at Kudagu.

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- It is the stand of the petitioners that on 14.09.2017 the first respondent / Speaker did not permit the writ petitioner in WP.No.25260/2017 or his Counsel to advance his arguments and

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gave out an impression that the matter will be postponed and another date will be given.

- On 18.09.2017 morning hours, a media report was released stating that out of 19 MLAs, who submitted representations to the Hon'ble Governor, 18 MLAs excluding Thiru S.T.K.Jakkaiyan, were disqualified and it is the case of the writ petitioners that based on the letter of Thiru S.T.K.Jakkaiyan, dated 07.09.2017 submitted to the Hon'ble Governor and the yet another letter dated 14.09.2017 submitted to the first respondent / Speaker retracting the allegations made against the third respondent, his disqualification petition was dismissed and however, the copies of the said letters have not been furnished to the petitioners and despite that, reliance has been placed upon to the stand of Thiru S.T.K.Jakkaiyan to disqualify them. The petitioners filed the present writ petitions on 19.09.2017 and it was listed for admission on 20.09.2017 and the writ petitions were entertained on the same day and an interim order was granted, directing the Election Commission of India, not to issue any Election Notification for conducting elections to the

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18 Constituencies pursuant to the impugned order dated 18.09.2017, until further orders are passed by this Court.

30 Counter affidavits, reply and rejoinders have been filed and after elaborate arguments, orders were reserved on 23.01.2018 and were pronounced on 14.06.2018. The Hon'ble Chief Justice dismissed all the writ petitions and the Hon'ble Mr.Justice M.Sundar, had allowed all the writ petitions. In the light of subsequent orders – details of which have been given in paragraphs 23 and 24 of this order, these writ petitions are listed before the Third Judge and fresh, detailed and elaborate arguments were advanced on merits by both sides.

31 Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners has drawn the attention of this Court to the written propositions/main points and in respect of **Proposition No.A**, made the following submissions:-

- The disqualification proceedings commenced on 24.08.2017 by virtue of the submission of the petition by the second respondent / the Chief Government Whip and the proceedings were culminated on 18.09.2017 in the form of the impugned order disqualifying 18

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out of 19 MLAs except Thiru S.T.K.Jakkaiyan and the first respondent / Speaker has shown undue haste and urgency to decide the said petition for disqualification without granting sufficient time and fair opportunities to the petitioners and as such, the procedure adopted by the first respondent / Speaker is in utter and gross violation of the principles of natural justice.

- The first respondent / Speaker anticipating that in the event of Floor Test, the writ petitioners would vote against the third respondent who is heading the Government and on that account, the Party in power would lose the vote of confidence, had exhibited great urgency to disqualify them.

- The petitioners, on more than one occasion, had met the third respondent to resolve the dispute/differences of opinion between them and the third respondent and since no proper response was forthcoming, they were left with no other option except to submit individual representations / Memorandum to the Governor of Tamil Nadu expressing no confidence on the third respondent on account of his corrupt activities, nepotism etc., and they are only

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against the third respondent and not against the Government and they continue to remain as loyal members of "AIADMK" party and their genuine request for cross-examination of the second respondent / Whip who submitted the petition for disqualification and the third respondent, to substantiate their contentions as to the availment of "Internal Grievance Redressal Mechanism", has been denied unreasonably.

- The third respondent, without any material or substance, has reached the conclusion that the petitioners had acted in tandem with the principal Opposition Party, viz., DMK and also taken on record, the two letters given by one of the MLAs, viz., Thiru S.T.K.Jakkaiyan and also placed reliance upon his statement to reach the conclusion that the petitioners had suffered disqualification under Para 2[1][a] of the Tenth Schedule and the said procedure adopted is totally unreasonable, arbitrary, actuated by *mala fides* and bias and also in utter disregard of principles of natural justice.

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- The disqualification petition submitted by the second respondent / Whip is bereft of any material particulars and except placing reliance upon unsubstantiated and uncorroborated Press and Media Reports, no material whatsoever has been furnished to substantiate that the petitioners had acted in collusion or against the Ruling Party, despite the fact that it has been clearly indicated by them that they are only against the third respondent / Chief Minister and in fact, made a request to replace him with Thiru K.Sengottaian, a Senior Party Functionary and a Senior Minister in the Cabinet.

- The first respondent / Speaker had failed to take into consideration the interim order dated 22.03.2017 passed by ECI in Dispute Case No.2/2017 wherein, it has been clearly indicated that neither of the two groups led by Tvl.E.Madhusudhanan, O.Panneerselvam and S.Semmalai and the group headed by Tmt.Sasikala Natarajan and Mr.T.T.V.Dinakaran, shall be permitted to use the name of the party, viz., “AIADMK” simplicitor and also freezed the “Two Leaves” Symbol and proceeded urgently overlooking the fact that between the date of interim order, i.e., 22.03.2017 and the final order dated 23.11.2017, there was no party existing in the name of

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"AIADMK" and as such, the question of voluntarily giving up the membership of "AIADMK" does not arise at all between the said period and in any event, he ought to have deferred the proceedings till the conclusion of the same and however, has proceeded with the same urgently, solely with the object to disqualify the writ petitioners on the alleged apprehension that they would vote against the Ruling Party in the floor test to be held.

- The first respondent / Speaker, by virtue of the above said conduct and acts, had acted in a *mala fide* manner and as such, the impugned order passed by him is vitiated by malice in law and in facts.

- Freedom of Speech has been guaranteed to the petitioners under Article 19[1][a] of the Constitution of India and the contents of their representations submitted to the Governor would clearly disclose that it is only bona fide voice of dissent expressing certain grievances against the third respondent alone and it cannot be termed as voluntarily giving up the membership as contemplated in para 2[1][a] of the Tenth Schedule.

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- The representations submitted to the Hon'ble Governor by the writ petitioners and Thiru S.T.K.Jakkaiyan, are based upon ***Yeddyurappa's case*** and the facts of the said case are similar to that of the present case and the Hon'ble Apex Court has quashed the order of the Speaker of the Karnataka Assembly in disqualifying certain MLAs and since the present case is akin to the said case, the first respondent / Speaker ought to have rejected / dismissed the petition for disqualification submitted by the second respondent / Whip.

- The subsequent Constitution Bench judgment of the Hon'ble Apex Court in ***Nabam Rebia's case***, does not in any manner, dilute the findings rendered in ***Yeddyurappa's case*** and the said judgment did not overrule either expressly or impliedly, the ratio laid down in ***Yeddyurappa's case*** to the facts and circumstances of the present case. The first respondent/Speaker ought not to have taken into consideration the two letters submitted by Thiru S.T.K.Jakkaiyan, one of the MLAs and also his statement to reach the conclusion to disqualify the petitioners, especially, in the light of the fact that the

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copies of the said letters/representations as well as the statement made by Thiru S.T.K.Jakkaiyan before the first respondent / Speaker, have not been furnished to the petitioners and however, relied upon the same behind the back of the petitioners and reached such an erroneous conclusion and therefore, the impugned order is unsustainable.

32 The learned Senior Counsel appearing for the petitioners, in support of his submissions with regard to **Proposition No.A**, has placed reliance upon the following judgments:-

1992 Supp [2] SC 651 [Kihoto Hollohan Vs. Zachillhu] ;

1994 [2] Supp SCC 641 [Ravi S.Naik Vs. Union of India] ;

2011 [7] SCC 1 [Balachandra L.Jharikholi and others Vs. B.S.Yeddyurappa and others].

33 PROPOSITION No.B - VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:-

- It is the submission of the learned Senior counsel for the petitioners that the disqualification proceedings commenced immediately on the submission of the petitioner dated 24.08.2017

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by the second respondent / Whip seeking disqualification of the writ petitioners and Thiru S.T.K.Jakkaiyan under Para 2[1][a] of the Tenth Schedule. Despite the interim reply submitted, praying for an opportunity, submission of documents and to cross-examine the respondents 2 and 3, the said request have been unfairly and unjustly denied and the first respondent / Speaker has exhibited undue haste and urgency which culminated in the impugned order dated 18.09.2017 and such acts were done by the first respondent / Speaker anticipating that in the event of Floor Test conducted, the petitioners would definitely vote against the third respondent / present Government.

- Attention of this Court was drawn to Rule 6[5][a] and 6[5][b] of the Disqualification Rules, 1986 which speaks about the concise statement of material facts on which the writ petitioners and the said petition shall be accompanied by copies of documentary evidence if any, on which the petitioners rely and if any information is relied upon by the petitioners furnished by any other person, it shall also be enclosed.

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- The learned Senior counsel appearing for the petitioners had drawn the attention of this Court to the petition for disqualification dated 24.08.2017 submitted by the second respondent / Whip and would submit that Rule 6 of the Disqualification Rules, have been given a complete go-by and the said petition should have been returned for complying with the basic defects and however, on the very date of submission of the said petition, it was entertained by the first respondent / Speaker.

- Further attention of this Court was drawn to the interim response/reply dated 30.08.2017 and would submit that a detailed interim reply has been given raising preliminary objections with a request to grant adjournment and also to issue summons to the second respondent / Whip for cross-examination and to permit the examination of the witnesses on their behalf and subsequently,the first respondent / Speaker appears to have invited the comments of the third respondent, vide communication dated 24.08.2017 and the third respondent has furnished his comments on 30.08.2017 and it was also forwarded to the petitioners. It is the submission of the learned Senior Counsel appearing for the petitioners that

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despite specific request made to furnish the copy of the letter dated 24.08.2017 sent by the first respondent / Speaker, in and which, he requested the third respondent to offer his comments, the copy of the said letter has not been furnished.

- The petitioners thereafter, submitted their interim replies dated 30.08.2017 and 05.09.2017 respectively, seeking attendance of the third respondent to cross-examine him in respect of the contents of his letter dated 30.08.2017 with a further time to submit their response to the said representation with a request to have an enquiry before the Committee under Rule 7[5] of the Disqualification Rules, 1986 as the first respondent / Speaker is biased.

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- The petitioners, thereafter, in their reply dated 05.09.2017, reiterated their earlier request and prayed for adjournment of the case from 07.09.2017.

- On 14.09.2017, the petitioners has received a communication as to the fixation of the date of hearing on 14.09.2017 and on that day,

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one of the petitioners, viz, Thiru P.Vetrivel, appeared along with his counsel and submitted his second reply dated 14.09.2017, drawing the attention of the first respondent / Speaker to the earlier reply and prayed for furnishing of the required documents sought in the individual reply dated 05.09.2017 and his Advocate's petition dated 05.09.2017 and to grant five days time from the date of receipt of the copies of the documents to enable him to submit his final response and thereafter, fix the date for personal hearing and for filing of the final reply and adjourning the hearing of the case from 07.09.2017 to some other date for the above said reasons.

- It is the submission of the learned Senior Counsel that on the said date, the first respondent / Speaker did not indicate that with the available materials, he is likely to pass the final order and the petitioners were under reasonable and genuine belief that in the light of the request dated 14.09.2017, the first respondent / Speaker would grant further time for further date and however, to their shock and surprise, became aware of the impugned order dated 18.09.2017 through Visual Media and they have not been

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furnished with the copy of the said order and they became aware of the contents of the order only through the Gazette Publication and thus, the first respondent / Speaker, all along exhibited undue haste, urgency and partisan attitude to favour the third respondent / Speaker.

- The primordial submission made by the learned Senior Counsel for the petitioners in this regard is that the first respondent / Speaker has also commented about the non-availment of the "Internal Grievances Redressal Mechanism", overlooking the fact that it is the case of the writ petitioners that they met the first respondent / Speaker and expressed their grievances about the style of functioning and one time in the Chambers of the first respondent / Speaker also and since no proper response was forthcoming, they were left with not other option except to meet the Hon'ble Governor and also they met the Governor and submitted a representation dated 22.08.2017 and it cannot be termed as an Anti-Party activity for the reason that on more than one occasion, it was specifically pointed out by the petitioners that they are only against the third respondent with regard to the style of functioning

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and not against the party, viz., "AIADMK", to which they belong and got elected as MLAs.

- It is once again reiterated by the learned Senior Counsel that denial of opportunity to cross-examine the respondents 2 and 3 would definitely amount to denial of natural justice to substantiate their stand and probablise their case and with regard to the communication sent to the petitioners to attend the Legislature Party Meeting also, not even an iota of material has been produced and however, the first respondent / Speaker had deliberately failed to appreciate the material facts and reached a totally erroneous conclusion and in any event, the ingredients of Para 2[1][a] of the Tenth Schedule have not been attracted to the facts and circumstances of the case.

- The next submission made by the learned Senior counsel is that the first respondent / Speaker had placed heavy reliance upon the materials and the same have not even been placed on record and however, chose to rely on the same behind their back to reach the conclusion which resulted in the impugned order.

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- The learned Senior Counsel has drawn the attention of this Court to Paragraph No.59 of the impugned order and would submit that the first respondent / Speaker has unduly and unnecessarily relied upon the meeting between the leader of the opposition party and the Governor with a request to order a floor test to prove the majority of "AIADMK" Party to reach the conclusion that the said act on the part of the leader of the opposition, cannot be viewed as an isolated act or an unconnected incident. The first respondent / Speaker has also recorded the finding that the act of the leader of the opposition meeting the Hon'ble Governor seeking a floor test, coupled with the representation dated 22.08.2017 submitted by the petitioners expressing no confidence on the third respondent would clearly indicate that the writ petitioners are acting in concert with the leader of the opposition. It is the submission of the learned Senior Counsel for the petitioners that it is not even the case of the second respondent / Whip in his representation dated 24.08.2017 and therefore, the first respondent / Speaker has taken note of the material, which is not even placed on record and reached the said erroneous conclusion.

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- The learned Senior Counsel drawing the attention of this Court to paragraphs No.60 and 64 of the impugned order, would submit that with regard to convening of the General Council Meeting and the staying away/non-attending of the said meeting by the petitioners herein, no material has been placed and the first respondent / Speaker has also taken note of the fact of one of the writ petitioners, viz., Thiru P.Vetrivel, approaching this Court and seeking an injunction from holding the General Council Meeting and reached the conclusion that the petitioners herein has distanced from the decision of the Party and therefore, it is not open to them to say that they are acting as per the majority view of the party and further, the conclusion that the petitioners herein have in fact, moved away from the ideology of the Party and the Political Party itself, is also not supported by any material and in fact, the first respondent / Speaker had relied upon the said extraneous information / material to reach the conclusion that the writ petitioners had moved away from the Party ideology and the Party itself and in the absence of any supporting materials, the said findings, is not only hit by the principles of natural justice ; but

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also it is based upon 'no evidence' and it should be termed as a perverse findings.

- The attention of this Court was also invited to Paragraphs No.66 to 69 of the impugned order and it is the submission of the learned Senior Counsel appearing for the writ petitioners that as per the contents of paragraph No.66 of the impugned order, some additional facts have been placed by the 17th respondent therein, viz., Thiru S.T.K.Jakkaiyan and in paragraph No.67, the first respondent / Speaker refers to the two reply statements dated 30.08.2017 and 05.09.2017 respectively and the presence of Thiru S.T.K.Jakkaiyan on 07.09.2017 and handing over of the letter stating that he was pressurized to submit his representation dated 22.08.2017 to the Governor. It is further stated in Paragraph No.67 that the 17th respondent, viz., Thiru S.T.K.Jakkaiyan, had realized that there were some mistake and therefore, sought to withdraw his representation dated 22.08.2017 submitted to the Governor and he has also revoked his Vakalat given to his Advocate and withdrawn his reply statements [interim replies] dated 30.08.2017 and 05.09.2017 respectively and when he personally met the first

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respondent / Speaker on 14.09.2017, he submitted a representation dated 14.09.2017 to him and also a copy of his representation dated 07.09.2017 submitted to the Governor and admittedly, before passing the impugned order, copies of the representations submitted by Thiru S.T.K.Jakkaiyan, dated 14.09.2017 and 07.09.2017 have not been furnished to the writ petitioners.

- In paragraph No.69 of the impugned order, the first respondent / Speaker would state that he do not want to go into the allegations made by the 17th respondent / Thiru S.T.K.Jakkaiyan in his initial reply statements and on the submission made by him during the personal hearing and taking into consideration of the fact of the contents of the letter explaining the circumstances for changing his decision, he formed the opinion that the circumstances which prevailed at the time of submission of the petition for disqualification by the second respondent / Whip, do not exist now. The learned Senior Counsel specifically drawing the attention of this Court to the last three lines of paragraph No.69 of the impugned order, would submit that the alleged act/event that prevailed during the stay of the petitioner herein and Thiru

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S.T.K.Jakkaiyan at Kodugu, had also been relied upon and though the first respondent / Speaker would state that he is dealing with the issue of stay separately, the fact remains that he got influenced on account of the said statement also and it is also one of the reasons to disqualify the petitioners through the impugned order. In sum and substance, the learned Senior counsel submitted that the first respondent / Speaker has committed a manifest error in relying upon the materials which subsequently came to his knowledge and without even furnishing the copies of the two letters submitted by Thiru S.T.K.Jakkaiyan and also relying upon the same behind the back of the writ petitioners, has reached the conclusion to disqualify them and the said act / attitude exhibited by the first respondent / Speaker, has not only violated the principles of natural justice, which is one of the grounds to test the legality of his order, but also the reasons assigned in that regard, are also perverse.

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- The learned Senior Counsel would invite the attention of this Court to the contents of the petition for disqualification dated 24.08.2017 submitted by the second respondent / Whip and would

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submit that even as per his own version in paragraph No.5, the petitioners made allegations only against the third respondent / Chief Minister and took a stand in paragraph No.6 that the allegations made in the complaint/representation to the Hon'ble Governor are false and absurd and not substantiated by any proof and on account of the fact that the allegations were made against the Chief Minister who was duly appointed by the Party, the act of making such allegations, may amount to voluntary surrendering of their membership of the Party and that they also even embraced a totally different ideology from that of the AIADMK Party. In paragraph No.8, the first respondent / Speaker took a stand that the writ petitioners have also failed to approach the Internal Grievances Redressal Mechanism of the Legislative Wing of the Party and the letter of dissent submitted by them to the Hon'ble Governor would amount to voluntary cessation of their membership with the Party and as such, they have incurred disqualification.

- The submission of the learned Senior counsel in this regard is that along with the said representation, two annexures have been

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annexed, viz., the letters / representations given by the petitioners herein to the Governor has circulated in the Media and the CD containing the Media Reports and also the Newspaper article dated 23.08.2017 and though non-following of section 65-B of the Indian Evidence Act, have been specifically pointed out, the first respondent / Speaker has brushed aside the same in paragraph No.23 of the Impugned order by stating that since it is a proceeding under Article 212 of the Constitution of India, the extent of procedural compliance required, cannot be equated to those that are required when a matter is being taken up by a judicial forum and therefore, there need not be any strict compliance with section 65-B of the Evidence Act, Civil Rules of Practice and Code of Civil Procedure. The learned Senior counsel, attacking the said conclusion would submit that in spite of the specific request made to examine the persons concerned with the Visual and Press Media, no specific order has been passed, rejecting their request and section 65-B of the Indian Evidence Act is a mandatory procedure contemplated for reception of an electronic evidence and even otherwise, a fair play is required on the part of the first respondent / Speaker to analyse the said

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materials independently and however, in utter disregard to the mandatory provision of the Evidence Act and not exhibiting a fair play and good conscience, reliance has been placed upon the said material to reach the conclusion and as such, the first respondent / Speaker has not exhibited a fair play and while doing so, had also violated the principles of natural justice.

34 Learned Senior counsel, in support of his submission, has placed reliance upon the following judgments:-

[a] *2016 [8] SCC 1* ***[Nabam Rebia and Bamang Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly] ;***

[b] *2011 [7] SCC 1* ***[Balachandra L.Jharikholi and others Vs. B.S.Yeddyurappa and others] ;***

[c] *1994 [2] Supp SCC 641* ***[Ravi S.Naik Vs. Union of India] ;*** and

[d] *AIR 1957 SC 882* ***[Union of India Vs. V.T.R.Verma]***

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35 <u>PERVERSITY, MALA FIDE, BIAS, PARTISAN ATTITUDE AND ABUSE OF POWER:-</u>

The following submissions were made by Mr.P.S.Raman, learned Senior Counsel appearing for the writ petitioners in WP.Nos.25260 to 25267 and 25398 to 25402/2017:-

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- In the floor test conducted on 18.02.2017, 11 MLAs, viz., Tvl. O.Panneerselvam [OPS], A.Aarukutty, Shanmuganathan, Manickam, Manokaran, K.Pandiyaraj, Manoranjitham, Saravanan, Semmalai, Chinnaraj and R.Natarajan – MLAs of AIADMK Political as well as the Legislature Party, had voted against the 2nd respondent / Whip. Therefore, some of the MLAs belonging to the said party submitted petitions to the first respondent / Speaker under the Disqualification Rules, 1986, praying that their disqualification under Para 2[1][b] of the Tenth Schedule on the ground that they voted against the "No Confident Motion" is unsustainable and also in violation of the direction in the form of directives issued by the second respondent / Whip. Tvl.Madhusudhanan and two others, had filed a petition dated 15.03.2017 before ECI under Para 15 of the Symbols Order, 1968 and it was taken on file in Dispute Case No.2/2017, wherein, interim orders came to be passed on 22.03.2017, directing both groups, not to use the name of the party "AIADMK", with a liberty to use the name with suffix names and also frozen the "Two Leaves" Symbol of the said party.

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- The grievance expressed by the petitioners is that it was a clear case wherein, the above cited 11 MLAs had voted against the Party Whip in the Floor Test held to prove the majority of "AIADMK" Legislature Party headed by Thiru Edapadi K.Palanisami (third respondent) and for obvious reasons, the first respondent / Speaker is yet to take any further action on the said petition and whereas, insofar as the present petition for disqualification submitted by the second respondent/Whip, he had proceeded in an undue haste and without affording proper, reasonable and sufficient opportunity and also in utter disregard and violation of principles of natural justice and had held in the impugned order that the petitioners suffered disqualification under Para 2[1][a] of the Tenth Schedule and the said act would clearly exhibit *mala fide* attitude, bias and partisan attitude towards the Ruling Party.

- It is further submitted that though the copy of the response of the third respondent dated 30.08.2017 has been furnished, the covering letter sent by the office of the first respondent / Speaker requesting the third respondent to furnish his comments, has not been given, despite the request and that apart, the documents

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sought for by the petitioner in their interim replies, have also not been furnished.

- Insofar as the availment of "Internal Dispute Redressal Mechanism", it is the specific case of the petitioners that they met the third respondent and expressed their grievances as to the style and functioning and despite that, he has failed to mend his ways and in the light of the stand taken that the petitioners had never approached the third respondent to amicably solve the difference of opinion, they requested the first respondent / Speaker to summon the third respondent for cross-examination.

- It is the further grievance of the petitioners that the second respondent / Whip, after presenting the petition seeking disqualification of the petitioners, had not even appeared in person to substantiate the allegations/averments made in the petition and despite that, the first respondent / Speaker took upon the matter on behalf of the second respondent / Whip and in utter disregard and violation of principles of natural justice, fair play and good conscience, had urgently proceeded and disqualified the petitioners

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in undue haste. It is also submitted that the petitioners, in one of the interim replies, also requested the first respondent / Speaker to refer the petition for disqualification submitted by the second respondent / Whip for an enquiry to a Committee constituted under Rule 7[4] of the Disqualification Rules, 1968 and without citing proper and adequate reasons, the said request has been rejected in the impugned order.

- It is the further submission of the learned Senior Counsel that undue haste exhibited by the first respondent / Speaker is at large and borne out from records for the reason that the leader of the Opposition, viz., Thiru.M.K.Stalin, filed WP.No.24708/2017, praying for appropriate direction, for holding the Floor Test and anticipating some adverse order, the petition for disqualification submitted by the second respondent / Whip has been taken up without deciding the petition for disqualification against 11 MLAs under Para 2[1][b] of the Tenth Schedule and had passed the impugned order which is bristled with perversity.

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- Originally, Thiru S.T.K.Jakkaiyan, joined with the petitioners and submitted a representation to the Governor of Tamil Nadu, expressing No Confidence and lack of faith and confidence on the third respondent and later on, he was allowed to retract and admittedly, the copies of the letters submitted by him to the first respondent / Speaker as well as to the Governor of Tamil Nadu, have not been furnished and the statement made by him in the personal enquiry, has also been taken into consideration for the purpose of disqualifying the petitioners and it is a settled position of law that the disqualification under Para 2[1][a] of the Tenth Schedule, stands attracted on the date of submission of the petition for disqualification and for obvious and *mala fide* reasons, Thiru S.T.K.Jakkaiyan, has been given undue favourable treatment and in fact, while disqualifying the petitioners herein, the petition seeking disqualification of Thiru S.T.K.Jakkaiyan, came to be dismissed and as such, persons standing on same footing have been treated differently with an oblique and *mala fide* motive and also in an illegal manner. It was once again reiterated that the copies of the newspaper articles and the DVD said to have been

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containing the news, have been taken into consideration without adhering to the provisions of the Indian Evidence Act.

- The learned Senior Counsel, on the merits of the matter, would urge that the Election Commission of India under Para 15 of the Symbols Order, passed an interim order dated 22.03.2017, restraining both groups from using Party's name with a liberty to use the name with a suffix name and also frozen the "Two Leaves" symbol and as a consequence, the original Political Party, viz., "AIADMK" was under suspended animation and though the matters subsequently got resolved and final order dated 23.11.2017 came to be passed, between 23.02.2017 and 23.11.2017, technically, there is no original party, viz., "AIADMK", was in existence and as such, the question of petitioners voluntarily giving up their membership of the said Party under Para 2[1][a] of the Tenth Schedule would not have arise at all and in any event, the first respondent / Speaker ought to have deferred the proceedings till the conclusion of the said proceedings.

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- The learned Senior Counsel also had invited the attention of this Court to Article 324 of the Constitution of India read with section 29-A of the Representation of People Act, 1951, and would submit that ECI as well as the office of the first respondent / Speaker are Constitutional authorities and both should respect each other's domain and position and since the ECI had in seizin of the said matter, the first respondent / Speaker ought to have deferred the proceedings till the culmination of the same and having failed to do so, it resulted in passing of the impugned order.

- The learned Senior Counsel took great pain in drawing the attention of this Court to the contents of the representation dated 22.08.2017 submitted by the petitioners to the Governor and reiterated the submission that the petitioners and Thiru S.T.K.Jakkaiyan, were against the functioning of the third respondent, as he indulged in corruption and nepotism etc., and thereby, brought down the image of the party in the public and in more than one place, they reiterated that they continue to remain with AIADMK Party and in any event, it was only a voice of dissent against the third respondent alone and not against the Party

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and their Freedom of Speech is also guaranteed and protected by Article 19[1][a] of the Constitution of India. It is also his submission that even in Para 4 of the petition submitted by the second respondent / Whip, it has been stated that the petitioners are against the third respondent / Chief Minister alone and not against the Government. The learned Senior Counsel has also placed heavy reliance upon the Judgment of the Apex Court in ***Yeddyurappa's case*** and would submit that the facts of the said case would fully fit in with that of the facts of the present case and in fact, the representations of the petitioners had also been prepared on the basis of the said case and the Speaker of the Tamil Nadu Legislative Assembly has also placed reliance upon the said judgment and however, misinterpreted the same and the result of the said verdict is the order of disqualification passed against the concerned MLAs of Karnataka Legislature Assembly belonging to BJP and the same was set aside. It is also contended by the learned Senior Counsel that the first respondent / Speaker has taken into consideration extraneous materials, which were not even the part of the record and invited the attention of this Court to Paragraph No.59 of the impugned order and would submit that to reach the

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conclusion that the petitioners had acted in tandem with the leader of the Opposition Party for the purpose of dislodging the Government, is not supported by any materials and the first respondent / Speaker has drawn an erroneous inference.

- The learned Senior Counsel would submit that the petitioner in WP.No.25260/2017, viz., Thiru P.Vetrivel, had filed a miscellaneous petition in WP.No.24708/2017 filed by the leader of the Opposition Party wherein it has been stated that the said petitioner, viz., Thiru P.Vetrivel, was under the apprehension that in view of the writ petition, a Floor Test may be called for at any date shortly and that the first respondent / Speaker may disqualify him on the view of the members, with the *mala fide* intention and depriving him of the opportunity of seeking judicial redress and thereby, preventing him from exercising his right as an elected representative, sought to implead him as a party and the contents of the affidavit would also disclose that he did not support the case of the leader of the Opposition in the said writ petition and as such, the findings rendered by the first respondent / Speaker that the petitioners had colluded with the leader of the Opposition and

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acted in tandem with him, is a perverse finding and the Hon'ble Mr.Justice M.Sundar in his dissent verdict, had also rightly reached the said conclusion.

- The learned Senior Counsel developing the argument, submitted that the petitioners merely wanted replacement of the third respondent / Chief Minister alone by inviting the attention of this Court to the news report of the Times of India dated 23.08.2017, which would disclose that they wanted Thiru Sengottaian, a senior leader of the "AIADMK" Party and also a Senior Minister to take over the mantle of the office of the Chief Minister and as such, it cannot be said that opposing the leader of the Legislature Party would amount to voluntarily giving up the membership of the Party.

- The learned Senior counsel appearing for the petitioners, on instructions, would submit that assuming, prior to disqualification, if the floor test was conducted, the petitioners being the members of "AIADMK" Political Party, would have obeyed and complied with the second respondent / Whip and in fact in Para 14[t] of the

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verdict of the Hon'ble Mr. Justice M.Sundar, the submission of Dr.Singhvi, learned Senior counsel appearing for the petitioners was also recorded and his submission was that the petitioners would not have voted against the second respondent / Whip, if the Floor Test had been called. **At this juncture, it is to be noted that such a stand has been taken during the course of arguments only**.

- The learned Senior Counsel, on the legal plea, would submit that the Constitution Bench Judgment of ***Rabam Nebia's case [cited supra]***, reported in ***2016 [8] SCC 1***, has no application to the facts of this case for the reason that the said decision pertains to the act of the Hon'ble Governor and it had not dealt with any specific issue as to the disqualification of the concerned MLAs under the Tenth Schedule and ***Yeddyurappa's case*** has not even been referred to and as such, it cannot be said that ***Yeddyurappa's case*** has been impliedly overruled by the said Constitution Bench Judgment.

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- It is the further submission of the learned Senior Counsel that the constitutional process sought for by the petitioners, does not necessarily mean that they want to throw the Ruling Party of the Government and assuming that the Governor had positively acted on their representations, he would have called for a Floor Test to test the majority or keep the Assembly under suspended animation, or made recommendation to the Government to dismiss the Government. It was also pointed out by the learned Senior Counsel that even in ***Yeddyurappa's case***, the Hon'ble Apex Court has specifically considered the said factual dispute and observed that assuming that the third respondent is to be replaced, still it is open to the Ruling Party to nominate and elect any other person from the same party for holding the office of the Chief Minister and in the light of the said observation, it cannot be said that the petitioners are acting against the interest of the party in which they belong and also to destabilize and overthrow the Government. However, the first respondent / Speaker had recorded unreasonable and perverse findings that the act would amount to voluntarily giving up of the membership of the party to which they belong, deliberately overlooking the fact that no evidence or material, was

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made available by the second respondent / Whip to reach the said conclusion.

✗ Reliance on additional materials, especially, with regard to the finding that the petitioners had acted in tandem with the leader of the Opposition Party, is also a height of perversity for the reason that as per ***Kihoto Hollohan's case***, the Speaker has to decide the question of disqualification with reference to the date on which, he has voluntarily given up his membership and in the instant case, the Speaker has taken the date of submission of the representation dated 22.08.2017 to the Governor to reach the said conclusion and no opportunity whatsoever, has been afforded to the petitioners.

36 The learned Senior Counsel appearing for the petitioners, in support of his submissions, relied on the following decisions:-

[1] ***Kihota Hollohan v. Zachilhu and Others*** reported in ***AIR 1993 SC 412 : 1992 Supp. SCC 651 (CB) ;***

[2] ***Ravi S.Naik Vs. Union of India*** reported in ***1994 [2] Supp SCC 641 ;***

[3] ***Dr.Mahachandra Prasad Singh Vs. the Chairman, Bihar Legislative Assembly*** reported in ***2004 [8] SCC 747 ;***

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[4] ***Jagjit Singh Vs. State of Haryana and Others*** reported in ***2006 [11] SCC 1 ;***

[5] ***Rajendra Singh Rana and Others Vs. Swami Prasad Maurya and Others*** reported in ***2007 [4] SCC 270 ;***

[6] ***Balachandra L.Jharikholi and others Vs. B.S.Yeddyurappa and others*** reported in ***2011 [7] SCC 1 ;*** *and*

[7] ***Nabam Rebia and Bamang Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly*** reported in ***2016 [8] SCC 1.***

37 **Mr.Mohan Parasaran,** learned Senior Counsel assisted by Mr.N.Raja Senthoor Pandiyan, learned counsel appearing for the petitioners in WP.Nos.25393 to 25397/2017, apart from adopting the arguments advanced by Mr.P.S.Raman, learned Senior Counsel, had also supplemented by advancing following submissions:

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- In the light of the seizin of the election Dispute Case No.2/2017 by ECI under Paragraph 15 of the Symbols Order, 1968 and subsistence of the interim orders dated 22.03.2017, the Political Party, viz., AIADMK, was in hibernation and there was a restrain order from using the party's name as well as using the symbol, till culmination of the proceedings on 23.11.2017 and admittedly, the petition for disqualification was filed by the second respondent /

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Whip on 24.08.2017 and during the said period, there was no Political Party, viz., AIADMK in real sense and as such, the voluntary giving up of the membership of the said Political Party under Para 2[1][a] of the Tenth Schedule, would not have arisen at all and as such, the first respondent / Speaker ought not to have entertained the petition submitted by the second respondent / Whip.

- ECI is also a Constitutional Functionary under Article 324 of the Constitution of India and it is the sole authority vested with the power of superintendence, direction and control of the elections and the Election Symbols [Reservation and Allotment] Order, 1968, came to be framed in exercise of powers conferred under Article 324 of the Constitution of India read with section 29-A of the Representation of People Act, 1951, and Rules 5 and 10 of the Conduct of the Election Rules, 1961 and in the light of the fact that the dispute between two factions of "AIADMK" was pending, the first respondent / Speaker, at least ought ought to have deferred the proceedings. As per the definition 2[h] of the Symbols Order, 1968, *"Political Party* " means an association or body of

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individual citizens of India, registered with the Commission [ECI] as a Political Party under section 29-A of the RPA Act, 1951 and Rule 13 speaks about *"when a candidate shall be deemed to be set up by a political party"* and admittedly, the petitioners were nominated by the Political Party, viz., "AIADMK, in the election held to the Tamil Nadu Legislative Assembly and they were successfully got elected and in the light of the subsistence of the interim order dated 22.03.2017, the Political Party, viz., "AIADMK" , was not in existence at least in a technical sense and as such, Para 2[1][a] of the Tenth Schedule has not been attracted. The symbol allotted to AIADMK Political Party, for the purpose of identification, has also been frozen as per the said order and as such, it cannot be said that the petitioners had voluntarily given up their membership of the said party and even otherwise, it is their specific case that they were opposed to the style of the functioning of the third respondent alone and they continue to be the members of the said Political Party and not deviated from the ideology of the said Party. It is also contended that despite subsistence of the interim order, the second respondent / Whip continued to use the name "AIADMK" and in any event, the first respondent ought to

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have taken cognizance of such misuse and violation of the order of ECI and returned the application for suitable modification in compliance ; but the first respondent / Speaker for the reasons best known to him, had failed to do so. The Hon'ble Chief Justice, in paragraph No.329 of the Common order dated 14.06.2017 has observed that the proceedings under Para 15 of the Symbols Order was inconsequential, overlooking the fact that the jurisdiction issue is involved and that the proceedings before the Constitutional Authority, viz., ECI, was pending even prior to the invocation of Para 2[1][a] of the Tenth Schedule by the second respondent / Whip and therefore, the said issue ought to have been decided first, before venturing into the merits of the matter. The Hon'ble Mr.Justice M.Sundar, had rightly found in paragraphs 14 [e], [f], [ak] and [am] that ECI was in seizin of the matter and as such, the adjudication done by the first respondent / Speaker on the petition for disqualification submitted by the second respondent / Whip is also in violation of the Constitutional Mandate and the said finding is also in consonance with the grounds for judicial review / interference as envisaged in ***Kihoto Hollohan's case.***

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➔ ***Yeddyurappa case,*** word by word, is fully applicable to the facts of the present case and in the said case, the Hon'ble Apex Court, has interfered with the order of disqualification passed by the Speaker of the Karnataka Assembly, not only on the ground that reasonable opportunity has been denied on the ground of affording shorter time than the one prescribed by the Rules ; but also on the merits of the matter and the said decision has not been referred to in the Constitution Bench Judgment in ***Nabam Rebia's case*** and as such, the question of implied overruling does not arise at all. ***Nabam Rebia's case*** deals with the misuse of power on the part of the Governor and the disqualification under Para 2[1][a] of the Tenth Schedule was not directly in issue and that apart, institution of Constitutional process on the part of the Government would also take into account the finding an alternate leader to head the Legislature Party for becoming the Chief Minister and not the dismissal of the Government and as such, the submission of the representations by the petitioners expressing no confidence upon the third respondent herein / the Chief Minister, would in no way lead to the inference that they are acting against the interest and ideology of the Party, through which they got elected and also

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against the ideology and the said factual aspect and the legal issue has been completely overlooked by the first respondent and as such, the impugned order is *per se* perverse, which is one of the grounds for interference.

- The petitioners did their level best to avail the "Internal Dispute Redressal Mechanism" to substantiate their claim and also pleaded that the first respondent, in the form of their interim replies to summon the third respondent for the purpose of cross-examination and though it is the stand of the third respondent that the communications have been sent to the petitioners, to attend the General Council Meeting, no materials whatsoever have been produced to substantiate the said fact and if permission was granted to the petitioners to cross-examine him, the said fact would have been definitely elicited in their favour, but on account of unjust and bias attitude exhibited by the first respondent / Speaker in favour of the third respondent, their fair and reasonable request has been unjustly denied and as such, it cannot be termed as a procedural irregularity. Thiru S.T.K.Jakkaiyan, who initially joined with the writ petitioners in submitting representations to the

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Governor of Tamil Nadu, had later on retracted, in the form of retraction and seemed to have submitted a representation dated 14.09.2017 to the first respondent and also enclosed a copy of his representation dated 07.09.2017 submitted to His Excellency the Governor of Tamil Nadu, withdrawing his earlier representation dated 22.08.2017 and those materials came into being subsequently to the entertainment of the petition for disqualification and for that, the petitioners were not even put on notice and copies of the said representations have also not been furnished to them. It is the his further submission that the case of Thiru S.T.K.Jakkaiyan, should not be dealt with separately and that too, on materials which came into being subsequently. The statement of Thiru S.T.K.Jakkaiyan given before the first respondent / Speaker on 14.09.2017 was also taken into consideration wherein, he has spoken about some of the members of "AIADMK" trying to topple the "AIADMK" Government and the said statement had also influenced the mind of the first respondent / Speaker while arriving at a decision to disqualify the writ petitioners. The course adopted by him is in quite contravention and *per se* violation of principles of natural justice,

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fair play, neutrality and good conscience and it is also one of the grounds for judicial review / interference with the order of the first respondent / Speaker. The second respondent / Whip after the submission of his petition for disqualification on 24.08.2017, not appeared before the first respondent / Speaker not even on one occasion to substantiate the allegations and despite that, the first respondent / Speaker had shown undue and over-jealous interest, in adjudicating the said petition and want of extra materials, by collecting the above said subsequent and additional materials for the sole purpose of disqualifying the petitioners in spite of the fact that the ingredients of Para 2[1][a] of the Tenth Schedule have not been attracted and the said act would clearly amounts to *mala fide* exercise of power.

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- In the Floor Test held on 18.02.2017, admittedly Tvl. O.Panneerselvam and his group of MLAs, had voted against the third respondent and a complaint was filed by six AIADMK MLAs, which include four of the petitioners herein, seeking their disqualification under Para 2[1][b] of the Tenth Schedule and not even notices were ordered and whereas, immediately after the

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submission of the representations dated 22.08.2017 by the petitioners to the Governor of Tamil Nadu, expressing lack of confidence against the third respondent alone on account of his style of functioning, on the submission of the petition by the second respondent / Whip dated 24.08.2017, cognizance was taken by the first respondent / Speaker and within twenty six days, he had passed the impugned order against the petitioners, by showing great urgency and undue haste in order to oblige the third respondent. The first respondent / Speaker, being the sole and ultimate authority to decide the issue relating to disqualification under Tenth Schedule, has adopted a different yardstick for Thiru O.Panneerselvam and his group and in respect of the said petitioners, the above cited cumulative acts of the first respondent / Speaker would amount to jurisdictional errors, pointed out by the Hon'ble Apex Court in Paragraph No.109 of ***Kihoto Hollohan case*** and the Hon'ble Mr.Justice M.Sundar had considered the factual aspects and legal issues in correct and proper perspective and rightly reached the conclusion to interfere with the said order and prays for allowing of the writ petitions and quashment of the impugned order dated 14.09.2017.

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Mr.Mohan Parasaran, learned Senior Counsel, in support of his submissions, placed reliance upon the following judgments:-

[a] **1977 [4] SCC 161** *[All Party Hill Leaders' Conference, Shillong V. Captain W.A.Sangma and others] ;*

[b] **1983 [1] SCC 147** *[Sanjeev Coke Manufacturing Company Vs. M/s.Bharat Coking Coal Limited and Another] ;*

[c] **1992 Supp [2] SC 651** *[Kihoto Hollohan Vs. Zachillhu] ;*

[d] **2005 [1] SCC 608** *[Sunita Devi Vs. State of Bihar and Another] ;*

[e] **2011 [7] SCC 1** [*Balachandra L.Jharikholi and others Vs. B.S.Yeddyurappa and others*] ;

[f] **2016 [6] SCC 82** *[Alagaapuram R.Mohanraj and Others Vs. Tamil Nadu Legislative Assembly rep. By its Secretary and Another] ;*

[g] **2016 [8] SCC 1** *[Nabam Rebia and Bamang Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly].*

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38 Mr.C.Aryama Sundaram, learned Senior Counsel assisted by Mr.K.Gowtham Kumar, learned counsel appearing for the respondents 1 and 4 in all the writ petitions, made the following submissions:-

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- The first respondent / Speaker, while exercising power under the Tenth Schedule of the Constitution of India, though is a Tribunal, is not a Tribunal in a real sense for the reason that the first respondent / Speaker is the Master of the House and also an important Constitutional Functionary and the order passed by him under the Tenth Schedule, ought not to be interfered with lightly for the reason that the scope of interference is also very limited as enunciated in Paragraph No.109 of ***Kihoto Hollohan's case***.

- Unless the order of the first respondent / Speaker under the Tenth Schedule results in patent injustice, it cannot be lightly interfered with for the reason that under Article 212 of the Constitution of India, in respect of any irregularity of procedure, it cannot be called in question, except on the above cited limited grounds and as a natural corollary, if it is a procedural irregularity, it cannot be interfered with at all. The reasons assigned by the Hon'ble Mr. Justice M.Sundar, in his dissenting verdict, cannot be considered as a plausible view for the reason that the learned Judge proceed with the impression that the office of the first respondent / Speaker is like any other Tribunal, overlooking the basic fact that he is the

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sole repository of the power under the Tenth Schedule. The course adopted by the learned Judge in the dissenting verdict would tantamount to assault of the basic structure, democracy and separation of power and while deciding the order passed under the Tenth Schedule, the decree for circumspection is required and to be followed. The learned Judge in Para 14 [am], had dealt with the definition of the word "perverse" and proceeded on the wrong premises that the first respondent / Speaker is like any other Tribunal and the said approach is *per se* wrong.

- The underlying object of Para 2[1][a] of the Tenth Schedule is that a person who is nominated by a Political Party and got elected on a Party Ticket, cannot ditch and cheat the Electorate and if he does so, it is a fraud on the Electorate. The Freedom of Speech enshrined under Article 19[1][a] of the Constitution of India, cannot be extended to a point, wherein a person remains to be a member of the Political Party as well as the Legislative Party, cannot criticize the policies and ideology of that Political Party in a public platform and the election of the third respondent as a Legislative Party Leader, was unanimous and in fact, the

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petitioners had also supported him and all of a sudden, for the reasons best known, made a complete turn around and started accusing him of corruption, nepotism etc., and by the said act, they went against the party ideology.

- The ideology of a party is reflected through the decision of the majority and if the petitioners do not agree with the majority decision of the party, they can very well resign their membership of the Legislative Assembly and go outside the party for the purpose of propagating their ideologies and they continue to remain in the party and accusing the unanimously elected Chief Minister / third respondent herein of corruption etc., and the said act would definitely amount to deviating from the Party's ideology and the same would amount to voluntarily giving up the membership of that Party. The third respondent being elected as the Chief Minister without any opposition, the petitioners shall abide by the decision of the majority and in fact, in the Floor Test conducted to prove the majority, the petitioners did vote for him and within a short span to time, started making wild, baseless and

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querulous allegations against him with a mala fide and oblique motive.

- Though the petitioners claim that they availed the "Intra Party Dispute Redressal Mechanism", absolutely no material whatsoever, has been placed and if their version is accepted that despite approaching the third respondent very many times, he promised to do the needful, but have not done so, they should have done something more and they have not done so. The finding recorded by the Hon'ble Mr. Justice M.Sundar that despite the ratio in ***Rebia's case***, the request made by the petitioners to the Governor, to initiate Constitutional process, cannot amount to the act of voluntarily giving up their membership of the Party, is unsustainable for the reason that it was open to the Governor, at the relevant point of time, to invoke Article 356 of the Constitution of India which would have the effect of unseating the Party in power. As per the ratio of ***Nabam Rebia's case***, the Hon'ble Governor cannot interfere with the internal party affair and despite that, the petitioners being the members of the Legislative Assembly, are aware or supposed to be aware of the same and still

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they insisted the Governor to institute rather initiate constitutional process and therefore, their act would definitely attract Para 2[1][a] of the Tenth Schedule. It is once again reiterated that the election of the third respondent as the Chief Minister is the majority decision and choice of "AIADMK" Party and protesting and revolting against the same would definitely opposing to the Party ideology itself and therefore, the second respondent / Whip has invoked Para 2[1][a] of the Tenth Schedule by submitting a representation to the first respondent / Speaker, who took it on cognizance and after due and strict compliance of the procedural law and on thorough consideration and appreciation of all the materials, had rightly reached the conclusion to disqualify them. Even assuming that on the basis of the representation submitted by the petitioners, the Hon'ble Governor had instituted the Constitutional Process, it would also amount to acting against Party's interest and as a natural corollary, Para 2[1][a] of the Tenth Schedule stands attracted.

- The learned Senior Counsel, by drawing the attention of this Court to the representation dated 22.08.2017 submitted by the petitioner

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in WP.No.25260/2017 would submit that in paragraph No.2 of the said representation, it is averred that "*whereas the present situation has arisen that the Governance of the State cannot be carried on in accordance with the provisions of the Constitution*" and in the first paragraph of page No.3, expressed lack of confidence on the third respondent and therefore, had withdrawn his support and ultimately prayed for institution of Constitutional Process, which would result in invocation of Article 356 of the Constitution of India. Reliance placed upon by the petitioners on ***Yeddyurappa's case*** is also unsustainable for the reason that the said case came to be decided on the facts and circumstances of the said case and the factual findings cannot be cited as precedent.

- Both the Hon'ble Chief Justice and the Hon'ble Mr. Justice M.Sundar, did not rely upon ***Yeddyurappa's case*** and the sheet anchor of the petitioners case is the said case only for the reason that their representations came to be prepared only on the basis of the said case and in fact, their subsequent replies to the petition for disqualification submitted by the second respondent / Whip are also based upon the said decision only and in the light of the ratio

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laid down in ***Nabam Rebia's case***, the Governor cannot do anything and despite that, they persist the initiation of Constitutional Process, which is nothing but an Anti-Party activity, which would definitely attract Para 2[1][a] of the Tenth Schedule. Reference has also been made to ***Dr.Mahachandra Prasad Singh Vs. the Chairman, Bihar Legislative Assembly*** reported in ***2004 [8] SCC 747*** and submission was made to the effect that in Paragraph 20 of the said judgment, the decision of the Hon'ble Apex Court in ***G.Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly***, reported in ***1996 [2] SCC 353*** as well as ***Ravi S.Naik Vs. Union of India*** reported in ***1994 [2] Supp SCC 641*** have been referred and it was observed that even in the absence of a formal resignation from membership, inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the Political Party to which he belongs and in the light of the said legal position, inference can be drawn from the conduct of the petitioners in having submitted representations to the Governor to institute the Constitutional Process, which is nothing but an act which would definitely result in the Ruling Party losing power and they cannot plead ignorance

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of ***Nabam Rebia's case*** also for the reason that four of the writ petitioners are also Lawyers and as per the said decision, the Hon'ble Governor has no role to play in the internal Party dispute.

- In the Floor Test held on 18.02.2017, the third respondent has proved his majority and admittedly, the petitioners did vote for him and even as per their version that they intend to withdraw the support to the third respondent and there was every possibility that the second Floor Test would have been ordered and in that event, the Ruling Party would have lost its power and the third respondent has to demit his office.

- Despite the fact that the Assembly was in seizin, the petitioners had failed to avail the "Internal Dispute Redressal Mechanism" and though in Paragraph 19 of the second reply dated 05.09.2017, a stand was taken that the effort made by Thiru P.Vetrivel [petitioner in WP.No.25260/2017] and other MLAs in meeting the third respondent to solve the dispute and that the third respondent had attempted to pacify them by dragging the matter and also assured allocation of time ; but it did not materialise and therefore,

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the petitioner in WP.No.25260/2017 wanted to cross-examine the third respondent. If really the petitioners wanted to solve the dispute amicably through Internal Dispute Redressal Mechanism and if it was their endeavour, they would have done something more, by making written request to call for the Party Meeting or at least in the form of written representations to the third respondent as to the point of difference and admittedly, they have not done anything and to substantiate their fact, they should have examined somebody ; but they had failed to do so and as such, the availment of the said mechanism, has not been substantiated at all and the said fact has also been recorded by the Hon'ble Chief Justice in paragraph No.320. The petitioners also took a stand that the Government headed by the third respondent is in Constitutional crisis and the said stand had led to the only inference that the Government is unconstitutionally run by the third respondent and the said stand of the petitioners would definitely attract Para 2[1][a] of the Tenth Schedule. The petitioners in Grounds No.[ii] in the writ petition, took a stand that the impugned order of the first respondent / Speaker would indicate that he is attempting to meet the Schedule of Trust vote, which is likely to be fixed by this

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Court in WP.No.24708/2017 and to ensure that Tvl.P.Vetrivel [petitioner in WP.No.25260/2017] and other members are disqualified prior to the date on which the floor test is held and in Ground No.[jj] also, it was averred that the impugned order has been passed with an oblique motive for disqualification, disqualifying him [Thiru P.Vetrivel] from the membership of the House prior to taking of decision by the Governor to conduct Floor Test and in Ground No.[yy], took a stand that great hurry shown by the first respondent / Speaker, was with the oblique motive to prevent him and other 17 MLAs from participating in the Floor Test, so that the third respondent is able to prove his majority in the House by unconstitutional means and the said averments would clearly indicate that the object of the writ petitioners is to request the Governor to institute the Constitutional Process, which would include "Floor Test" also and in that event, they would have definitely voted against the Government. Similarly in Ground No.[zz] and [ccc], the petitioners took a stand that the act of the first respondent / Speaker would tantamount to supporting the third respondent, who has lost the confidence of majority in the House, in allowing him to continue illegally as the Chief Minister

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and also enabling the third respondent to illegally occupy the position of the Chief Minister, despite having lost confidence of the majority of the members and therefore, the intention of the petitioners has also been made very clear that they wanted the Ruling Party to lose the majority and as a natural consequence, to lose the power and it is nothing but an act constituting voluntarily cessation of their membership with the Political Party and the said circumstances have been correctly taken note of and well appreciated by the first respondent / Speaker. The petitioners in their three replies, took different stand and even at the time of invocation of the jurisdiction of ECI under Para 15 of the Symbols Order, by Thiru Madhusudhanan and two others, the petitioners were with Thiru Edapadi K.Palanisami (third respondent) and within a short span of time, made a complete turn around and sought his removal, which would definitely tantamount to opposition of Party's ideology and acting against the interest of the Party. In the General Council Meeting held on 14.09.2017, a decision has been taken to resolve the difference between Thiru O.Panneerselvam and Thiru Edapadi K.Palanisami group and ratification of the removal of Tmt.V.K.Sasikala as General

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Secretary and Thiru T.T.V.Dinakaran, as Deputy General Secretary, was also done and now, Thiru T.T.V.Dinakaran is functioning as a separate group with altogether a different symbol.

- The finding recorded by the first respondent / Speaker that there was collusion between the Leader of the Opposition Party, viz., "DMK" and the petitioners and the same was based on certain materials and assuming that by way of appreciating the materials, such a conclusion cannot be reached, is not a ground to interfere with the said finding, for the reason that appreciation of evidence/material has been done in a particular manner by the first respondent / Speaker and this Court, in exercise of its power of judicial review, cannot re-appreciate the evidence / material to reach an altogether a different conclusion/findings. The finding as to the cahoots between the petitioners and DMK Party even assuming without admitting, is unsustainable, the said finding can be ignored / eschewed and still the order of the first respondent / Speaker can be sustained on other reasons. The Hon'ble Mr. Justice M.Sundar in order to reach the finding of perversity, has adopted a wrong approach and adopted a wrong test to reach an

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erroneous finding as "perverse" and as such, the inference goes against the preponderance of probability and it amounts to jurisdictional error in approaching the issue.

- The Hon'ble Mr. Justice M.Sundar in Paragraph No.14[as] has observed that *"in the absence of any shred of evidence"* which means, erroneous findings on appreciation and though it is open to the learned Judge to disagree with the said findings, cannot term it as perverse. Even otherwise, ignoring the said finding, the legality of the impugned order can be tested on other grounds and as such, the view of the Hon'ble Chief Justice, reflects the correct position.

- Insofar as the lack of opportunities granted to the petitioners to put forth their effective defence, it is submitted that as per Rule 7[3][b] of the Disqualification Rules, 1986, the Member concerned 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 thereon to the Speaker and as per Sub Rule [4] of Rule 7, after considering the comments received under Sub-Rule [3] [whether originally or on extension under that

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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 or expedient so to do, refer the petition to the Committee for making a preliminary enquiry and submitting a report to him. In the case on hand, on 24.08.2017, the second respondent / Whip submitted a petition to the first respondent/Speaker, seeking disqualification of the petitioners as well as Thiru S.T.K.Jakkaiyan under Para 2[1][a] of the Tenth Schedule and the said representation was forwarded to the petitioners as well as to Thiru S.T.K.Jakkaiyan and interim replies dated 30.08.2017 was submitted by the petitioners and their prayer for time was also considered and vide communication dated 31.08.2017, the first respondent / Speaker granted time to submit their final response by 05.09.2017 and also fixed the date of personal hearing on 07.09.2017 and in the interregnum, the response of the third respondent dated 30.08.2017 was also furnished to the petitioners on 03.09.2017. On 05.09.2017, the petitioners and another, had submitted their reply/comments and prayed for further time and on 07.09.2017, Thiru P.Vetrivel [Petitioner in WP.No.25260/2017] alone was present and personal

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hearing for disqualification was adjourned to 14.09.2017 specifically indicating that no further time would be granted. On the same day, i.e., 07.09.2017, Thiru S.T.K.Jakkaiyan met the first respondent / Speaker and revoked Vakalat given by him to the first respondent and also indicated that he would be withdrawing his representation dated 22.08.2017 submitted to the Governor. On 14.09.2017, Thiru P.Vetrivel [Petitioner in WP.No.25260/2017] and his Counsel represented and in respect of the said specific issue, the first respondent / Speaker in Para 32 observed about the affording of the opportunity and in Para 33, he has recorded the fact that reasonable opportunity has been afforded and also permitted to them to have the assistance of a Lawyer as sought for by them. In sum and substance, it is the submission of the learned Senior Counsel appearing for the respondents 1 and 4 that though Rule 7[3][b] of the Disqualification Rules, 1986, provides for seven days time to submit their response and the first respondent / Speaker went ahead and granted more and sufficient time and despite that, the petitioners did not avail the opportunities given and insisted for adjournment, may be with a view to drag on the

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proceedings and as such, it cannot be said that no reasonable and fair opportunity has been afforded to the petitioners.

- Thiru M.K.Stalin, the Leader of the Opposition Party, viz., "DMK", also met the Governor of Tamil Nadu on 14.09.2017 and submitted representation requesting for Floor Test and also filed WP.No.24708/2017. The petitioner in WP.No.25260/2017, viz., Thiru P.Vetrivel, filed a petition for impleadment and in support of it, has sworn to an affidavit dated 14.09.2017 and in paragraph No.7, averred that he apprehends that in view of the writ petition, a Floor Test may be called for at any date shortly and that the Hon'ble Speaker may disqualify him on the eve of the Trust Vote with *mala fide* intention of depriving him of the opportunity of seeking judicial redressal from this Court and thereby, preventing him from exercising his right as an elected representative to participate in the Trust Vote. It is the submission of the learned Senior Counsel that the Opposition Party, viz., "DMK", also apprehends about the disqualification of the petitioners and another MLA and in fact, the Leader of the Opposition Party met the Governor on the same day as that of the petitioners and another

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and therefore, there is nothing on the part of the first respondent / Speaker to draw an inference that the Opposition Party as well as the petitioners and another on that day were on the same faith and in Paragraphs No.59 and 63 had reached the conclusion that they have deviated from the loyalty from the Party and voluntarily taken the side of the Opposition Party and that the Leader of the Opposition, based on the said representation submitted by the petitioners, had immediately followed up with a representation and submitted the same to the Governor, praying for initiation of the Constitutional Process and also recorded the finding that ***Yeddyurappa's case*** have no application to the case on hand. The said findings recorded by the first respondent / Speaker are based upon appreciation of the materials available on record and therefore, it cannot be said that the said findings came to be rendered on "no evidence" or termed as perverse. Even otherwise, this Court, while re-appreciating the said materials, cannot reach a different conclusion and as such, the findings recorded by the Hon'ble Mr. Justice M.Sundar in Para 14[as] that the impugned order passed by the first respondent / Speaker suffers from the vice of perversity in the light of the conclusion that 18 petitioners were

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acting in cahoots with the principal Opposition Party when there was no material before it and the said finding cannot be sustained for the reason that the learned Judge had re-appreciated the materials and reached a different conclusion and the same is impermissible in law even in respect of the orders passed by other Tribunals.

- The learned Senior Counsel drawing the attention of this Court to paragraphs No.45 to 65 would submit that in none of the paragraphs, the contents of the representations dated 07.09.2017 and 14.09.2017 submitted by Thiru S.T.K.Jakkaiyan to the Governor as well as the first respondent / Speaker have not been dealt with and as such, it cannot be said that the first respondent / Speaker was influenced by the contents of the same and if it is so, there was no need or necessity to furnish the copies of the said representations to the petitioners for eliciting their response. The finding of the first respondent in that regard, is once again based on appreciation of evidence and it cannot be concluded as a patent error of law available on the face of the record and in that event, the said findings cannot be termed as perverse and the material

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available before the first respondent / Speaker to reach the conclusion, cannot be re-appreciated to reach an altogether different conclusion. He would further submit that the first respondent / Speaker might have drawn a wrong inference and erroneous conclusion based on appreciation of such an evidence and it cannot be termed as perverse decision/findings.

- The learned Senior Counsel, meeting the arguments advanced by the respective learned Senior Counsel appearing for the petitioners that the Freedom of Speech guaranteed under Article 19[1][a] of the Constitution of India was sought to be negated, would submit that Freedom of Speech is not absolute and even for the sake of argument, assuming that the petitioners got some difference of opinion and want to express their dissatisfaction or dissent, it should have been raised within the Party and not in the form of representations to the Governor of Tamil Nadu to initiate Constitutional Process and subsequently, giving statements in full public glare.

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- Attention of this Court was invited to Paragraphs No.40 and 44 of ***Kihoto Hollohan's case*** and it is submitted that if any Member expresses dissatisfaction before the Public Forum or in the form of representation to the Governor Constitutional Process, it will not only embarrass the public image of the Party and it's popularity ; but also the public confidence on the said Party and the ultimate choice vest with the Electorate to choose a Political Party as the Ruling Party to rule the State.

- Though the learned Senior Counsel appearing for the petitioners made a submission that in the event of Floor Test being held and whip being issued, the petitioners would have voted in compulsion and it was also reiterated by the learned Senior Counsel for the petitioners in none of the replies and not even in the affidavits filed in support of the writ petitions or the reply affidavits, the petitioners took such a stand and had drawn the attention of this Court to the Letter of Thiru T.T.V.Dinakaran, Deputy General Secretary of “AIADMK [Amma]” Group dated 21.08.2017 and would submit that MLAs of their group, viz., the petitioners and Thiru S.T.K.Jakkaiyan, were instructed to meet the Governor of

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Tamil Nadu and withdraw their earlier support given to the third respondent which will ensure that a new Chief Minister is elected from their Party to run the Government in the interest of the public and complete the Legislative tenure and the said letter would further indicate that the said instruction has been given with the consent of the General Secretary, viz., Tmt V.K.Sasikala.

- The first respondent / Speaker has dealt with the said letter in Paragraph No.52 of the impugned order and recorded the finding that the said letter came to be filed for the first time along with the second reply/comments dated 14.09.2017 and further recorded the finding that their representation dated 22.08.2017 submitted to the Governor of Tamil Nadu was not based on majority views of the Party MLAs and therefore, their only aim is to dislodge the Government run by the Ruling party and though they would state that they want replacement of the third respondent alone, their real intention is to throw the Ruling Party out of power and it would definitely amount to voluntarily giving up the membership of the Political Party, viz., "AIADMK" and the same would attract Para 2[1][a] of the Tenth Schedule.

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- Attention of this Court was also invited to Paragraphs No.364 to 371 of the Hon'ble Chief Justice's Order wherein the learned Chief Justice has recorded the finding that mis-appreciation of evidence cannot be termed as perversity and insufficiency of the evidence is not a ground to drawn an inference that the finding is perverse and the first respondent / Speaker has taken a possible and plausible view and it cannot be interfered with and it is submitted that the said view is a correct view in the light of the ratio laid down in Paragraph No.109 of ***Kihoto Hollohan's case.***

- The findings of the Hon'ble Mr.Justice M.Sundar as to the breach of Constitutional Mandate in paragraphs No.14[an] and [bg] had also been assailed by submitting that though the learned Judge has concluded that in the light of the pendency of the proceedings before ECI under Para 15 of the Symbols Order, 1968, the question of voluntarily giving up the membership of "AIADMK" Party could not been answered by the first respondent / Speaker and as such, it amounts to violation of constitutional mandate and is *per se* unsustainable for the reason that the proceedings before the

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Election Commission of India under the above said Order as well as the power of the first respondent / Speaker for adjudicating the issue relating to disqualification under Para 2[1][a] of the Tenth Schedule operate on entirely different field and admittedly, the amendment through which the Tenth Schedule has been brought forth, was subsequent to Article 324 of the Constitution of India and section 20-A of the Representation of People Act, 1951, and therefore, the Parliament was very well aware of the power of the Election Commission to adjudicate the issue relating to the Symbol Order and despite that, an amendment has been brought forth introducing Tenth Schedule and there is no specific provision restraining the Speaker to adjudicate the issue relating to the Tenth Schedule pending adjudication of the proceedings before ECI under Symbols Order and as such, the said finding is wholly unsustainable. In addition to the said submission, it is the further submission of the learned Senior Counsel appearing for the respondents 1 and 4 that ultimately, the Dispute Case No.2/2017 came to be disposed of by ECI in the light of rapprochement made between Thiru O.Panneerselvam's group and Thiru.Edapadi K.Palanisami's group and if such a kind of analogy is adopted, the

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first respondent / Speaker cannot proceed and adjudicate the proceedings under the Tenth Schedule till the finality of the proceedings under Symbols Order and it is not as if the said proceeding would reach finality at the hands of ECI for the reason that further challenge can also be made by either of the parties in the event of any adverse order before the Constitutional Court and it is not the intention to defer the proceedings under the Tenth Schedule till finality is reached in the proceedings relating to Symbols Order and the said aspect has been completely overlooked by the learned Judge while giving a finding that the act of the first respondent / Speaker in proceeding under Tenth Schedule despite pendency of the proceedings under the Symbols Order, is *per se* unsustainable in law.

- The learned Judge has further found that treating the case of Thiru S.T.K.Jakkaiyan differently, though he has been placed on the same footing as that of the petitioners, would amount to *mala fide* act on the part of the first respondent / Speaker, is also unsustainable for the reason that Thiru S.T.K.Jakkaiyan rescinded from his earlier position and submitted a representation dated

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07.09.2017 to the Governor of Tamil Nadu, withdrawing his earlier representation dated 22.08.2017 and when he met the first respondent / Speaker on 14.09.2017, he also gave a representation and the first respondent / Speaker has dealt with the said issue separately and not at all got influenced by the contents of the said letters as well as the personal representation of Thiru S.T.K.Jakkaiyan and reached an independent conclusion to disqualify the petitioners herein on a thorough consideration and appreciation of the materials placed on record and as such, it cannot be termed as perverse and such a course adopted by the first respondent / Speaker cannot also be said as *mala fide* exercise of power. It is further submitted that from the date of submission of the petition for disqualification till the conclusion of the proceedings, the first respondent / Speaker is entitled to take into consideration, the materials which came to his knowledge and has given cogent reason as to why he had treated Thiru S.T.K.Jakkaiyan separately and even for the sake of argument that the said conclusion drawn by the first respondent / Speaker is not based upon proper appreciation of materials placed, still the said finding cannot be disturbed for the reason that this Court, in

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exercise of its power under Article 226 of the Constitution of India cannot re-appreciate the same and reach a different conclusion and of course, it is open to this Court to interfere with the said finding if it reaches the conclusion that the said finding came to be recorded based on no materials or evidence and perversity is attached to it. However, in the case on hand, such a kind of finding cannot be reached for the reason that the first respondent has appreciated the materials placed, in a particular manner, after affording fair and reasonable opportunity to the petitioners to put forth their stand and despite that, they had failed to avail the same solely with the object of prolonging the proceedings.

- Attention of this Court was also invited to paragraphs No.45 and 46 of the impugned order and is the submission of the learned Senior Counsel appearing for the respondents 1 and 4 that though the first respondent / Speaker in Paragraph No.45, has recorded the finding that at the time of the submission of the representation dated 14.09.2017, seeking for police protection, they were actually at Karnataka and whereas, the representation would disclose the fact that they were at Chennai and the said statement is a false

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statement before the first respondent / Speaker and even if the said finding is eschewed for consideration, still the finding of the first respondent / Speaker as to the disqualification of the petitioners and dismissal of the disqualification petition in respect of Thiru S.T.K.Jakkiyan, is sustainable for the above said reasons and the Hon'ble Chief Justice in Paragraph No.371 has taken into consideration of the same and gave a finding that the findings recorded by the first respondent / Speaker are possible and plausible one and it cannot be interfered with by way of judicial review and the legal position was correctly adopted while reaching the said conclusion.

39 The learned Senior counsel also dealt with the primordial submission advanced on behalf of the petitioners as to the violation of the principles of natural justice. Attention of this Court was invited to Article 212 of the Constitution of India, Rules 7[3][b] and 7[7] of the Disqualification Rules, 1986 and Rules 150, 219 and 230 of the Tamil Nadu Legislative Assembly Rules and following submissions were made:-

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Article 212 of the Constitution of India says that Courts not to inquire into the proceedings of the Legislature and as per sub-rule [1], the validity of any proceedings in the Legislature of the State shall not be called in question on the ground of any alleged irregularity of procedure.

Rule 7 of the Disqualification Rules, 1986, speaks about the procedure to be followed on receipt of the petition for disqualification under Rule 6. **Sub-rule [7] of Rule 7** says that "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 inquriy under sub-rule [4] shall be, so far as may be, the same as the procedure for inquiry and determination by the Committee of any question as to the breach of privilege of the House by a member, and neither the Speaker nor the Committee shall come to any finding that the member has become subject to disqualification under the Tenth Schedule without affording any reasonable opportunity to such member to represent his case and to be heard in person."

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The **Tamil Nadu Legislative Assembly Rules** came to be framed under Article 208[1] of the Constitution of India and as per Rule **150[1],** the Select Committee may hear expert evidence and the representations of any special interest likely to be affected by the measure before it and as per **sub-rule [2]**, for that purpose, it may require any person residing within the limits of the State, to attend before it as witness or to produce before it such records and documents as it may think necessary and thereupon a requisition in writing shall be sent to the person concerned over the signature of the Secretary. **Rule 219** says that a member may with the consent of the Speaker raise a question involving a breach of privilege, either of a Member or of the House or of a Committee thereof and **Rule 230** says that "except the aforesaid rules applicable to a Select Committee of the Assembly shall apply".

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It is the further submission of the learned Senior Counsel that constitution of the Select Committee is under Rule 144 of the Tamil Nadu Legislative Assembly Rules and it pertains to introduction of a Bill and the Select Committee is of the view that in connection with the

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introduction of the Bill, it would like to hear any expert evidence and representatives of any special interest likely to be affected by the measure before it, it may summon the said person to attend the enquiry and also may administer oath or affirmation of the witness examined before it and therefore, Rule 150 operates entirely on a separate and different field and even for the sake of arguments that the second respondent who submitted the petition for disqualification, did not give any evidence, still it is open to the petitioners herein to submit a list of witnesses to be examined on their behalf and if not, ought to have examined themselves in support of their claim that they did oppose the third respondent alone and not intend to leave the Political Party and admittedly, they failed to resort to such a course. It is also not in dispute that the petitioners did meet the Governor of Tamil Nadu and submitted a representation dated 22.08.2017 and some of them also gave media interviews and the said fact has not at all been disputed and the representation / petition of the second respondent / Whip merely refers to the submission and contents of the said representation and as such, there is no necessity to examine the second respondent / Whip. The order of the first respondent / Speaker can also be tested as to whether the principles of natural justice had been adhered to and the first respondent / Speaker despite Rule 7[3][b], had granted

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adequate and reasonable opportunity by extending the time and the petitioners went on submitting only interim replies with a view to prolong the proceedings and despite the warning/indication given by the first respondent / Speaker that the enquiry would take place on 14.09.2017, still they prayed for time and however, the first respondent / Speaker was not inclined to grant time and based on the materials placed including the first detailed representation of the petitioners dated 30.08.2017, has rightly reached the conclusion to disqualify them and it cannot be faulted with.

40 Attention of this Court was also invited to the decisions reported in **1973 [2] SCC 438** [*M/s.Kanungo and Company Vs. Collector of Customs and Others*] ; **1977 [2] SCC 256** [*The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*] ; **2006 [11] SCC 1** [*Jagjit Singh Vs. State of Haryana and others*] ; **2008 [9] SCC 31** [*Haryana Financial Corporation and Another Vs. Kilaash Chandra Ahuja*] and **2015 [8] SCC 519** [*Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati*] and the following submissions were made:-

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[i] The decision in **1977 [4] SCC 161** *[All Party Hill Leaders' Conference, Shillong Vs. Captain W.A.Sangma and others]* arise out of Symbols Order and in Paragraph No.35, the scope of Article 324 was taken into consideration and it was observed that "*in the light of the said constitutional provision, no objection can be taken to the Commission's adjudication of the matter as being beyond the scope of its jurisdiction.*" Admittedly, the first respondent / Speaker is the sole repository or authority to decide the issue pertains to disqualification under the Tenth Schedule and the facts and circumstances of the case would clearly disclose that he had strictly followed the Disqualification Rules and strictly adhered to the principles of natural justice and decide the issue and according to the learned Senior Counsel appearing for the respondents 1 and 4, it cannot be faulted with.

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[ii] The decision in **1973 [2] SCC 438 [Kanungo's case cited supra]** pertains to affording opportunity of personal hearing and in **paragraph No.12**, the Hon'ble Supreme Court has taken into consideration of the fact that the complaint that all the persons from whom enquiries were alleged to have been made, should have been produced to enable him to cross-examine, has recorded the finding that

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"*the principles of natural justice would not be required that they should be examined in the presence of the complainant and he should be allowed to cross-examine on the statements made before the Authorities*"**.**

[iii] In the decision reported in **1977 [2] SCC 256 [Ramjee's case cited supra]**, adherence to the principles of natural justice in a departmental enquiry came up for consideration and in **Paragraph No.13**, it was observed that "*natural justice is an no unruly horse, no lurking land mine 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 essentials processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of.*" In **paragraph No.14,** the Apex Court, after considering its earlier decisions, had observed that "*if the authority which takes the final decision acts mechanically and without applying its own mind, the order may be bad, but if the decision making body, after fair and independent consideration, reaches a conclusion which tallies with the recommendations of the subordinate authority which held the preliminary enquiry, there is no error in law*" and in **Paragraph No.15**,

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the Apex Court observed that *"these general observations must be tested on the concrete facts of each case and every minuscule violation does not spell any illegality or if totality of the circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures"* .

[iv] **2008 [9] SCC 31 [Kailash Chandra Ahuja's case cited supra]** pertains to non-furnishing of the Enquiry Report in the Departmental Enquiry to a delinquent. The Hon'ble Apex Court, after referring to the leading case in ***A.K.Kraipak Vs. Union of India*** reported in ***1969 [2] SCC 262*** and a catena of decisions as well as yet another often quoted case reported in ***1993 [4] SCC 727 [ECIL Vs. B.Karunakar],*** in **Paragraph No.24** has observed as follows:-

> *"....Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case."*

The Hon'ble Supreme Court has also taken note of the decision of ***Ridge Vs. Baldwin*** reported in ***1964 Appeal Cases 40 : 1963 [2] All England***

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Reporters 66 [HL] : 1963 [2] WLR 935 as well as the ***Prejudice Theory*** and observed in paragraphs 36, 42 and 44 that, *"even in those cases, where procedural requirements have not been complied with, action has not been held ipso facto illegal, unlawful or void, unless it is shown that non-observance had prejudicially affected the applicant and if there is no prejudice to the employee, the action cannot be set aside merely on the ground of no hearing was afforded while taking a decision by the authority and whether prejudice had been caused to the delinquent employee, depends upon the facts and circumstances of each case and no rule of universal application can be laid down."*.

[v] Attention of this Court was also invited to ***Jagjith's case [cited supra]*** reported in ***2006 [11] SCC 1*** and it is the submission of the learned Senior Counsel for the respondents 1 and 4 that one of the contentions put forth on behalf of the petitioners is that no opportunity of cross-examining the second respondent / Whip as well as the third respondent have been afforded to them and as such, the procedure adopted by the first respondent / Speaker as well as the conclusion reached by him, are in *per se,* violation of the principles of natural justice and refuting the same, would submit that as per **Paragraph No.14** of the

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said judgment, it was observed that "*the proceedings under the Tenth Schedule are not comparable to either a trial in a Court of law or departmental proceedings for disciplinary action against an employee. But the proceedings here are against the elected representative of the people and the judge who holds independent high office of a Speaker and the scope of judicial review in respect of the proceedings before such Tribunal is limited and however, limited may be the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated.* It was further observed that *"if the view taken by the Tribunal is reasonable one, the Court would decline to strike down or on the ground that another view is more reasonable and the Tribunal can draw an inference from the conduct of the member, of course, depending upon the facts of the case and totality of the circumstances."* In **paragraph No.20**, the Hon'ble Apex Court after formulating the question whether sufficient opportunity was granted to the petitioners or not, proceeded to adjudicate the said issue and in **Paragraph No.26,** observed that *"the petitioners therein cannot be permitted to sit on the fence, take vague pleas, make general denials that he has been denied with the opportunity to cross-examine or adduce evidence* and it is observed that *"mere denial of opportunity to cross-*

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examine or adduce evidence may not automatically lead to violation of principles of natural justice and the principles of natural justice cannot be placed in a rigid manner. The Court, on facts of the case, despite denial of opportunity to lead evidence, may come to the conclusion that reasonable opportunity has been afforded to the person aggrieved and the principles of natural justice are flexible and have to be examined in each case." In **Paragraph No.35,** the Apex Court having noted that the petitioners therein declined to watch the recordings and in **Paragraph No.48**, taking note of the fact that they failed to avail the opportunity granted to them, has observed that *"the petitioners had failed to plead how the admissions/statements made by them were erroneous. Had they done so, then the question of its proof would have arisen. In stead of so doing, the petitioners only took shelter under the general vague denial pleading that they wish to adduce evidence. It is also to be remembered as observed by the Apex Court, in the aforesaid case in* ***AIR 1960 SC 100 [Narayan Bhagwantrao Gossavi Balajiwale Vs. Gopal Vinayak Gosavi]*** *that admission is the best evidence that can be relied upon and though no conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous and the petitioners have failed to satisfy the latter part"* and in **Paragraph No.49,** taking note of the factual

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aspect, has concluded that *the contention put forth by the petitioners that they have not been given a fair deal by the Speaker on the principles of natural justice, have been violated, has not been accepted*. In **Paragraphs No.84 and 85** of the said decision, the Apex Court has taken into consideration the high office of the Speaker and his functions and after taking note of ***Kihoto Hollohan case***, [cited supra], has observed in **Paragraph No.85** that *"Speaker enjoys a pivotal position. The position of the Speaker is and has been held by people of outstanding ability and impartiality, without meaning any disrespect for any particular Speaker in the Country, but, only going by some of the events of the recent past, certain questions have been raised about the confidence in the matter of impartiality on some issues having political overtones which are decided by the Speaker in the capacity as a Tribunal*" and though it was argued that the function under Tenth Schedule shall be entrusted to some other Agency, the Hon'ble Apex Court, in **Paragraph No.86** has observed that *"it is only for the Parliament to decide and if deemed appropriate, may examine it."*

[vi] The learned Senior Counsel, relying upon ***Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and***

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others reported in ***2015 [8] SCC 519*** would submit that in the said decision, all the earlier judgments including the leading judgments on natural justice have been considered by the Apex Court and in **Paragraph No.39**, it was observed that "*though the principles of natural justice cannot be applied in strait-jacket formula, the jurisprudential basis of adhering to the principles of natural justice have been highlighted which are grounded on the Doctrine of Procedural Fairness, accuracy of outcome leading to general social goalsetc and after taking note of the decision reported in* ***1971 [1] WLR 1578 [Malloch Vs. Aberdeen Corporation],*** wherein, it is observed that *"a breach of procedure .... cannot give [rise to] a remedy in the Courts unless behind it there is something of substance which has been lost by the failure. The Court does not act in vain."*

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41 In sum and substance, it is the submission of the learned Senior Counsel appearing for the respondents 1 and 4, after drawing the attention of this Court to the impugned order passed by the first respondent / Speaker as well as the above cited decisions that under the present facts and circumstances, it cannot be said that the first respondent / Speaker had given a complete go-by to the procedural fairness and

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thereby, violated the principles of natural justice for the reason that the first respondent / Speaker had given more than sufficient time to the petitioners herein to put forth their reply to the petition for disqualification submitted by the second respondent / Whip and in fact, they have submitted three interim replies including the detailed first representation dated 30.08.2017 and though it was pointed out by the first respondent / Speaker that beyond 14.09.2017 no further opportunity will be given to them, still they prayed for time and the first respondent / Speaker has taken into consideration the thorough appreciation of the entire materials placed and without being influenced by the retraction on the part of Thiru S.T.K.Jakkaiyan, has rightly reached the conclusion to disqualify the petitioners by considering the fact that the first respondent / Speaker exercising power under the Tenth Schedule, cannot be considered like any other Tribunal and that, he being the Constitutional Functionary and sole authority to decide the said issue, the reasons assigned by him in the impugned order, cannot be interfered with at all. Attention of this Court was also invited to the relevant paragraphs of the order of the Hon'ble Chief Justice as that of the Hon'ble Mr. Justice M.Sundar and would submit that the learned Judge, in his dissenting verdict, has committed a patent error of law by treating the office of the

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first respondent / Speaker as that of any other normal Tribunal, overlooking the ratios laid down by the Constitutional Bench Judgments in ***Kihoto Hollohan's case*** and ***Nabam Rebia's case*** and in fact gone to the extent of re-appreciating the materials and reached an altogether different conclusion and such approach, is *per se* unsustainable and also amounts to unsettling the settled legal position.

42 Mr.C.S.Vaidyanathan, learned Senior Counsel assisted by Mr.S.R.Rajagopal, learned counsel appearing for the third respondent made the following submissions:-

- ✔ The petitioners were set up by AIADMK Party and sought mandate and got elected as the Members of the Legislative Assembly and they opposed the Government in the form of representations dated 22.08.2017 to institute the Constitutional Process and His Excellency the Governor cannot change the Chief Minister on his own except to order floor test, dismiss the Government, keep the Assembly under suspended animation and seek for President Rule. Though the petitioners would state that their efforts to sort out the difference of opinion through the Internal Dispute Redressal Mechanism, it failed and therefore, they approached the Hon'ble

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Governor, is unsustainable for the reason that the representations dated 22.08.2017 submitted by the petitioners would alone be sufficient to attract Para 2[1][a] of the Tenth Schedule of the Constitution of India and as a natural corollary, the first respondent, being the sole authority to adjudicate the disqualification, has correctly drawn the inference and after thorough consideration and appreciation of the relevant records and after affording fair and reasonable opportunities to the petitioners, had rightly concluded that the acts of the petitioners would attract Para 2[1][a] of the Tenth Schedule and accordingly, passed the impugned order and therefore, this Court, in exercise of its power under Article 226 of the Constitution of India, cannot interfere with the same.

HIGH COURT OF JUDICATURE MADRAS
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- ✔ The decision rendered by the Hon'ble Supreme Court in ***Yeddyurappa's case***, is not applicable to the facts and circumstances of the present case for the reason that the order of the Speaker of the Karnataka Assembly was interfered with on the ground of the violation of Disqualification Rules as well as principles of natural justice; but in the instant case, the first

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respondent / Speaker had afforded three chances to enable the petitioners to come with full and detailed response to the petition for disqualification submitted by the second respondent and despite that, they submitted individual interim replies and going on asking for time and in spite of the indication given that on 14.09.2017, adjudication would be done, still they prayed for time and the first respondent/Speaker has taken into consideration the relevant aspects and particulars and rightly reached the conclusion in the form of the impugned order and therefore, no interference is warranted. The impugned order passed by the first respondent/Speaker can be interfered with only if there was lack or error of jurisdiction and as per the Constitutional Scheme, the first respondent is the sole repository and authority to adjudicate the issue of disqualification under Para 2[1][a] of the Tenth Schedule and on that ground also, the impugned order cannot be interfered with.

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- The proceedings before ECI under Para 15 of the Symbols Order, cannot put up a clog / restraint upon the first respondent/Speaker to adjudicate the petition filed under Tenth Schedule for the reason

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that the proceedings before ECI under Symbols Order and the issue pertaining to disqualification under Tenth Schedule, operate on two different spheres and in the absence of any specific provision in the Constitution, restraining or forbearing the first respondent / Speaker from exercising his power under Tenth, Schedule, it cannot be said that unless the proceedings under the Symbols Order are disposed of, the first respondent / Speaker cannot proceed further. The Hon'ble Mr. Justice M.Sundar, has failed to advert to the said important legal aspect and findings given in that regard, are *per se*, unsustainable.

- ✔ The definition of the Political Party under section 2[f] of the Representation of People Act, 1951 [in short RP Act] came into being by way of insertion by Act 1 of 1989 with effect from 15.06.1989. The Tenth Schedule was added by the Constitution 52nd Amendment Act, 1985, with effect from 01.03.1985. Para 1[b] of the Tenth Schedule defines the *"Legislature Party"* and as per the said definition, it means " *in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 4, means the group*

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consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions".

- ✔ The Hon'ble Mr.Justice M.Sundar observed in paragraph No.14[ad] that the political party as such, has not been defined in the Tenth Schedule and it has been defined under section 2[1][f] of RP Act, and in Paragraph No.14[ae], concluded that the real "AIADMK" Party on whose ticket, the writ petitioners were elected was in issue between 16.03.2017 and 23.11.2017 before the sole Constitutional Authority, viz., ECI, and in Paragraph No.14[af], also observed that since the said Authority was in seizin of which is the original "AIADMK" Political Party in whose ticket or in other words, which of the aforesaid two factions is the real "AIADMK" Political Party in whose ticket 18 MLAs were selected, concluded in paragraph 14[am] that whether a particular MLA has voluntarily given up the membership of "AIADMK" Political Party during the period between 16.03.2017 and 23.11.2017 could have either been taken up or tested in this period and as such, it is also in violation of the Constitutional mandate.

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- ✔ It is also not in dispute and rather as per the own admission of the petitioners in their representations dated 22.08.2017 to the Governor of Tamil Nadu, that they continue to remain in "AIADMK" Political Party and by virtue of interim orders of ECI, between 16.03.2017 and 23.11.2017, it cannot be said that there was no Political Party, viz., "AIADMK" Party, was in existence and therefore, the finding reached by the Hon'ble Mr. Justice M.Sundar, is palpably wrong and moreover, the Tenth Schedule was added by the Constitution in the year 1985 with effect from 01.03.1985 and whereas, the Election Symbols [Reservation and Allotment] Order, was passed by the Election Commission in the year 1968, and though ECI as well as the first respondent / Speaker are the Constitutional Authorities, in the absence of any specific provisions in the Symbols Order as well as in the Constitution of India, both the Constitutional Functionaries / Authorities are not prohibited from exercising their powers and as such, the finding recorded by the Hon'ble Mr.Justice M.Sundar in Paragraphs No.14[ag] and 14[al] would amounts to misconstruing the provisions of law.

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- The power of disqualification vests with three authorities, viz., [a] Before Election with the Returning Officer ; [b] After becoming an elected representative, under Article 102[1] and 191 of the Constitution of India ; and [c] Special situation under Tenth Schedule-a political flavour is attached to it and a sacred trust has been entrusted by the Constitution to the Speaker and he is the sole and ultimate authority to decide the issue relating to disqualification under the said Schedule. If arguments advanced on behalf of the petitioners as to the deferment of the proceedings by the first respondent / Speaker till conclusion of the proceedings under Symbols Order before ECI, is accepted and also found favour with the Hon'ble Mr. Justice M.Sundar, then it amounts to rewriting the Constitution and the same is impermissible in law.

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- It is not in dispute that 18 MLAs submitted representations to the Governor expressing lack of confidence on account of the corrupt allegation etc., against the third respondent herein and thereby, sought the institution of Constitutional process and it is also not in dispute that all of them belong to "AIADMK" Political Party as well as the Legislature Party and as already submitted, the

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proceedings under the Symbols Order and disqualification, act on entirely a different sphere and the situation contemplated under Para 4, does not exist and as such, the first respondent / Speaker is free and competent to adjudicate the issue relating to disqualification under the Tenth Schedule. At the time of invocation of the jurisdiction before ECI, the petitioners belonged to the group of Thiru Edapadi K.Palanisami (third respondent) and later on, for the reasons best known, started deviating from the ideology of the Party and opposed the third respondent and therefore, the pendency of the said proceedings before ECI cannot be cited as a bar or rather, act as a restraint on the first respondent / Speaker to exercise his Constitutional function. Reliance has also been placed on the decision of the House of Lords reported in ***1951 AC 109 [East and Dwellings Co. Ltd Vs. Finsbury Borough Council]***, and in page 132 of the said decision, it was observed as follows:-

> *"...... If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as the real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these*

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in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs ; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

- ✔ The learned Senior counsel would submit that as per the Tenth Schedule, once a petition seeking disqualification is submitted, the Speaker has to draw an interference and after applying the relevant rules, has to adjudicate the said issue and such a Constitutional function, cannot be set at nought on account of pendency of the proceedings before ECI under Symbols Order and the approach of the Hon'ble Mr. Justice M.Sundar in that regard, is wholly unsustainable. The learned Senior Counsel, elaborating the said submission, has invited the attention of this Court to the RP Act, 1951 and made the following submissions:-

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- ✔ Section 2[f] of RP Act, 1951, defines the Political Party and Section 29-A speaks about the Registration with Election Commission of Associations and bodies as Political Parties. Section 33 of the said Act speaks about the presentation of

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nomination papers and requirements for a valid nomination and Section 38 speaks about the publication of the list of contesting candidates. It is not in dispute that the petitioners were nominated by the political party, viz., "AIADMK", and they contested the election for members of the Tamil Nadu Legislative Assembly and got elected and it is their stand in the representations submitted to the Governor as well as their interim replies to the first respondent / Speaker that they continue to remain as members of the said party and since the said fact has not been disputed at all, the question of deferment of the proceedings by the first respondent / Speaker under Tenth Schedule till the conclusion of the proceedings before ECI under Symbols Order, does not arise at all.

- Attention of this Court was also invited to the decision reported in ***AIR 1967 SC 898 [Samyukta Socialist Party V, Election Commission of India and Another and Madhu Limaye Vs. Election Commission of India and Others]***, and it was submitted that some questions arose for consideration in the said decision; viz., [a]what are the powers of the Election Commission in relation to the allotment of symbols? ; and [b] whether in the

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circumstances, its powers were legally exercised? and in paragraph No.8 that *“the restrictions which the Election Commission has framed for the use of symbols are quite clear and permit the issuance of fresh notifications if symbols are required to be changed.”* The Hon'ble Supreme Court of India, in the said decision has also traced the history of the Symbols Order and in Paragraph No.4, has oberved that *“owing to the inability of a vast majority of voters to read or mark a ballot, a system of allotment of symbols has to be employed. Every candidate is required to have symbol to represent his particular ballot box and a voter exercises his choice by putting the ballot in the box of his candidate identified by the symbol. The allotment of symbols is done by the Election Commission under Rules framed by the Central Government . The symbols are of two kinds: free and reserved. A free symbol belongs to no one in particular and may be chosen [unless chosen already by some other candidate] by any candidate. Where two or more candidates desire the same symbol, there is a drawing of lots to determine who should get it. A free symbol becomes a free symbol again after it has been used in an election by a candidate. Reserved Symbols, on the other hand, are*

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those which the Election Commission assigns to recognized Political parties on the basis of their achievement, which means reaching a prescribed minimum share at the polls. Political Parties set great store by their reserved symbols probably because the symbol gets identified with the Party and helps it in maintaining election appeals and propaganda."

- It is the submission of the learned Senior Counsel appearing for the third respondent in the light of above cited decision that the allotment of symbol is on account of the fact that inability of a vast majority of voter to read or mark and the Symbols Order deals with that issue and it is nothing to do with the decision to be taken by the Speaker under the Tenth Schedule of the Constitution of India and therefore, the proceedings cannot be deferred till the conclusion of the proceedings under the Symbols Order and on account of dichotomy of functions between two Constitutional entities, viz., ECI and Speaker under the Tenth Schedule in clear terms, the Speaker is the sole Authority to decide the said issue and there is nothing on the part of the first respondent / Speaker to proceed and conclude the proceedings under the Tenth Schedule

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and it cannot be faulted with.

- ✔ The learned Senior Counsel, inviting the attention of this Court to yet another decision on the said subject, reported in ***1985 [4] SCC 628 [Kanhiya Lal Omar V. R.K.Trivedi and others]***, would submit that the validity / vires of the Election Symbols [Reservation and Allotment] Order, 1968, was made in the above cited decision and the vires of the said Order has been upheld. In paragraph No.10 of the said decision, adding of the Tenth Schedule under 52nd Amendment, 1985, was also taken cognizance of and it was observed that *"the Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his Political Party and would thereby be disqualified for being a member of the House concerned"* and reliance has also been placed upon the earlier decision reported in ***1972 [4] SCC 664 [Sadiq Ali Vs, Election Commission of India]***, wherein the scope of Paragraph 15 of the Symbols Order came up for consideration and in Paragraphs No.40 and 41 of the said

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decision, it was observed that *"the fact that the power of resolving a dispute between two rival groups for allotment of symbol of a political party has been vested in such a high authority would raise a presumption, though rebuttable an provide a guarantee, though not absolute but to a considerable extent, that the power would not be misused but would be exercised in a fair and reasonable manner.* The Hon'ble Supreme Court has also dealt with the main issue in ***Kanhiya Lal Omar's case*** that the Central Government which had been delegated the power to make rules under section 169 of the Act, could not further delegate the power to make any subordinate Legislation in the form of Symbols Order, observed that *"such a power can be traced under Article 324[1] of the Constitution of India"* and in Paragraph No.17, observed that *"one has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which, the power is granted, is effectively achieved."*

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- The learned Senior Counsel appearing for the third respondent, by placing heavy reliance upon the observations made in Paragraphs No.40 and 41 of ***Sadiq Ali's case*** [cited supra], would submit that the source of power of the first respondent / Speaker is under the Tenth Schedule of the Constitution of India and since such power has been granted for a specific purpose, coupled with the position that he is the sole Authority to decide the issue with regard to the disqualification under the Tenth Schedule, the adjudication on his part on the petition submitted by the second respondent / Whip cannot be faulted with and no obligation has been cast upon him to defer the proceedings till the conclusion of the proceedings before ECI under Symbols Order.

- The petitioner in WP.No.25260/2017, viz., Thiru P.Vetrivel, in ground No.[c] in the affidavit filed in support of the said writ petition, as well as the other petitioners, in the respective affidavits filed in support of the writ petitions, also took a stand that they have not given up their membership of "AIADMK" Political Party and the petitioner in WP.No.25260/2017, in paragraph No.13[3] of the Rejoinder dated October 2017, to the common counter affidavit

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filed on behalf of the 1st respondent, averred that ***"I submit that the reason cited in defence of the Speaker is vague and malicious. I submit that pendency of the petition before Election Commission has nothing to do with the disqualification petition, which is totally independent"*** and despite such a stand being taken, the Hon'ble Mr. Justice M.Sundar, has concluded that the proceedings conducted by the first respondent / Speaker under the Tenth Schedule *de hors* the pendency of the proceedings under Symbols Order before ECI, would amount to violation of Constitutional Mandate and the same is unsustainable.

- ✔ It was also pointed out that diluting the said stand taken in paragraph 13[3] of the Rejoinder affidavit of the petitioner in WP.No.25260/2017, in the Rejoinder affidavit to the written statement/counter made on behalf of the second respondent, a quite contradictory stand has been taken in paragraph No.[d] that the first respondent / Speaker has failed to appreciate the implications of the proceedings before ECI under Para 15 of the Symbols Order and thus, the petitioners are guilty of taking quite contradictory stand to suit their convenience, depending upon the

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circumstances and it would also exhibit their unfair an unreasonable stand and also reflects of their conduct.

43 SCOPE OF INTERFERENCE WITH THE 1ST RESPONDENT / SPEAKER'S ORDER:-

The learned Senior counsel appearing for the third respondent has invited the attention of this Court to the following paragraphs in ***Kihoto's case*** *[cited supra]*:- **Paragraph No.9:-** "*this brings to the fore the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the foundations of out democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule*". The Hon'ble Supreme Court of India, in **Paragraph No.24,** has formulated the questions for consideration. In **Paragraph No.33,** the Apex Court has observed that "*the points raised in the petitions, are indeed, far-reaching and of no small importance – invoking the 'sense of relevance of constitutionally stated principles to unfamiliar settings'. On*

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the one hand, there is the real and imminent threat to the very fabric of Indian democracy posed by certain levels of political behaviour conspicuous by their utter and total disregard of well recognised political proprieties and morality. These trends tend to degrade the tone of political life and, in their wider propensities, are dangerous to and undermine the very survival of the cherished values of democracy. There is a legislative determination through experimental constitutional processes to combat that evil."

44 It is the submission of the learned Senior counsel that it is the specific case of the petitioners that they are opposing or rather, dissatisfied with the style of the functioning of the third respondent as the Chief Minister and in fact, their opposition is against the third respondent alone and they continue to remain as the members of "AIADMK" Political party and what they expressed or stated in their representations submitted to the Governor, praying for institution of Constitutional Process, is for the purpose of venting out their grievance and rather, a dissent and such freedom of expression is guaranteed under Article 19[1][a] of the Constitution of India. It is the submission of the learned Senior Counsel that the freedom of speech is not an absolute one

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and it is subject to reasonable restrictions and if the petitioners are really aggrieved by the style and functioning of the third respondent as the Chief Minister, they ought to have invoked the Internal Dispute Redressal Mechanism, by participating in the General Council Meeting or at least in the form of written representations, stating their grievances for the purpose of redressal and though they would claim that they tried to contact the third respondent in this regard and it resulted in failure, they have failed to submit or produce even an iota of evidence or material to sustain their stand. Though it was open to the petitioners or either one of them to appear as a witness and give oral evidence before the first respondent/Speaker, admittedly, they did not avail the said opportunity and as such, they cannot plea that for the purpose of availing the Internal Dispute Redressal Mechanism, the third respondent is to be summoned and subject him for the purpose of cross-examination. Learned Senior counsel, elaborating the arguments, has further invited the attention of this Court to **paragraph No.44** of the said decision and would submit that it was observed in the said paragraph, *".......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..."* and also

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drawn the attention of this Court to **Paragraphs No.49 and 51,** made a submission that, as observed in the said paragraphs that, *"in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall and the anti-defectin law seeks to recognise the practical need to place the proprieties of political and personal conduct."* It was concluded in **Paragraph No.53** of the said decision that Paragraph 2 of the Tenth Schedule to the Constitution is valid and it does not violate their freedom of speech, freedom of vote and conscience as contended and the provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 194 of the Constitution of India and in the light of the findings recorded by way of majority verdict, the plea/point/submission made on behalf of the petitioners that expressing or voicing the dissent with regard to the style and functioning of the third respondent as the Chief Minister, cannot be pardoned also for the reason that it would embarrass the image of the political party which is in power in a poor light in public. Admittedly, the petitioners, after submission of the representations to the Governor of Tamil Nadu, seeking the initiation/institution of Constitutional Process, gone on public, by giving press and media interviews and their conduct would definitely amount to deviating or going from the ideology of the

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party in which they were members and got elected and it would definitely amount to voluntarily giving up their membership of that political party and the said aspect has been rightly taken note of by the first respondent / Speaker which resulted in the impugned order. It is not in dispute that the first respondent is the sole authority to decide the main issue under the Tenth Schedule and by virtue of Article 212[1] of the Constitution of India, the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any remedy of procedure and the Courts cannot enquire and therefore, the power exercised by the first respondent/Speaker, cannot be termed as jurisdictional error and even assuming without admitting that there were some irregularities in the procedure, still it cannot be interfered with.

45 The learned Senior counsel has also placed reliance upon the judgment of the Privy Council reported in ***1980 Privy Council 318 [South East Asia Fire Bricks SDN BHD Vs. Non Metallic Mineral Products Manufacturing Employees Union and others],*** and would submit that an Award of the Industrial Court was put to challenge and in page No.324, it was observed that, *"those errors of law that give rise to an excess of jurisdiction and those that do not,and held that there had*

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been no excess or lack of jurisdiction which would justify the Court in issuing an order of certiorari" and it has been concluded that the Awards of the Industrial Court are not subject to review by certiorari merely on the ground of error of law. In **paragraph No.101** of **Kihoto's case**, the Hon'ble Apex Court has taken note of the ***Administrative law H.W.R. Wade [6th Edition] pp.724-726 ;*** and ***1980 Privy Council 318 [South East Asia Fire Bricks SDN BHD Vs. Non Metallic Mineral Products Manufacturing Employees Union and others]*** [cited supra] and yet another decision reported in ***1969 [1] ALL ER 208 [Anisminic Ltd Vs. Foreign Compensation Commission]*** and observed that *"an ouster clause attaching finality to a determination, therefore, does oust certiorari to some extent and it will be effective in ousting the power of the Court to review the decision of an inferior tribunal by certiorari if the inferior Tribunal has not acted without jurisdiction and has merely made an error of law which does not affect its jurisdiction and if its decision is not a nullity for some reason such as breach of rule of natural justice."* In the case on hand, the first respondent/Speaker did not commit any error of law and in fact, exercised its jurisdiction and power strictly within four corners of the Tenth Schedule, after strictly complying with the principles of natural justice and exhibited fairness.

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Though, the Speaker while exercising power under the Tenth Schedule is deemed to act as a Tribunal, considering the fact that he is a Constitutional authority and the sole repository of powers insofar as the legislature is concerned, his office exercising such power, cannot be equated with that of a normal Tribunals like Central Administrative Tribunal, Customs and Excise Tribunal and other Tribunals etc and the said order is to be tested strictly in the light of paragraph No.109 of ***Kihoto Hollohalan's case*** and none of the grounds have been made out for interfering with the impugned order.

46 The scope of Writ of Certiorari has also been considered by the Hon'ble Apex Court in the decision reported in ***AIR 1954 SC 440 [5 Judges] – T.C.Basappa Vs. T.Nagappa and another]*** and in paragraph No.7, it was observed that *"in granting a writ of certiorari, the Superior Court does not exercise the powers of an Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Court purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal."* In paragraph No,11, the Apex Court, after placing reliance upon the decision reported

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in ***1952 SCR 583 [Veerappa Pillai Vs.Ramon & Raman Ltd],*** observed that *"Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases wherein the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice. However, extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."* These above lines would indicate the general principles that govern the exercise of jurisdiction in the matter of granting writ of certiorari under Article 226 of the Constitution.

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47 The scope of certiorari has also been considered in yet another decision reported in ***AIR 1955 SC 233 [5 Judges]-Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others***, wherein, reliance has also been placed upon the decision in ***T.C.Basappa's case [cited supra]***,

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and drawing the attention of this Court to Paragraph No.21, it is the submission of the learned Senior Counsel appearing for the third respondent that an error of law was the ground for granting a certiorari ; but it must be apparent on the face of the record and such a writ will not be issued as an appeal in disguise and rehearing of the issue raised in the proceedings, are also impermissible and it can be issued to correct if the error of law is revealed on the face of the order or decision or the irregularity or absence of or excess of jurisdiction, were shown and the error should be something more than a mere error and it must be manifest on the face of the record and what is meant by face of record has also been explained in the decision reported in ***AIR 1953 Bombay 133 [Batuk K.Viyas Vs. Surat Municipality]***, wherein was observed that "*no error can be said to be apparent on the face of the record if it was not self evident and if it require an examination or argument to establish it.*" The first respondent in the impugned order, has taken into consideration three replies submitted by the writ petitioners and after affording sufficient, reasonable and fair opportunities to them, had thoroughly analyzed and considered entire materials placed before him and by placing reliance upon the decisions of the Hon'ble Apex Court, has rightly and correctly reached the conclusion to disqualify the

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petitioners and assuming that such a course adopted by the first respondent is to be construed as an error of law, it is not manifest or apparent on the face of record and this Court, in its exercise of its jurisdiction under Article 226 of the Constitution of India, cannot re-appreciate and revalue the materials placed before the first respondent and reach a different conclusion and as such, the challenge made by the petitioners to the impugned order is wholly unsustainable.

VOLUNTARILY GIVING UP THE MEMBERSHIP OF A POLITICAL PARTY:-

48 Attention of this Court was invited to Paragraph No.371 of the Hon'ble Chief Justice's Order and it is the submission of the learned Senior Counsel that the Hon'ble Chief Justice, in the light of the well settled legal position, found that the decision / conclusion reached by the first respondent / Speaker, cannot be termed as unreasonable, irrational or perverse and if two views are possible, the High Court, does not in exercise of its power of judicial review conferred under Article 226 of the Constitution of India, interfere with the decision just because it prefers the other view and the Hon'ble Mr. Justice M.Sundar, in

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paragraph No.14[w] has observed that the petitioners had approached the wrong Forum [meeting the Governor] ; but, concluded that "however, going to wrong Forum alone, may not attract the ingredients of Para 2[1][a] unless there is a buttressing material". The said conclusion reached by the learned Judge is not in consonance with the ratio laid down in ***Nabam Rebia's case*** for the reason that the Governor is not expected to intervene or interfere with the Intra Party affairs and institution of Constitutional Process means, ordering Floor Test, dismissal of the Government and invocation of the President Rule and it is also made clear from the circumstances that the intention of the writ petitioners is to dislodge the Ruling Party, viz., "AIADMK", from the seat of power, though they claim that they oppose the style of the functioning of the third respondent alone. Learned Senior Counsel, drawing the attention of this Court to ***Ravi S.Naik's case***, reported in ***1994 [2] Supp SCC 641,*** would submit that in Paragraph No.11 of the said decision,it was observed that the words "voluntarily giving up the membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily given up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of formal resignation

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from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the Political Party to which he belongs and would further add that as per the decision reported in ***2007 [4] SCC 270 [Rajendra Singh Rana and Others Vs Swami Prasad Maurya and Others]***, the whole proceedings under the Tenth Schedule is initiated or gets initiated as part of disqualification of a member of the House, only on a complaint being made and in paragraphs No.48 and 49 of the said decision, has taken into consideration what are the acts that constitute voluntary giving up of membership of the original party and *observed that "the act of giving a letter by 13 BSP MLAs, requesting the Governor to call upon the leader of the other side [the Samajwadi Party] to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket, the members had got elected"* and would submit that admittedly, the petitioners, in their representations to the Governor dated 22.08.2017 expressing lack of confidence on the third respondent, praying for institution /initiation of a Constitutional mandate and though they claim that they continue to remain as members of the Political Party through which they got elected as Members of Legislative Assembly, in fact deviated from the ideology and expressed lack of faith on the leadership

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and the second respondent / Whip in his petition for disqualification has merely brought to the knowledge of the first respondent / Speaker as to the said act and it is also not seriously disputed by the petitioners as to the meeting of the Governor and submission of the said representations and no more further act is required as to the proof of voluntary giving up of the membership of the political party. It is also the stand of the petitioners that their representations to the Governor came to be prepared solely on the basis of ***Yeddyurappa's case*** decision and it is their stand that merely expressing voice of dissent against the acts of corruption etc., on the part of the third respondent / Chief Minister would not amount to voluntarily giving up the membership of the political party and their opposition is only against the third respondent and at no point of time, they have no intention to quit or give up their membership of the political party and the said stand is to be tested with the materials available on record.

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49 The learned Senior Counsel, inviting the attention of this Court to ***Yeddyurappa's case,*** would submit that the Speaker of the Karnataka Assembly has framed two issues, i.e., [1] whether the respondents are disqualified under Para 2[1][a] of the Tenth Schedule of

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the Constitution of India, as alleged by the applicant ; and [2] Is there a requirement to give 7 days time to the respondents as stated in their objection statement? and ultimately, the Speaker concluded that the concerned MLAs became disqualified under Para 2[1][a] of the Tenth Schedule. The said order was put to challenge before the Karnataka High Court and was heard by a Division Bench consisting of the Hon'ble Chief Justice and the Hon'ble Mr. Justice N.Kumar. The Hon'ble Chief Justice upheld the decision of the Speaker and the Hon'ble Mr. Justice N.Kumar, has concurred with the views of the Hon'ble Chief Justice on certain points and came to the conclusion that the act of no confidence on the leader of the Legislative Party does not amount to voluntarily giving up the membership of the political party, so also the expressing no confidence in the Government formed by a party with a particular leader as the Chief Minister, would also not amounting to voluntarily giving up of the membership of the political party and further that dissent is not defection and the Tenth Schedule while recognizing dissent, prohibits defection and therefore, interfered with the said order. On account of the difference of opinion / split verdict, the matter was referred to the Third Judge, who concurred with the decision of the Hon'ble Chief Justice, thereby upholding the order of the Speaker and thus, the matter reached

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the portals of the Hon'ble Supreme Court of India and in Paragraph No.113, the Hon'ble Supreme Court has formulated core questions for consideration:-

> **[a]** Did the appellants voluntarily give up their membership of the Bharatiya Janata Party?
>
> **[b]** Since only three days' time was given to the appellants to reply to the show-cause notices, as against the period of 7 days or more, prescribed in Rule 7[3] of the Disqualification Rules, were the said notices vitiated?
>
> **[c]** Did the Speaker act in hot haste in disposing of the disqualification application filed by Shri B.S.Yeddyurapa introducing a whiff of bias as to the procedure adopted?
>
> **[d]** What is the scope of judicial review of an order passed by the Speaker under Para 2[1][a] of the Tenth Schedule to the Constitution, having regard to the provisions of Article 212 thereof?

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50 The Hon'ble Supreme Court of India found that as against the prescription of seven days notice, the Speaker has granted only three days time and though certain rules can be taken as directive, still the proper opportunity of meeting the allegations have to be granted to the concerned MLAs. It was further found that the copies of the

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representations of two MLAs who retracted their earlier stand, were not given and the Speaker has also relied upon the contents of the same and dismissed the Disqualification Petition, holding that the concerned MLAs are disqualified under Para 2[1][a] . It is the submission of the learned Senior Counsel that admittedly, the Speaker of the Karnataka Assembly as against 7 days time prescription, has granted only three days time and also placed reliance upon copies of the affidavit filed by Thiru.K.S.Eswarappa to hold that the concerned MLAs were disqualified, did not furnish with the copies of the same and however, in the case on hand, though the Disqualification Rules prescribes seven days time, more than 20 days time have been granted and the petitioners have submitted only three interim replies and always sought time and despite indication has been given that hearing on the disqualification petition will be held on 14.09.2017, still the petitioners sought time and as such, it cannot be said that the there was infraction of the Rules. Though Thiru S.T.K.Jakkiyan, while originally joined with the writ petitioners and also submitted a representation to the Governor, later on rescinded from his position and gave a representation to the 1st respondent / Speaker with a copy of the representation submitted to the Governor retracting his earlier position and the contents of the same have

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not been relied upon by the first respondent / Speaker to reach the conclusion as to the disqualification of the petitioners and in fact, after recording the reasons as to their disqualification, the case of Thiru S.T.K.Jakkiyan, has been dealt with separately and as such, the decision rendered in ***Yeddyurappa's case*** have no application to the case on hand at all.

51 The petitioners, being the elected representatives, are also supposed to be aware of ***Nabam Rebia's case,*** wherein it is held that "*the activities within a political party, confirming turbulence, or unrest within its ranks, are beyond the concern of the Governor. The Governor must keep clear of any political horse- trading, and even unsavoury political manipulations, irrespective of the degree of their ethical repulsiveness. Who should or should not be a leader of a political party, is a political question, to be dealt with and resolved privately by the political party itself*" and the Governor cannot meet such issues as a matter of his concern and the provisions of the Constitution do not confer upon the Governor to resolve the disputes within the political party or between the political parties and as such, the approach made by the petitioners in the form of representations to the Governor to intervene

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and change the Chief Minister, viz., the third respondent, by instituting / resorting to Constitutional Process, is beyond the purview or the role of the Governor. It is the further submission of the learned Senior Counsel appearing for the third respondent that the role of the Governor in the light of the provisions of the Constitution, is to dismiss the Government that has lost the confidence of the Legislative Assembly but refuses to quit since the Chief Minister holds office during the pleasure of the Governor; when the Chief Minister neglects or refuses to summon the Assembly for holding a "Floor Test", the Governor should summon the Assembly for the purpose ; Dissolution and prorogation of the House under Article 174 of the Constitution and the Governor's report under Article 356 of the Constitution. Since the petitioners are also supposed to be aware of the said latest judgment rendered by the Constitution Bench of the Hon'ble Supreme Court of India, knew the consequences of their act of approaching the Governor was for the sole purpose to dismiss the Government and it was nothing but an act of voluntarily giving up their membership of the political party they belong and the said legal aspect has been taken into consideration by the first respondent / Speaker and as such, it cannot be faulted with. The decision rendered in ***Yeddyurappa's case*** cannot be cited as a ratio for the reason that the said decision came

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to be rendered on the facts and circumstances of the said case and it cannot be cited as a precedent.

52 In the decision reported in ***AIR 1956 SC 116 [5 Judges] – Willie [William Slaney Vs. The State of Madhya Pradesh,*** the issue before the Court was that the stand of the appellant therein that he would not be charged with having murdered a man personally and therefore, he cannot be convicted for the offence u/s.302 IPC and that the said conviction is an illegal which cannot be proved and claimed that he must either be acquitted or at the most, be retried and also pleaded, in the circumstances, re-trial cannot be ordered. The Hon'ble Supreme Court has considered the question of prejudice as to the non-framing of the said charge and in paragraph No.44, observed that *"....But these are matters of fact, which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in any other case. The facts can never be alike in any two cases, however alike, they may seem and there is no such thing as judicial precedent of facts though Counsel and even Judges, are prone to argue and to act as if there were."*

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53 The learned Senior counsel, further developing the said arguments has also invited the attention of this Court to the decisions reported in ***2018 [4] SCC 743 [Jayant Verma and Others Vs. Union of India and Others]*** and ***2018 [6] SCC 21 [State of Gujarat and Others Vs. Utility Users' Welfare Association and Others].*** The Hon'ble Apex Court in the decision reported in ***2018 [4] SCC 743 [Jayant Verma's case-cited supra]***, has considered the question "what is ratio decidendi" and after taking into consideration various decisions including the decision reported in ***1959 AC 743 - Qualcast [Wolverhampton] Vs. Haynes],*** in paragraph No.55, has observed that *"it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by facts as found, upon which decision is based. The other two elements in the decision are not precedents. The judgment is not binding [except directly on the parties themselves] nor are the findings on facts."* This means that even whether direct facts of an earlier case appear to be identical to those of the case before the Court, the Judge is not bound to draw same inference as drawn in the earlier case".

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54 In the case reported in ***2018 [6] SCC 21 [Utility Users' Welfare Association's case-cited supra]***, the Hon'ble Supreme Court of India applied the Inversion test to test whether a particular proposition of law is to be treated as ratio decidendi of the case and in paragraphs No.113 and 114 observed as follows:-

> *“**113** In order to determine this aspect, one of the well-established tests is “the Inversion Test” propounded inter alia by Eugene Wambaugh, a Professor at The Harvard law School, who published a classic text book called **The Study of Cases** in the year 1892. This textbook propounded inter alia what is know as the “Wambaugh Test” or “the Inversion Test” as the means of judicial interpretation. “The Inversion Test” is used to identify the ratio decidendi in any judgment. The central idea, in the words of Professor Wambaugh, is as under:-*
>
> > *“In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the Court had conceived this new proposition to be good, and had it in mined, the decision could have been the same. If the answer be affirmative, then, however*

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> *excellent the original proposition may be, the case is not a precedent for that proposition; but if the answer be negative the case is a precedent for the original proposition and possibly for other propositions also."*

> ***114*** *In order to test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inversed, i.e., to remove from the text of the judgment as if it did not exist. It the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case. This test has been followed to imply that the ratio decidendi of the case. This test has been followed to imply that the ratio decidendi is what is absolutely necessary for the decision of the case. In order that an opinion may have the weight of a precedent", according to John Chipman Grey, " it must be an opinion, the formation of which, is necessary for the decision of a particular case."*

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55 It is the submission of the learned Senior Counsel that applying the Inversion test, if the text of ***Yeddyurappa's judgment*** is removed as if it did not exist, the conclusion would also remains the same and therefore, it cannot be regarded as the ratio decidendi of the

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case and reiterated that the order of the Speaker of the Legislative Assembly of Karnataka State came to be interfered with, as he failed to adhere to the period prescribed for issuance of notice and that he relied upon the letters of retraction of two MLAs to reach the said conclusion and in the case on hand, it was not so and as such, the said decision will not come to the aid of the petitioners.

56 The Hon'ble Chief Justice in paragraph No.356 of the impugned order concluded that ***Yeddyurappa's case*** is distinguishable on facts and the Hon'ble Mr. Justice M.Sundar has also considered the arguments as to whether ***Nabam Rebia's case***, impliedly overrules ***Yeddyurappa's case*** in paragraph No.14[ch][iii] has observed that "t*his court has exercised the power of judicial review in the manner alluded to supra and has not limited and / or curtailed itself to Yeddyurappa case"* and has reached the decision, independent of ***Yeddyurappa's case*** and further observed that it is not for the High Court to examine the issued implied overruling and *per incuriam* judgments of the Hon'ble Supreme Court.

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57 In sum and substance, it is the submission of the learned Senior Counsel appearing for the third respondent that the sheet anchor of the petitioners case is the ***Yeddyurappa's case*** and both the Hon'ble Chief Justice and the Hon'ble Mr.Justice M.Sundar have held that the said case is distinguishable on facts and independent conclusion has been reached *de hors* the said decision respectively and as such, the said point cannot be canvassed before this Court and even otherwise, the said decision rendered in ***Yeddyurappa's case*** cannot be cited as a ratio decidendi and in the light of the subsequent Constitution Judgment rendered in ***Nabam Rebia's case***, the Governor cannot interfere in Intra Party hurdle or affairs.

58 The power of the Speaker under the Tenth Schedule has also came up for consideration in ***Jagjit Singh's case [2006 [11] SCC 1]*** and in paragraph No.84, it was observed that *"the Speaker enjoys very high status, position of great respect and esteem in the Parliamentary traditions. He being the very embodiment of propriety and impartiality, has been assigned the function to decide whether a Member has incurred disqualification or not........The high office of the Speaker has been considered as one of the grounds for upholding the Constitutional*

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validity under the Tenth Schedule in ***Kihoto Hollohan's case"*** and in paragraph No.85, it is further observed that "*undoubtedly, in our Constitutional Scheme, the Speaker enjoys a pivotal position. The position of the Speaker is and has been held by people of outstanding ability and impartiality...."* and reiterated the submission that though in ***Kihoto Hollohan's case***, it was observed that the Speaker in exercise of power under Tenth Schedule is a Tribunal, in the light of the enjoyment of high status being held by him, it cannot be equated with that of any other Tribunals and the judicial review/scope of interference lies within a very narrow campus and would be confined to jurisdictional errors only, i.e., infirmities based on violation of Constitutional mandate, mala fides, non-compliance with the rules of natural justice and perversity and none of the grounds have been made out by the petitioners in their challenge to the impugned order passed by the first respondent / Speaker. The petitioners have not made out any ground as to the decision of the Speaker in arriving at the conclusion that the petitioners had incurred disqualification as they had voluntarily given up the membership of the political party under Para 2[1][a] of the Tenth Schedule of the Constitution of India.

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59 AVAILMENT OF INTERNAL DISPUTE REDRESSAL MECHANISM:-

- The petitioners, in order to substantiate their contention that they have tried their level best to avail the Internal Dispute Redressal Mechanism and however, due to the act and attitude of the third respondent, it did not fructify and left with no other option only, they approached the Governor, in the form of representations dated 22.08.2017 for institution/initiation of the Constitutional Process, sought summoning of the third respondent for the purpose of cross-examination.

- The learned Senior Counsel for the third respondent inviting the attention of this Court to the three interim replies submitted by Thiru P.Vetrivel [petitioner in WP.No.25260/2017] and would submit that different stand has been taken as to the availment of such a mechanism. In the interim reply dated 24.08.2017, in paragraph 23, Thiru P.Vetrivel took a stand that he had approached the Governor only after his efforts to address his Party regarding the grievances that the Chief Minister contact ended in failure and

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addressing the Governor regarding the matter of public interest and in respect of the conduct of the Chief Minister cannot be termed as voluntarily opting out of the Party. In paragraph No.19 of the second interim reply dated 05.09.2017, the said petitioner took a stand that during the period between 14.06.2017 and 19.07.2017, he and the other MLAs have met the third respondent / Chief Minister in that regard ; but the third respondent had attempted to pacify them by dragging the matter and assured to allot time shortly. But, it did not materialise and it can be substantiated by cross-examining the third respondent and such opportunity is a lawful right for a person to defend his case, as per the principles of natural justice. It is pointed out by the learned Senior Counsel that between 14.06.2017 and 19.07.2017, the Assembly was in seizin and the petitioners did approach the third respondent and only on account of the call in the form of the letter dated 21.08.2017 written by Thiru T.T.V.Dinakaran, Deputy General Secretary, "AIADMK [Amma]" Party, they met the Governor and submitted the representations dated 22.08.2017. Assuming that their efforts to resolve the difference of opinion as to the style and manner of functioning of the third respondent, ended in futile, nothing

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prevented them to call for a meeting or at least submit individual / joint representations expressing their grievances and according to the learned Senior counsel, the petitioners did not adopt either of such a course.

- The third respondent in his comments/reply dated 30.08.2017 also took a categorical stand that in the Floor Test held on 18.02.2017, all the petitioners and Thiru S.T.K.Jakkiyan had voted in his favour and therefore, their stand that they tried to meet him between 14.06.2017 and 19.07.2017 and if they had really had an issue with him, they would have approached the Legislative Party or the office of the Speaker and would not have approached the Governor for setting the Constitutional scheme or things in motion and therefore, the burden lies heavily on the petitioners to prove, substantiate and probablise their assertion that they tried their level best to avail "Intra Dispute Redressal Mechanism" and it is settled position of law that the person who asserts the particular fact, has to prove the same and admittedly, the petitioners did not do so and in order to prove a negative thing, they wanted to cross-examine the third respondent and the same is impermissible in law. Even

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for the sake of argument, that the said request made by the petitioners has been rejected, still it cannot be construed as violation of principles of natural justice for the reason that the first respondent / Speaker had dealt with that issue in paragraph No.54 of the impugned order and the said finding has been reached on the basis of the contents of the replies submitted by the petitioners and also the comments of the third respondent dated 30.08.2017 and even for the sake of argument, it is an erroneous approach or the materials placed on record have not been properly appreciated, still it cannot be construed as an error apparent on the face of the record and considering the limited scope of judicial review, this Court cannot re-appreciate the materials/evidence and reach altogether a different conclusion.

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➔ The petitioner in WP.No.25260/2017, viz., Thiru P.Vetrivel, in his second reply dated 14.09.2017, in paragraph No.14, also took a stand that as per the majority view of the Party, he had approached the Governor of Tamil Nadu on 22.08.2017 and would further state that the said act was done as per the instructions of their Party's Deputy General Secretary Mr.T.T.V.Dinakaran,'s letter dated

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21.08.2017. Though it is claimed in the said reply that they represent the majority, the fact remains that one of the 19 MLAs who approached the Governor, viz., Thiru S.T.K.Jakkiyan, had rescinded from his earlier stand and till the filing of the writ petition, apart from the other writ petitions, none of the MLAs from the other group, had supported them for the replacement of the third respondent and as such, it cannot be said that they represent the majority.

- ➔ If the petitioners are dissatisfied with the style of functioning of the third respondent, they should have resigned from the Membership as well as the Legislature Party and contested in the election and proved their assertion that they represent the majority view/support of the political party and however, they did not do so. On the contrary, by claiming to be the Members of the Political Party, made damaging statements in the public and thereby, deviated from the ideology of the party and in fact, deserted the Party and the said act, would definitely amount to voluntarily giving up the membership of the political party, which would squarely attract Para 2[1][a] of the Tenth Schedule.

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- Answering to the submission made by the learned Senior Counsel appearing for the petitioners that the first respondent / Speaker, in order to reach the conclusion in paragraphs No.59 and 63 of the impugned order that the petitioners had acted in cahoots with the leader of the Opposition, it is the submission of the learned Senior Counsel appearing for the third respondent that the fact remains that there are materials in the form of Newspaper report as to the meeting took place between the Leader of the Opposition, viz., Thiru.M.K.Stalin, with the Governor on the very same day on which the petitioners and another met the Governor and there is no prohibition to take cognizance of newspaper reports and assuming it is an error of fact, still the impugned order cannot be interfered with on that ground, by way of judicial review and even otherwise, this Court cannot re-appreciate the same and reach a different conclusion.

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- WP.Nos.27853 to 27856 of 2017 were filed for taking action under Tenth Schedule against 11 MLAs belonging to Thiru O.Panneerselvam group as they violated blatant breech of trust

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vote and the said writ petition was dismissed by the Hon'ble Chief Justice and the Hon'ble Mr. Justice Abdul Quddose and by way of appeal, challenge has been made to the said order and it is pending before the Hon'ble Supreme Court and therefore, the issue is still at large and even otherwise, as far as deciding the disqualification under Para 2[1][b] is concerned, it is an elaborate exercise and even otherwise, it is open to the political party to contend the same within the stipulated time and as such, it cannot be said that the alleged inaction on the part of the first respondent / Speaker in deciding the said disqualification would amount to *mala fide* action and exhibiting biased attitude and such an allegation cannot be levelled against the first respondent, considering the high Constitutional Post he is holding and he is always expected to be impartial.

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- The finding of the Hon'ble Mr.Justice M.Sundar as to the different yardstick adopted in respect of Thiru S.T.K.Jakkiyan, is also unsustainable for the reason that the first respondent / Speaker after dealing with the issue relating to disqualification of the petitioners, separately had dealt with the issue relating to Thiru

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S.T.K.Jakkiyan and the statement of Thiru S.T.K.Jakkiyan relied upon by the first respondent / Speaker as pointed out by the learned Senior Counsel for the petitioners in paragraph No.45, only relates to availability of the petitioners at Chennai at the relevant point of time and not for any other reason and the contents of the letter dated 14.09.2017 sent by Thiru S.T.K.Jakkiyan to the first respondent as well as the representation dated 07.09.2017 submitted by him to the Hon'ble Governor, have not been relied upon by the first respondent / Speaker to decide the said issue and therefore, the finding recorded by the Hon'ble Mr. Justice M.Sundar that the first respondent has violated the Constitutional mandate and acted in a mala fide manner, in any event, is unsustainable and a totally wrong approach has been made.

The learned Senior Counsel appearing for the third respondent, in the light of the above submissions made, prays for dismissal of all the writ petitions with exemplary costs.

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60 Mr.Mukul Rohatgi, learned Senior Counsel assisted by Mr.C.Thirumaran, learned counsel appearing for the second respondent / Whip, made the following submissions:-

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- The Hon'ble Chief Justice and the Hon'ble Mr. Justice Abdul Quddose had dismissed the writ petition which was filed for issuance of a writ of mandamus, directing the first respondent / Speaker to take a decision on the petition for disqualification against 11 MLAs and the matter is pending before before the Larger Bench of the Hon'ble Supreme Court of India and as such, the alleged inaction on the part of the first respondent / Speaker to take a call on those petitions, whether has deliberately done so, cannot be gone into in these writ petitions.

- The petitioners placed heavy reliance upon ***Yeddyurappa's case*** and the Hon'ble Chief Justice has distinguished the same in paragraph No.154. As regards *mala fide*, the Hon'ble Mr. Justice M.Sundar has held that different yardstick adopted in respect of Thiru S.T.K.Jakkiyan amounts to *mala fide* and breach of Constitutional Mandate for the reason that the disqualification under Para 2[1][a] of the Tenth Schedule occurs immediately from the moment of giving up of the membership and therefore, the subsequent statement/letters of Thiru S.T.K.Jakkiyan should not

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have been acted upon and whereas, the Hon'ble Chief Justice held that onus of proving *mala fide*, malice in law and fact, is on the petitioners and they had failed to do so. The first respondent is entitled to take into consideration the materials placed on record, till he reaches the conclusion on the petition for disqualification submitted by the second respondent and accordingly, took note of Thiru S.T.K.Jakkiyan as well as his representation dated 14.09.2017 and his earlier representation dated 07.09.2017 submitted to the Governor and reached the conclusion that the petition for disqualification insofar as Thiru S.T.K.Jakkiyan is concerned, is liable to be dismissed and the said approach of the first respondent cannot be faulted with.

- As regards the Constitutional Mandate, the Hon'ble Mr. Justice M.Sundar made a wrong approach by citing the reason that in the light of pendency of the Symbol Order Proceedings before ECI between 16.03.2017 and 23.11.2017, "AIADMK" did not exist as a Party in its original form and that the Symbol has also been freezed. The said reason is also unsustainable for the reason that the disqualification proceedings before the first respondent have

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nothing to do with the Symbol Order Proceedings before ECI and both the Constitutional functionaries are entitled to act in their own sphere and jurisdiction and the Hon'ble Chief Justice has rightly reached the conclusion that ECI proceedings has no relevance and also for the reason that the split is not a defence in the disqualification proceedings after 01.01.2004.

- The Hon'ble Mr. Justice M.Sundar had also recorded a finding that the impugned order of the first respondent / Speaker suffers on account of perversity in the light of the reasons that the petitioners have acted in collusion with DMK and it is an extraneous material. The fact remains, even as per the Newspaper report, which has been annexed with the petition for disqualification submitted by the second respondent/Whip that the leader of the Opposition Party [DMK], viz., Thiru M.K.Stalin, had met the Governor on the very same day as that of the petitioners and even as per paragraph No.10 of the representation and the reply/comments of Thiru.P.Vetrivel [petitioner in WP.No.25260/2017] dated 05.09.2017 that several opposition parties had been calling upon the Governor and the Hon'ble

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President of India to intervene in the matter and however, the Governor had taken a stand that the representation submitted by him as well as other 18 MLAs, which include the other MLAs, is purely an internal party matter. Therefore, material was available before the first respondent / Speaker and he appreciated the same in a particular manner and reached a logical conclusion that the petitioners had acted in collusion and tandem with the Leader of the Opposition Party. Therefore, it cannot be stated that the said approach is perverse and rather, the said finding based on the above material, is perverse. Even otherwise, such a decision/view of the first respondent / Speaker shall also be a possible view and it cannot be termed as unreasonable, irrational or perverse.

- The Hon'ble Mr. Justice M.Sundar, has concluded that non-supply of the copies of Thiru S.T.K.Jakkiyan's statement as well as his letter dated 14.09.2017 addressed to the first respondent / Speaker and his representation to the Governor dated 07.09.2017, would amount to violation of the principles of natural justice and despite fair and reasonable request has been made for cross-examination, it has been denied. The learned Judge has also recorded the further

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finding that the first respondent / Speaker ought to have given further time to submit their response. The Hon'ble Chief Justice has recorded the finding that along with the petition for disqualification submitted by the second respondent , copies of DVDs and Newspaper reports have been given and it is not even the case of the petitioners that no such enclosures have been given to them. The principles of natural justice require that the party should have been given a reasonable opportunity of personal hearing and in the case on hand, despite seven days time prescribed under Rule 7[3][b] , the first respondent / Speaker had accommodated the petitioners by granting three adjournments and despite pointing out that on 14.09.2017, the first respondent / Speaker intend to proceed with the matter, still the petitioners prayed for time and therefore, with the materials placed before him and on thorough consideration and appreciation, has rightly reached the conclusion to disqualify the petitioners.

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- The denial of opportunity of cross-examination to the petitioner cannot be said as violation of principles of natural justice for the reason that the cross-examination is not a matter of right. Reliance

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placed upon by the learned Senior counsel appearing for the petitioners on certain decisions cited supra would have no application for the reason that it is an admitted fact that the petitioners after meeting the Governor, came outside and some of them, had given press interviews as to the contents of the said representation and it was also telecasted and appeared in newspapers and the said fact has not been disputed at all.

- Insofar as the availment of "Internal Dispute Redressal Mechanism" is concerned, the third respondent in his response dated 30.08.2017, has denied the said fact and it is not even the case of the petitioners that despite denial of opportunity to meet the 3rd respondent, they had submitted written representations and nothing prevented them to examine themselves or at least some of them to substantiate their defence that they tried their best to avail the "Internal Dispute Redressal Mechanism". Therefore, it is wholly unnecessary to give an opportunity to cross-examine either the 2nd respondent or the third respondent or both as well as the Newspaper and Visual media. The petitioners had failed to show that any prejudice has been caused to them on account of denial of

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the opportunity to cross-examine all the concerned witnesses and even otherwise, the first respondent / Speaker is entitled to draw inference on the representation dated 24.08.2017 submitted by the second respondent / Whip to the first respondent / Speaker and in the effect, the petitioners had suffered disqualification under para 2[1][a] of the Tenth Schedule.

61 The learned Senior Counsel appearing for the second respondent / Whip has also drawn the attention of this Court to ***Kihoto Hollohan's case, Dr.Mahachandra Prasad's case and Jagjith Singh's case [cited supra]*** and prays for dismissal of the writ petitions.

62 Mr.Mohan Parasaran, learned Senior Counsel assisted by Mr.N.Raja Senthoor Pandiyan, learned counsel appearing for some of the petitioners, in response to the submissions made by Mr.C.Aryama Sundaram, Mr.C.S.Vaidyanathan and Mr.Mukul Rohatgi, respective learned Senior Counsel appearing for the respondents 1, 3 and 2, made the following submissions:-

- The whole issue before this Court in these writ petitions is the validity or correctness or otherwise of the order of the first

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respondent / Speaker and to survive or to be set aside for the reasons assigned on its own merits. Though Article 212[1] says that in the event of procedural irregularity, no interference is warranted and if the said irregularity results in substantial illegality, the impugned order definitely warrants interference.

- Mr.Mohan Parasaran, learned Senior Counsel, responding to the submissions of Mr.C.Aryama Sundaram, learned Senior Counsel appearing for the first respondent / Speaker, would submit that **this Court, acting as the Third Judge, is not concerned with the approach of the two Hon'ble Judges to the issue and it has to record and give its own findings/reasons for the reason that fresh arguments have been advanced by both sides on merits of the case and which, in effect, is to test the correctness of the impugned order and this Court, cannot say or conclude that either of the findings recorded by the two Hon'ble Judges are correct or incorrect**.

- In paragraphs No.41 and 43 of ***Dharampal Sathyapal's case,*** it was observed that even it is found that there is violation of

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principles of natural justice, it may not be necessary to strike down the action and refer the matter back to the authorities to take a fresh decision after complying with the procedural requirement, where non granting of hearing has not caused any prejudice ; but in the case on hand, the prejudice suffered by the petitioners have been pointed out very clearly and on account of non-granting of sufficient time to respond to the allegations made by the second respondent / Whip in his petition for disqualification, denial of opportunity in cross-examining the second respondent / Whip and the third respondent / Speaker as well as the Press and Visual Media Reporters and the prejudice had gone deep into the root of the matter and therefore, the petitioners has suffered by losing their elected office, which resulted in the denial of opportunity to serve the Electorate.

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- The alleged act of revolt/expressing dissatisfaction as to the style and functioning of the third respondent / Chief Minister, in any event, would amount to dissent only and it cannot be treated as a defection and further, inviting the attention of this Court to paragraph No.122 of ***Yeddyurappa's case***, submission has been

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made that initiation of the Constitutional Process as requested, cannot necessarily be the Constitutional process of removal of the Chief Minister through Constitutional means and on account of the Ruling BJP Party was not necessarily deprived of further opportunity of forming the Government and in the case on hand, the petitioners had clearly stated that they remain with the political party, viz., "AIADMK", and they only wanted the third respondent to be removed on account of his corrupt practice and favourtism etc., and it cannot be termed as an act of deviating from the ideology of the Party and such a right is protected under Article 19[1][a] of the Constitution of India.

- ***Nebam Rabia's case*** has not been expressly or impliedly overruled the ***Yeddyurappa's case*** for the reason that the said judgment has not even been referred to and even otherwise, the High Court cannot question the correctness of the Apex Court's order and the law of the land has been declared in ***Yeddurappa's case*** and the said case is having full application to the facts in issue as well as the legal points and the said material aspect has been completely overlooked by the first respondent / Speaker. The learned Senior

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Counsel, placing much reliance upon the Symbol Order Proceedings, submitted that in the light of the operation of the interim order, neither of the groups were permitted to use the name of "AIADMK" simplicitor and as well as the symbol viz., "Two Leaves" and therefore, the political party as well as its symbol were in the state of suspended animation and the said proceedings reached the finality only on 26.11.2017 and the only option which was available to the first respondent / Speaker was to postpone the proceedings for the reason that para 2[1][a] of the Tenth Schedule is in respect of voluntarily giving up the membership of a Political Party and the said Political Party was in a suspended animation and therefore, the issue of voluntarily giving up the membership of the party would have arose at all and the said aspect has been rightly taken note of by the Hon'ble Mr. Justice M.Sundar.

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- The power of the first respondent / Speaker relates to Article 324 of the Constitution of India and even otherwise, Article 324 and the Tenth Schedule should have been harmoniously constructed and if the said process would have been adopted, the first respondent ought to have followed the proceedings and however,

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unfortunately, exhibiting partisan attitude, acting in a bias and *mala fide* manner, had decided the issue against the petitioners and the said approach was wholly perverse.

63 Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners, in response to the submission of the respective learned Senior Counsel appearing for the respondents, made the following submissions under three heads:- **[a]** Natural Justice ; **[b]** Dissent and Defection ; and **[c]** Doctrine of Severability.

Natural Justice:-

Placing reliance upon ***Dr.Mahachandra Prasad's case and Jagjith Singh's case,*** the learned Senior Counsel would submit that the petitioners has been unjustly and unfairly denied the opportunity of submitting detailed response to the petition for disqualification submitted by the second respondent / Whip and that apart, they have been denied the opportunity of cross-examination of the respondents 2 and 3, apart from the Press Reporters and if at least the said opportunity was given to them, they would have definitely established that they had tried their level best to avail the Internal Dispute Redressal Mechanism.

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Dissent and Defection:-

[1] Dissent would not amount to defection and expressing opposition against the style and functioning of the third respondent / Chief Minister alone would not amount to defection ; but only an act of expressing dissent and the same is guaranteed under Article 19[1][a] of the Constitution of India. In any event, dissent or opposition made by a conscience subjector, cannot lead to an inference that he voluntarily quit the membership of the political party and drawn the attention of this Court to the facts of ***Yeddyurappa's case***, and it is the submission of the learned Senior counsel that in ***Yeddyurappa's case***, the concerned MLAs have not specifically stated that they remained as the Members of BJP Party ; but in the case on hand, the petitioners on more than one occasion, had specifically stated that they continue to be the members of the Political Party, viz., "AIADMK" and in fact, their representations dated 22.08.2017 to the Governor, were solely based upon ***Yeddyurappa's case*** and the ratio laid down in the said judgment would have full and complete application to the present case on hand. The finding of the first respondent / Speaker that the

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petitioners had acted in cahoots and collusion with the leader of the Opposition Party, viz., "DMK", is based upon an extraneous material and to meet the allegation, no opportunity whatsoever has been provided to the petitioners and it was nothing but a perverse approach and also resulted in jurisdictional error which is one of the grounds for interfering with the first respondent's order.

[2] The learned Senior Counsel has also placed reliance upon the judgments reported in ***1997 [5] SCC 536 [Mafatlal Industries Limited Vs Union of India]*** and ***2007 [3] SCC 184 [Raja Ram Pal Vs. Speaker, Lok Sabha and others]*** and would submit that ignoring the relevant factors and relying upon extraneous materials on the part of the first respondent / Speaker has resulted in perverse findings. The burden of proof has been wrongly shifted to the petitioners and it is for the second respondent, who submitted the petition for disqualification of the petitioners, to prove and substantiate the contents of his representation and admittedly, after submission of the said petition, he has not even appeared before the first respondent and however, the first respondent despite the absence of the second respondent had

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shown undue interest and exhibiting biased attitude and acting in a mala fide manner, had relied upon the extraneous materials and totally mis-appreciated the evidence / materials and in utter violation of principles of natural justice, had reached the perverse finding and in the process, also violated Constitutional mandates and the said approach of the first respondent / Speaker has been condemned by the Hon'ble Mr. Justice M. Sundar in his judgment.

[3] The learned Senior Counsel responding to the arguments of Mr.Mukul Rohatgi, learned Senior counsel appearing for the second respondent / Whip, would submit that the first respondent / Speaker acting under the Tenth Schedule, is a Tribunal and the proceedings before him is in the nature of *lis* and the civil rights of the petitioners to continue as the elected representatives, sought to be taken away and as such, it is obligatory on his part to adhere to the principles of natural justice, fairness and neutrality and despite holding a high Constitutional office, as the Speaker, he has failed to live up to his reputation and exhibiting a totally biased attitude, has decided the case against the petitioners.

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[4] The learned Senior Counsel on the plea of Severability and sustainment of the impugned order argued by Mr.C.S.Vaidyanathan, learned Senior Counsel appearing for the third respondent, would submit that the order is to be read as a whole and drawn the attention of this Court to the judgments reported in ***AIR 1955 SCC 271 [Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay]*** and ***2002 [7] SCC 98 [Union of India Vs. Shakuntala Gupta [dead] by LRs]*** and would submit that the entire order should disclose subjective satisfaction on the part of the author and even there is one infirmity, the order cannot be dissected and it should be sustained as a whole or to be set aside and would further add that doctrine of severability has no application on the case on hand.

[5] The learned Senior Counsel also supported the arguments advanced by Mr.Mohan Parasaran, learned Senior Counsel appearing for some of the petitioners by submitting that this Court, acting as a Third Judge, is not expected to give a finding that which of the verdicts are correct and pointed out that the arguments advanced by both sides as to the sustainability or

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otherwise of the impugned order passed by the first respondent and therefore, this Court is to give it's independent findings.

[6] The learned Senior Counsel for the petitioners referred to paragraphs No.40 and 52 of ***Yeddyurappa's case***, and would submit that in some paragraphs, view of the Hon'ble Mr. Justice N.Kumar of Karnataka High Court had been extracted and ultimately upheld his views and also invited the attention of this Court to the dissenting verdict of the Hon'ble Mr. Justice N.Kumar in **WP.Nos.32660 to 32670/2010 [Shri Gopalakrishna Belur and others Vs. Thiru.B.S.Yeddyurappa, Chief Minister and Speaker of Karnataka Assembly]**, dated 18.10.2010 and would further add that the facts as well as the ratio of ***Yeddyurappa case*** applies wholly to the facts of the present case and also drawn the attention of this Court to the judgment reported in ***2018 [6] SCC 21 [State of Gujarat and Others Vs. Utility Users' Welfare Association and Others]***, and would submit that in order to test whether a particular proposition of law is to be treated as ratio decidendi of the case, the proposition is to be inferred and by applying the said principle, a conclusion could be safely reached

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that ***Yeddyurappa's case*** is fully applicable to the present case on hand and the said decision/order of the Speaker of Karnataka Assembly in disqualifying 11 MLAs under Para 2[1][a] of the Tenth Schedule came to be set aside and in the light of the same, the impugned order of the first respondent / Speaker herein is liable to be quashed with consequential directions.

64 Mr.C.Aryama Sundaram, learned Senior Counsel appearing for the respondents 1 and 4 in response, apart from reiterating his earlier submissions, made the following submissions:-

- The reasoning process of the first respondent / Speaker cannot be tested and would further add that under the guise of re-appreciating the evidence or materials, this Court cannot reach an altogether a different conclusion from that of the first respondent and thereby, setting aside the order.

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- The petitioners who were the members of "AIADMK" party, got elected through the Party tickets and they are expected to show and maintain their loyalty to the said party and their alleged dissent in public had resulted in embarrassment to the Party and though they

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claimed that they availed "Internal Dispute Redressal Mechanism", no materials whatsoever had been produced by them and in that regard, they have not even submitted any written representation and as such, the opportunity to cross-examine the respondents 2 and 3 would not arise at all.

- The learned Senior Counsel has invited the attention of this Court to Ground No.[ll] of the writ petition filed and would submit that even according to the petitioners, "*the covert intention behind the present proceedings is to create an artificial majority in the Legislative Assembly by reducing the number of members through disqualification*" and would add that in the light of the said averment, the petitioners in fact, had anticipated the floor test and in that event, would have definitely voted against the Government. Though for the first time, before this Court it was the submission of the learned Senior Counsel appearing for the respondents 1 and 4 that in the event of Whip being issued, they would not have violated the same, the fact remains that in the light of the said averments, they have made their intention very clear to vote against the Party, which would result in the fall of the Government.

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- The contentions put forth by the petitioners that the first respondent / Speaker relied upon the extraneous materials, is *per se* unsustainable for the reason that one of the petitioners in his second reply dated 05.09.2017, in paragraph No.10, had specifically averred that several opposition parties have been calling upon the Governor to intervene in the matter and there was also a Newspaper report which has been enclosed as a document along with the petition for disqualification submitted by the second respondent, showing that the Leader of the Opposition Party, viz., Thiru M.K.Stalin, met the Governor on the very same day as that of the petitioners and therefore, a natural inference has been drawn by the second respondent / Whip and therefore, it cannot be said that the finding recorded by the first respondent/Speaker that the petitioners had acted in tandem and in cahoot with the Opposition Party, is not supported by any materials/findings/evidence.

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- The reliance made by the first respondent / Speaker on the statement of Thiru S.T.K.Jakkiyan, only pertains to non availability at Chennai and to the submission of the report and not beyond that and even otherwise, the Speaker has dealt with the issue relating to

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Thiru S.T.K.Jakkiyan separately after concluding that the petitioners has suffered disqualification under Para 2[1][a] of the Tenth Schedule and the said approach cannot be faulted with.

- Insofar as the non-adherence to Rule 7[7] of the Disqualification Rules, it is the submission of the learned Senior Counsel appearing for the respondents 1 and 4 that the procedure adopted is the same as that of the Select Committee and only if Expert evidence is required, then only he should be examined and the said rule has no strict application to the facts of the present case. The Speaker can device his own procedure and the only mandate cast upon him is that he should strictly adhere to the principles of natural justice and in the case on hand, it has been exhibited beyond all probabilities and the Speaker has granted more than sufficient and reasonable opportunity to the petitioners to respond to the petition for disqualification and despite three opportunities given, the petitioners had failed to avail the same and in fact, tried their level best to drag on the proceedings and the preliminary objections raised by them, have been dealt with by the Speaker and thereafter, he had gone into the merits of the petition for disqualification

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submitted by the second respondent / Whip and dealt with the said issue thoroughly and also pointed out that the office of the Speaker while deciding the disqualification, cannot be equated with the other Tribunals and that is why, in ***Kihoto Hollohan's case***, the judicial review of the Speaker's order has been limited to only certain grounds and none of the grounds would stand attracted to the impugned order and as such, it cannot be interfered with. It is also an admitted fact that the petitioner in WP.No.25260/2017, did file a civil suit on the file of this Court and also moved an application praying for an order of restraint from holding the General Council Meeting and it was dismissed with cost and therefore, relying upon the same by the Speaker cannot be termed as perverse for the reason that the said fact of filing suit cannot be denied by him.

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- It was also open to the petitioners to participate in the said Meeting and express their grievances as to the style of functioning of the third respondent but the fact remains that they were desparate that the Meeting should not be held and that they filed a civil suit and sought an interim order for holding the said Meeting and the said

Interlocutory Application was rightly dismissed with exemplary cost and therefore, it is not open to the petitioners to plea that on account of denial of opportunity to cross examine the third respondent as to the availment of "Internal Dispute Redressal Mechanism", they have been put to great prejudice.

- Lastly, it is submitted by the learned Senior Counsel appearing for the respondents 1 and 4 that the first respondent is not amenable to Article 227 of the Constitution of India and though it was contended on behalf of the petitioners that the office of the Speaker should be treated as a normal Tribunal, in the light of the said legal position and considering the fact that the first respondent is holding a high Constitutional office, his order cannot be interfered with like the orders passed by any other Tribunals, except on limited grounds as enunciated in ***Kihoto Hollohan's case.***

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- The learned Senior counsel also pointed out that the fact remains that the petitioners met the Governor and submitted representations and though they would state that majority of the

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Party had supported them, the fact remains that even on that day, the majority of MLAs of the Ruling Party, did not support them and their right to dissent, has not been totally taken away for the reason that they have got the right to dissent within the Party and not by going to the public and making statement which would embarrass the political as well as the Ruling Party and in any event, dissent cannot be taken outside the party, rather by making a different statement and it would definitely amount to deviating from the Party's ideology.

- The submission of Mr.C.S.Vaidyanathan, learned Senior Counsel appearing for the third respondent as to the severability of the order, has also been reiterated by Mr.C.Aryama Sundaram, learned Senior counsel by submitting that severability applies to the impugned order also and even assuming that the finding of the Speaker that the petitioners had acted in collusion and in tandem with the leader of the Opposition Party, is to be set aside, still the rest of the order is sustainable and it cannot be said that the said finding reached by the Speaker is wholly without any evidence.

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- The learned Senior counsel, in response to the submission made by the learned Senior Counsel appearing for the petitioners that some of the findings of the Hon'ble Mr. Justice N.Kumar of Karnataka High Court, in his dissenting verdict, has been found acceptance by the Hon'ble Apex Court in ***Yeddyurappa's case***, would submit that admittedly the Special Leave Petitions preferred against the order of the learned Third Judge of Karnataka High Court, had been entertained and was converted as Civil Appeals, and a common judgment came to be delivered and on account of the same, the decision of the Karnataka High Court got merged with the judgment of the Hon'ble Supreme Court and therefore, the findings / observations of the Hon'ble Mr. Justice N.Kumar, cannot be looked into at all and prays for sustainment of the impugned order passed by the first respondent / Speaker.

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65 Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners has sought leave of this Court to submit his response and reiterated his submission by placing heavy reliance upon the ***Yeddyurappa's case*** as well as ***Dharampal Sathyapal's case*** and once again made the submission that dissent does not amount to defection and

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expressing dissent within the Party would not amount to voluntarily giving up the membership of a Political Party and as such, the Tenth Schedule ought not to have been invoked and since the third respondent is not the leader of the Political Party, dissent is permissible and would further add that as per paragraph No.100 of ***Kihoto Hollhan's case***, the office of the Speaker is a Tribunal and it is amenable to jurisdiction of this Court under Article 226 and 227 of the Constitution of India. The learned Senior Counsel, by way of information, has also made a submission that the Constituencies of the petitioners represent 10% of the elected votes of 7.8% of the population of the State and admittedly, those Constituencies have not been represented for quite a long time right from the date of impugned order and consequently, the concerned Electorates are suffering and therefore, prays for setting aside of the impugned order passed by the first respondent / Speaker.

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66 The petitioners in W.P.Nos.25260 to 25267 and 25393 to 25402 of 2017 have filed a Common Synopsis of Dates and Events dated 21.07.2018 and it is relevant to extract the same:

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SL.No.	*Date*	*Event*
1	05.12.2016	Demise of Selvi J.Jayalalithaa, erstwhile Chief Minister of Tamil Nadu, and leader of AIADMK
2	06.12.2016	Thiru OPS sworn in as Chief Minister
2 (a)	06.02.2017	Thiru OPS resigns as Chief Minister
3	16.02.2017	Thiru E.Palanisamy (EPS) is sworn in as Chief Minister of Tamil Nadu in place of Thiru O.Paneer Selvam
4	18.02.2017	A Trust Vote is conducted for Thiru EPS to prove his majority, Thiru O Paneer Selvam and 11 other MLAs voted against EPS in violation of the whip issued by the Chief Government Whip of AIADMK
4(a)	16.03.2017	Thiru OPS filed a petition before the Election Commission under Para 15 of the Symbols Order
5	20.03.2017	4 of the Writ Petitioners in the present batch move a petition under Para 2(1)(b) of the Tenth Schedule against Thiru OPS and 11 other MLA's for voting against the party Whip. However, R1 does not even issue notice in that petition
6	22.03.2017	EC passes an interim order recognizing two groups in AIADMK Party and both groups are prevented from using the name "All India Anna Dravida Munnetra Kazhagam" simplicitor and the "Two Leaves" symbol pending final orders
6(a)	1st week of August, 2017	Thiru OPS attacks EPS and AIADMK before several news Channels and press
7	21.08.2017	OPS and one K.Pandirajran (another one of the 12 MLAs who voted against whip) are sworn in as Dy CM and Minister respectively in EPS govt.
8	21.08.2017	Letter from AIADMK Deputy General Secretary to all AIADMK MLA's to give a representation to the Governor against the Chief Minister and select a new Chief Minister from the party

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SL.No.	*Date*	*Event*
9	22.08.2017	Individual Letters were written by 19 MLAs of the AIADMK including the 18 petitioners herein to the Hon'ble Governor, identical to the representation submitted in Yeddyurappa case.
9(a)	24.08.2017	R2(Whip) files petition under Para 2(1)(a) of the Tenth Schedule against the 18 petitioners herein and Thiru Jakkaiyan. The Speaker issues a Show Cause Notice against all 19 MLAs, immediately upon receipt of the petition.
9(b)	30.08.2017	The petitioner files an interim reply inter alia requesting an opportunity for cross examination of the Chief Government Whip, examination of witnesses etc.,
10	31.08.2017	The 1st respondent directed the petitioners to file a final reply by 5th September and represent the case before him in person on 07.09.2017
11	03.09.2017	The 1st respondent forwards the comments dated 30.08.2017 of Chief Minister (EPS)/R-3 to the petitioners
12	05.09.2017	A second interim reply with requests for the documents based on the comments of Thiru EPS and for cross examination of Thiru EPS
13	07.09.2017	Vide notice dated 07.09.2017, the date for filing of further comments and personal hearing in the matter was fixed for 14.09.2017. Thiru STK Jakkaiyan writes a letter to the Governor retracting his earlier and states that the letter was sent by coercion. This letter was never shown to the petitioners.
14	14.09.2017	The petitioner along with his advocate was present and filed a further interim reply. In the interim reply it was pointed out that letter dated 22.08.2017 to the Hon'ble Governor was written pursuant to the directions of the

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SL.No.	*Date*	*Event*
		leaders of the party. A memo requesting for documents and opportunity to cross examination was also filed. STK Jakkaiyan writes a letter to the Speaker retracting his letter to the Governor.
15	18.09.2017	A media report was released in the morning of 18.09.2017 stating that 18 (petitioners herein) out of 19 MLAs have been disqualified. The copy of order was not provided to the petitioner but the same was uploaded on the website at around 8.30 p.m.
16	19.09.2017	The present Writ Petitions is filed by the petitioners
17	23.11.2017	Interim Freeze Order of the Election Commission continues until this day when the final order was passed by the Election Commission in favour of OPS faction

67 Written Propositions advanced on behalf of the petitioners dated 22.07.2018 have already been extracted above in paragraph 28.

68 The first respondent/Speaker has invoked the provisions of "The Members of the Tamil Nadu Legislative Assembly (Disqualification On Ground Of Defection) Rules, 1986" [in short "the Disqualification Rules"] and disqualified the petitioners. Therefore, it is relevant to trace the history of the said legislation.

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68.1 Tenth Schedule of the Constitution was introduced by "The Constitution (Fifty Second Amendment) Act, 1985". The Committee on Electoral Reforms (Dinesh Goswami Committee) in it's report of May, 1990, the Law Commission of India in it's 170th Report on "Reform of Electoral Laws" (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in it's report of March 31, 2002 have, *inter alia*, recommended omission of paragraph 3 of the Tenth Schedule to the Constitution of India pertaining to exemption from disqualification in case of splits and in the light of the same, amendment to the Constitution was proposed by introduction of the Bill dated 26.04.2003 by omitting paragraph 3 of the Tenth Schedule to the Constitution of India and also to provide that the size of the Council of Ministers should not be more than 10% of the strength of House or Houses concerned, whether Unicameral or Bicameral; however, in case of smaller States like Sikkim, Mizoram and Goa having 32, 40 and 40 Members in the Legislative Assemblies respectively, a minimum strength of seven Ministers is proposed.

68.2 Even prior to the said amendment, Constitutional validity of the Tenth Schedule to the Constitution of India, introduced vide Fifty

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Second Amendment Act, 1985 was put to challenge before the Hon'ble Supreme Court in the decision in ***Kihota Hollohan v. Zachilhu and Others [AIR 1993 SC 412 = 1992 Supp. SCC 651 (CB)]***. The Constitution Bench of the Hon'ble Supreme Court, by majority of three Judges, had upheld the vires of the Tenth Schedule and two Hon'ble Judges, in their minority decision, has held that "***since the conferment of authority is on the Speaker and that provision cannot be sustained for the reason given, even without paragraph 7, the entire Tenth Schedule is rendered invalid in the absence of any valid authority for decision of the dispute***". In the above cited decision, events which led to the Fifty Second Amendment, resulting in introduction of Tenth Schedule has been narrated in detail and in *extenso*.

68.3 The Hon'ble Supreme Court has also considered the issue as to whether the Speaker or the Chairman acting under Paragraph 6(1) of the Tenth Schedule is a Tribunal and held that the Speaker or the Chairman acting under Paragraph 6(1) of the Tenth Schedule is a Tribunal. The Hon'ble Supreme Court has also dealt with the issue relating to finality of the Clauses in Paragraph 6 and in paragraph 109 of the decision held that "***in the light of the decision referred to above and***

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the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity". (emphasis supplied)

68.4 The Hon'ble Supreme Court has also considered the question whether the investiture of the determinative jurisdiction in the Speaker would by itself stand vitiated as denying the idea of an independent adjudicatory authority and in paragraph 115 of the decision observed that ***"We are afraid the criticism that the provision incurs the vice of unconstitutionality ignores the high status and importance of the office of the Speaker in a Parliamentary democracy. The office of the Speaker is held in the highest respect and esteem in Parliamentary traditions. The evolution of the institution of Parliamentary democracy has as its pivot the institution of the Speaker. 'The Speaker holds a high, important and ceremonial office. All questions of the well being of the House are matters of Speaker's concern.' The Speaker is said to be the very embodiment of propriety and impartiality. He performs***

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wide ranging functions including the performance of important functions of a judicial character". (emphasis supplied)

68.5 A contention was also put forth that adjudicatory functions of the Speaker/Chairman may result in political bias and in paragraph 119 it was observed that,

> *"19.Accordingly, the contention that the vesting of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such constitutional functionaries should not be considered exceptionable".*

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68.6 Thus, as per majority opinion, the order passed by the Speaker under Tenth Schedule is amenable to judicial review of the Hon'ble Supreme Court under Article 136 and of the High Courts under Articles 226 and 227 of the Constitution of India on limited grounds. It

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has been further held that in the absence of prior ratification in accordance with the proviso to Clause (2) to Article 368, Paragraph 7 of the Tenth Schedule is unconstitutional and the said paragraph being separable from the remaining paragraph of the Tenth Schedule, is to be struck down and accordingly, stuck down.

68.7 Thus, law is well settled as to the scope of judicial review in respect of the functions exercised/order passed by the Speaker/Chairman under the Tenth Schedule.

69 Facts leading to the present litigation as culled out from the list of dates and events furnished by the respective learned counsel appearing for the parties would disclose the following:

69.1 Members of Legislative Assembly [MLAs] numbering 122, including the petitioners as well as Thiru S.T.K.Jakkaiyan were elected as Members of the "All India Anna Dravida Munnetra Kazhagam" [in short "AIADMK"] party under "Two Leaves" Symbol. The third respondent, namely Thiru E.Palanisamy, was elected as a Member of the Legislative Assembly of "AIADMK" party and sworn in as the Chief Minister of

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Tamil Nadu along with his Cabinet on 16.02.2017. A Floor Test was conducted on 18.02.2017 and admittedly, the petitioners along with other MLAs showed allegiance to the "AIADMK" party by voting in his favour.

69.2 Subsequently, difference of opinion/dispute arose between Thiru O.Panneerselvam, who sworn in as the Chief Minister of Tamil Nadu on 06.12.2016, immediately after the demise of Miss J.Jayalalithaa, erstwhile Chief Minister of Tamil Nadu and the leader of "AIADMK" party and Tmt V.K.Sasikala and another. The dispute pertains to who actually represents "AIADMK" party and accordingly, a petition was filed by Thiru E.Madhusudhanan and others in Dispute Case No.2 of 2017 on 16.03.2017 before the Election Commission of India [in short "ECI"] for resolution of the dispute under Paragraph 15 of the Symbols Order. ECI has passed an interim order dated 22.03.2017, restraining both groups/factions from using the name "AIADMK" and also freezing of "Two Leaves" symbol until further orders.

69.3 A Floor Test was ordered to proved the majority of the ruling party headed by Thiru E.Palanisamy and a Whip was also issued

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and according to the petitioners, in contravention of the said Whip, Thiru O.Panneerselvam and Thiru K.Pandiarajan had voted against Thiru E.Palanisamy, in violation of the said Whip.

69.4 Subsequently, dispute/difference of opinion between Thiru O.Panneerselvam and Thiru E.Palanisamy got resolved amicably. Thiru O.Panneerselvam was sworn in as the Deputy Chief Minister and Thiru K.Pandiarajan, who belongs to his group, was sworn in as a Minister.

69.5 Thiru P.Vetrivel/petitioner in W.P.No.25260 of 2017 along with other petitioners including Thiru S.T.K.Jakkaiyan, met the Governor of Tamil Nadu and submitted individual representation dated 22.08.2017 stating among other things that each of them got disillusioned with the functioning of the Government headed by Thiru Edapadi K.Palanisamy, as there have been abuse of power, favouritism, misuse of Government machinery, widespread corruption and for the past four months, allegations of corruption against Thiru Edapadi K.Palanisamy started emanating from various quarters. The petitioners further stated that on account of the fact that Thiru Edapadi K.Palanisamy is corrupt and

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encouraging corruption at several levels, which also have caused damage to the image and reputation of "AIADMK" party and though they supported Thiru Edapadi K.Palanisamy during the month of February, 2017, while the Floor Test was conducted, the situation has arisen that governance of the State cannot be carried on in accordance with the provisions of the Constitution.

69.6 The petitioners also drawn the attention of the Governor to the Press Statement given by Thiru O.Panneerselvam during August, 2017, complaining about corrupt practice by the Government, but within two weeks from making such statement, Thiru Edapadi K.Palanisamy sworn Thiru O.Panneerselvam as the Deputy Chief Minister and it also reveals that Thiru Edapadi K.Palanisamy is indulging in favouritism, abuse of power by misusing the Government machinery to cover up the corrupt practice.

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69.7 The petitioners, in the said representations, expressed their lack of confidence on Thiru Edapadi K.Palanisamy and therefore, indicated that they are withdrawing their earlier support given to him. The petitioners had also specifically indicated that they have not given

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up their membership of "AIADMK" party and they are discharging their duty as a conscious citizen to expose the abuse and misuse of the Constitutional provision.

69.8 The petitioners also relied upon the judgment rendered by the Hon'ble Supreme Court in ***Balchandra L.Jarkiholi and Others v. B.S.Yeddyurappa and Others [(2011) 7 SCC 1]*** and submitted that in the above cited judgment, rights of a Member of the Legislative Assembly in a similar situation have been discussed in detail and therefore, they are invoking their conferred right of MLA, vide their representations dated 22.08.2017.

69.9 The petitioners further stated that the dream and vision of their party supremo namely, Miss J.Jayalalithaa, towards upliftment of the people of Tamil Nadu, has been totally ignored by the Chief Minister Thiru Edapadi K.Palanisamy and they being elected MLA belonging to "AIADMK" party, cannot support him for the reasons stated and therefore, requested the Governor to intervene and institute the Constitutional process as Constitutional Head of the State.

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69.10 The second respondent, who is the Chief Government Whip as well as Member of the "AIADMK" party, has filed a petition dated 24.08.2017, seeking disqualification of the petitioners herein as well as Thiru S.T.K.Jakkaiyan under Tenth Schedule to the Constitution of India read with Disqualification Rules, 1986 by stating among other things that on 22.08.2017, several media houses had reported the alleged complaint submitted by the said MLAs to the Governor of Tamil Nadu, making allegations against the Chief Minister Thiru Edapadi K.Palanisamy and they did not make allegations against the Government. The second respondent/Whip would further state that copy of the said representations submitted to the Governor of Tamil Nadu also came to his knowledge, wherein they have indicated their intention to withdraw their support to the Chief Minister alone and not to the Government.

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69.11 It is also stated by the second respondent/Whip that in the media releases, the petitioners and another had chosen to withdraw their support to the Chief Minister on the ground that Thiru O.Panneerselvam was accommodated as the Deputy Chief Minister and Thiru K.Pandiarajan was accommodated as a Minister in the Cabinet and they are also aggrieved by the alleged actions to be taken against Tmt.

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V.K.Sasikala and the action taken against Thiru T.T.V.Dhinakaran and press releases and media releases were made from the residence of Thiru T.T.V.Dhinakaran.

69.12 The second respondent/Whip took a stand that the entire allegations in the complaint are false and not substantiated by any proof whatsoever and despite the fact that they being members of "AIADMK" Party, they have to abide by Rule 5 of the Rules and Regulations of the "AIADMK" Party and by their above said act, they had voluntarily surrendered their membership and embraced a totally different ideology from that of "AIADMK" Party and that apart, they have also disassociated themselves from the Party.

69.13 The second respondent/Whip also pointed out that the petitioners and another MLA had also failed to avail the "Internal Dispute Redressal Mechanism" and straight away met the Governor and submitted representation to the Governor to take action and their unanimous stand in withdrawing their support to the Chief Minister would indicate that they do not want to identify themselves with the party and as such, their action would attract disqualification under Tenth

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Schedule of the Constitution read with Disqualification Rules, 1986 and therefore, prayed for their disqualification with immediate effect.

69.14 The second respondent/Whip, along with his petition dated 24.08.2017, also enclosed the letter dated 22.08.2017 given by the petitioners to the Governor as circulated in the media, compact disc containing media reports and newspaper articles dated 23.08.2017.

69.15 The first respondent/Speaker, upon receipt of the petition from the second respondent/Whip, had sent a communication dated 24.08.2017 by enclosing a copy of the representation and sought their response.

69.16 Interim reply/comments was filed by the ninth respondent therein/petitioner in W.P.No.25260 of 2017 dated 30.08.2017, stating among other things that the petition is not at all maintainable, as the present case does not fall within the ambit of Section 2(1)(a) of the Tenth Schedule of the Constitution and also invited the attention of the first respondent/Speaker to the decision in ***Yeddyurappa's case*** (cited supra) and stated that the representations to the Governor bears a striking

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similarity to the facts projected in the above cited decision. The petitioners took a stand in paragraph 6 of the interim reply that ***"covert intention behind the present proceedings is to increase the majority in the legislative assembly by reducing the number of members through disqualification and therefore, state that the entire proceeding is vitiated by malafides, bias, procedural irregularities and want of jurisdiction"***.

69.17 It is further stated in the said interim reply that the petitioner in W.P.No.25260 of 2017 alone participated in press interviews and since reliance has been placed upon to comply with Section 65-B of the Indian Evidence Act and also took a stand that even as per the reports of the visual media, the petitioner in W.P.No.25260 of 2017, nowhere mentioned his intention either directly or indirectly to give up the membership of the political party which he belongs. It is further stated by the petitioner that his examination as well as examination of the Reporter, Cameraman and Editor of Jaya Plus Channel would prove the case projected by the Chief Whip as false.

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69.18 It is the specific case of the petitioners that the representation submitted to the Governor was only against the Chief Minister and nowhere they have indicated that they have voluntarily given up the membership of the political party and also invited the attention of this Court to the interim order dated 22.03.2017 passed in Dispute Case No.2 of 2017, pending on the file of the ECI under Symbols Order.

69.19 As regards the allegation of non-availing the Internal Dispute Redressal Mechanism to resolve the dispute, the petitioner in W.P.No.25260 of 2017 took a stand that he had approached the Governor only after his efforts to address his party as to the grievances with the Chief Minister had ended in failure and he met the Governor purely in public interest. It is also stated by them in the interim reply that the second respondent/Whip had conducted a press conference on 24.08.2017 in his office, where he has made certain new facts which have not been disclosed/suppressed by him in his petition dated 24.08.2017 and by either cross-examining the second respondent/Whip or examining the concerned reporter, cameraman and news editor of Thanthi TV would substantiate that the claim of the second respondent/Whip as false and

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prayed for opportunity to run the DVD and also prayed for cross examination of the second respondent/Whip and to examine witnesses on his part without any delay.

69.20 In the said interim reply dated 30.08.2017, the following request was made by the petitioner in W.P.No.25260 of 2017 to the first respondent/Speaker:

1. To grant adjournment and grant further time to give detail explanation with other related documents.

2. To permit me to appoint Advocate to represent on my behalf and permit to plead legal plea on my behalf.

3. To issue summons to the petitioner in order to attend before the Hon'ble Speaker or Committee for cross examination on the basis of verification affidavits and petition filed by the petitioner.

4. To permit examining witnesses on my part and further permit to mark the documents through such witnesses as exhibits and

5. To dismiss the present petition filed by the petitioner since the same is not maintainable and beyond the speakers Jurisdiction to entertain the same."

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69.21 The fourth respondent/Secretary of the Legislative Assembly, Secretariat, Chennai-600 009, vide communication dated 31.08.2017, after referring to the interim reply dated 30.08.2017 submitted by the petitioner in W.P.No.25260 of 2017, informed him that in terms of Rule 7(7) of the Disqualification Rules, 1986, the first respondent/Speaker has decided to give reasonable opportunity to represent their case and also hear him in person and fixed the hearing between 03.00 p.m and 04.00 p.m. on 07.09.2017 in his Chambers for personal hearing and also informed him that he may submit his final comments before 5.00 p.m. on 05.09.2017 and represent the case before the first respondent/Speaker in person on 07.09.2017.

69.22 The first respondent/Speaker, in the interregnum, has forwarded the representation submitted by the petitioner and invited the comments of the third respondent/Chief Minister, who, vide letter dated 30.08.2017, has submitted his comments to the first respondent stating among other things that he was unanimously elected as the leader of the Legislative Party in the meeting held on 14.02.2017 and the 19 respondents/writ petitioners and another had also participated in the meeting and in the Floor Test held on 18.02.2017, they supported him

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and voted in his favour. It is further stated by the third respondent that at no point of time, the writ petitioners and another had given letter/communication either in writing or orally, claiming that they have lost confidence in the Government and submitted representation to the Governor with *mala fide* intention to achieve the ulterior motive of disrupting the Government and the party *per se*. It is also indicated by the third respondent that if they really had an issue with him, they would have approached the Legislative Party or the office of the Speaker and would not have approached the Governor, praying for setting the Constitutional Scheme of things in motion and the said act on their part amounts to violating the party principles and conspiring to work against the party and it also amounts to voluntarily giving up their membership of the party, though they may claim otherwise.

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69.23 The third respondent would also state that 19 respondents/writ petitioners and another, who hide themselves from public at large, except for their appearances before media, have not attended the Legislative Party Meetings and the act of submitting representation to the Governor is against the party itself and prayed for passing of appropriate orders.

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69.24 The first respondent/Speaker, on receipt of the response from the third respondent, had also furnished a copy of the reply to the petitioners. The petitioner in W.P.No.25260 of 2017, namely Thiru.P.Vetrivel, who has been arrayed as ninth respondent in the Disqualification Petition, has submitted his response and made the following additional prayer:

(1) To furnish the copy of the letter sent to the Hon'ble Chief Minister Mr.Edapadi K.Palanisamy from the Secretary, Legislative Assembly.

(2) To direct the Hon'ble Chief Minister Mr.Edapadi K.Palanisamy to furnish copies in order to prove the invitations which were alleged to be served on him inviting to attend Legislature party meetings held after 22.08.2017.

(3) 15 days time to submit my final reply on furnishing of the above documents.

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(4) Permit to have the enquiry before the Committee under Rule 7(5) as per the Anti Defection Law.

69.25 The petitioner in W.P.No.25260 of 2017 also took a stand in the said reply that during the period between 14.06.2017 and 19.07.2017,

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he and other MLAs had met the Hon'ble Chief Minister in that regard and he in-turn tried to pacify them by dragging the matter and also assured to allocate time shortly, but it did not materialize and in order to establish the fact as to the availability of "Internal Dispute Redressal Mechanism", requested for summoning of the third respondent for the purpose of cross examination and he can prove through press reports and video footages of both print and visual media that he had met the third respondent on several occasions to sort out their grievances and even during Assembly Sessions between 14.06.2017 and 19.07.2017, he and other MLAs had met the third respondent in his chambers as well as in the chambers of the first respondent to sort out the difference and no invitations have been extended to them in the so-called meetings claimed to have been called by the third respondent and therefore, made the above additional prayers.

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69.26 The respondents 1 to 19 in the Disqualification Petition/writ petitioners and another had field a common petition dated 05.09.2017 pointing out that they have filed their individual interim replies on 30.08.2017 and further pointed out that the office of the first respondent/Speaker had served 19 sets of Xerox copies of the letter dated

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03.09.2017 as well as the comments of the third respondent dated 30.08.2017 and they sought for 15 days time to reply to the comments of the third respondent and therefore, prayed for furnishing of the required documents as cited in their individual reply and therefore, prayed for further 15 days time to give final reply.

69.27 The first respondent/Speaker has sent a communication dated 07.09.2017 and in response to the same, the 9th respondent/petitioner in W.P.No.25260 of 2017 has submitted his second reply/comments pointing out the request made for extension of time and referred to the annexures enclosed, vide his reply dated 05.09.2017 and also referred to Annexure Nos.VI and VII, which he filed along with the present reply and prayed to the first respondent to furnish the required documents as cited in the individual reply dated 05.09.2017 and prayed for 5 days time for submitting his final reply and to fix the date for personal hearing, after filing of his final reply and also prayed to adjourn the personal hearing from 14.09.2017 to some other date.

69.28 The respondents 1 to 16, 18 and 19, in response to the letter of the first respondent dated 07.09.2017, has submitted their common

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petition dated 14.09.2017, praying for the following:

1. To furnish the above cited documents.
2. To permit the Respondents to conduct cross examination of the petitioner.
3. To examine the Respondent's side witnesses.
4. To cross examine the Hon'ble Chief Minister of Tamil Nadu Mr.Edapadi K.Palaniswami before the Committee.
5. To refer the matter to the Committee.
6. To provide appropriate and adequate police protection to the Respondents through Karnataka Polie to attend the personal enquiry from Kudagu of Karnataka with to and flow police protection on any date with 5 days prior intimation after the above said prayers 1, 2, 3, 4 and 5 are convenient to the Hon'ble Speaker and thus render justice.

69.29 It was pointed out in the said petition among other things that the documents sought for by them are yet to be furnished by the first respondent and if the documents are furnished even today, they are ready to cross examine the second respondent/Whip and also examine witnesses on their part and also cross-examine the third respondent even by tomorrow or any other date convenient to the first respondent. It was also pointed out that at Kudagu, Karnataka, he was threatened by a huge team of police personnel attached to Tamil Nadu Police and they also forced them to talk to the third respondent through the mobile phone of

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the police officers and also threatened them with dire consequences, if they do not withdraw their representation dated 22.08.2017 and further threatened to foist false cases against them and also gave inducement to pay a sum of Rs.15 Crores to Rs.20 Crores to support the present Government headed by the third respondent and in this regard, one of the MLAs has lodged a complaint to the jurisdictional police and the same is pending. It was further pointed out that if the opportunity sought for by them is not given, free and fair enquiry could not be conducted and it is also against the principles of natural justice.

69.30 The first respondent has issued the impugned notification/order dated 18.09.2017, which was also published in the Tamil Nadu Government Gazette Extraordinary dated 18.09.2017 disqualifying the writ petitioners except the 17th respondent, namely Thiru.S.T.K.Jakkaiyan. In the impugned order, it is pointed out that one of the 19 respondents, namely Thiru.S.T.K.Jakkaiyan/17th respondent had met the first respondent/Speaker in his office on the same day on 14.09.2017 and handed over a letter, wherein he has stated that he was pressurized in submitting the representation dated 22.08.2017 to the Governor and later he realized that it was a mistake and not a voluntary

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act and therefore, sought to withdraw the same and also revoked the vakalat given to his counsel and further withdrawn the reply statements submitted dated 30.08.2017 and 05.09.2017.

69.31 The first respondent, after referring to the fixation of hearing dates to the interim reply/comments submitted by each of the respondents in the Disqualification Petition, had dealt with the issue relating to disqualification in respect of the respondents 1 to 16, 18 and 19 as well as the 17th respondent at the first instance and after holding that they had voluntarily given up their membership of the political party and thereby suffered the disqualification as a Member of the House in terms of paragraph 2(1)(a) of the Tenth Schedule read with Rule 8(1)(b) of the Disqualification Rules, 1986, had dealt with the case of 17th respondent, namely Thiru.S.T.K.Jakkaiyan separately and after taking note of the representation dated 07.09.2017 addressed to the Governor for withdrawing of his earlier representation dated 22.08.2017, in para 69 of the impugned order, has indicated that he did not want to go into the allegations made by him in the reply statements filed by him and taking into consideration of the fact that the 17th respondent has given letters explaining the circumstances for his change of decision before the

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Governor, the first respondent/Speaker has formed an opinion that the initial circumstances which had prevailed at the time of submission of the complaint do not exist and also observed that the said respondents had also given a statement that during his stay at Puducherry along with the respondents, he was witness to a situation, wherein some of the members of "AIADMK" party were trying to topple the ruling "AIADMK" Government and thereby facilitating the main opposition party, namely "DMK" Party to capture power and arrived at a conclusion that the allegations made against him are not subsisting and therefore, no further action needs to be initiated against him and accordingly, dismissed the petition as against the 17th respondent for his disqualification.

69.32 The first respondent, while disqualifying the writ petitioners, had also declared that they ceased to be the Members of the Tamil Nadu Legislative Assembly with immediate effect and the seats held by them in the Tamil Nadu Legislative Assembly shall fall vacant according to the provisions of Article 190(3)(a) of the Constitution of India. Challenging the legality of the said decision of the first respondent/Speaker dated 18.09.2017, these writ petitions have been filed.

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69.33 The writ petitions were entertained on 20.09.2017 and interim orders were passed to the effect that there shall not be any election notification for conducting elections for the 18 Legislative Assembly Constituencies, pursuant to the impugned order dated 18.09.2017, which are the subject matter in the writ petitions, until further orders of this Court.

69.34 The fourth respondent had filed a common counter affidavit on his behalf and on behalf of the first respondent. The second respondent also filed his counter affidavit and so also the third respondent. On 04.10.2017, the petitioner in W.P.No.25260 of 2017, namely Thiru.P.Vetrivel had filed his additional affidavit and individual additional affidavits were also filed by rest of the writ petitioners on 06.10.2017 and they also filed individual rejoinders on 11.10.2017 to the common counter affidavit filed by the respondents 1 and 4 and also filed individual rejoinders to the common counter affidavit filed by the second respondent and so also the third respondent on 11.10.2017. The first respondent, in response to the same, filed common sur-rejoinder on his behalf and on behalf of the fourth respondent on 23.10.2017 for the rejoinders filed by the petitioners. The third respondent has also filed a

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common sur-rejoinder on 23.10.2017 to the additional affidavit field by the petitioners. The third respondent has also field a common counter affidavit to the rejoinders of the 18 writ petitioners on 01.11.2017.

69.35 Mr.N.Raja Senthoor Pandian, learned counsel appearing for the petitioners in W.P.Nos.25260 to 25266 of 2017 and 25393 to 25397 of 2017, had submitted written arguments on 23.01.2018 and Mr.P.S.Raman, learned Senior Advocate appearing for the petitioners in W.P.Nos.25267 of 2017, 25398 to 25402 of 2017 had also filed written arguments on 23.01.2018. The respondents 1 to 4 had also submitted written submissions on 23.01.2018 and so also the respondents 2 and 3.

69.36 The Hon'ble First Bench of this Court, before whom the writ petitions were listed, after hearing marathon arguments, reserved orders on 23.01.2018. The orders were pronounced on 14.06.2017. The Hon'ble Chief Justice, who authored the leading judgment, has dismissed all the writ petitions. The Hon'ble Mr.Justice M.Sundar, finding himself in disagreement with the conclusion arrived by the Hon'ble Chief Justice, has delivered a separate dissenting verdict allowing all the writ petitions. On account of dissenting verdicts, the Hon'ble Chief Justice, taking into

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consideration of the fact that she was the author of the leading judgment, had directed the Registry to place the papers before the next senior most Judge, namely Hon'ble Mr.Justice Huluvadi G.Ramesh for nominating a third Judge and also taking into consideration the plea made by the learned Senior Counsel appearing for some of the writ petitioners, had directed that the interim order which was subsisting during the pendency of the writ petitioners, shall continue till the decision of the third Judge.

69.37 As already stated, the order of the senior most Puisne Judge in nominating the third Judge was put to challenge before the Hon'ble Supreme Court of India in Transfer Petition (Civil) Nos.1014 of 2018 etc., batch and the Hon'ble Supreme Court, vide order dated 17.06.2018, has nominated ***Justice M.Sathyanarayanan*** as the third Judge to decide the case.

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69.38 All the writ petitions were listed for hearing on 04.07.2018 and this Court, after ascertaining the convenience of the respective learned counsel appearing for the parties, had fixed the date of hearing on 23.07.2018 and also indicated that the matters would be heard

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between 23.07.2018 and 27.07.2018. Accordingly, arguments went on from 23.07.2018 till 25.07.2018.

69.39 Mr.C.A.Sundaram, learned Senior Counsel appearing for the respondents 1 and 4 at the end of the day on 25.07.2018, prayed for some accommodation on account of his prior commitments. Mr.C.S.Vaidhyanathan, learned Senior Counsel appearing for the third respondent also made a submission that after conclusion of arguments on behalf of the respondents 1 and 4, he may be in a position to commence his arguments and with regard to the said request, this Court heard the submission of the respective learned Senior Counsel appearing for the petitioners and adjourned the matter to 03.08.2018. It was also indicated to the respective learned Senior Counsel appearing for the petitioners that a Division Bench consisting of myself ***[M.Sathyanarayanan, J.]*** and ***Hon'ble Mr.Justice N.Seshasayee*** had already started hearing a batch of Specially Ordered Matter pertaining to “Beach Sand Mining Cases” and informed that arguments will be heard in the forenoon, as the Special Ordered Cases have to be heard in the afternoon session and they also agreed.

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69.40 It is to be noted at this juncture that facts leading to these litigations, statement of facts and legal position have been narrated and extracted in both the verdicts, delivered by The Hon'ble Chief Justice and Hon'ble Mr.Justice M.Sundar and for brevity and in order to avoid repetition, only relevant facts have been narrated in the above cited paragraphs.

70 This Court paid it's anxious consideration and best attention to the rival submissions and also perused the materials available on record and also considered the decisions cited by the respective learned Senior Counsel appearing for the parties.

71 This Court, before proceeding to adjudicate these matters, makes it clear that the submission made before the First Division Bench ***[The Hon'ble The Chief Justice and Hon'ble Mr.Justice M.Sundar]*** have been repeated and reiterated in more vigour. The respective learned Senior Counsel appearing for the parties though initially made an endeavour to sustain the verdict in their favour, later on, advanced arguments on merits of the case and requested this Court to rendered it's findings on merits. Accordingly, this Court is rendering it's findings on

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merits as requested by the respective learned Senior Counsel appearing for the parties. It is also to be noted at this juncture, the present order would result in sustainment of either of the verdicts, as a natural corollary.

72 Law on the subject of disqualification under Tenth Schedule of the Constitution of India is well settled and this Court has to see whether on the facts of this case, the petitioners had suffered disqualification under Paragraph 2(1)(a) of the Tenth Schedule read with The Members of the Legislative Assembly (Disqualification on ground of Defection) Rules, 1986. As the law is well settled, this Court, before analyzing and appreciating the facts of this case, would like to consider the relevant judgments cited on the subject of disqualification.

73 Constitutional validity of the Tenth Schedule to the Constitution of India, introduced vide Fifty Second Amendment Act, 1985 was assailed in the form of Writ Petitions, Transfer Petitions, Special Leave Petitions, Civil Appeals and other similar connected matters.

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KIHOTO HOLLOHAN'S CASE

74 The Hon'ble Supreme Court of India had traced the history relating to introduction of Tenth Schedule by virtue of Fifty Second Amendment in the decision in ***Kihoto Hollohan v. Zachillhu and Others [1992 Supp (2) SCC 651]*** and in paragraph 9 of the said judgment, the Hon'ble Supreme Court of India observed that ***"The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House, as specified in Paragraph 2 of the Tenth Schedule"***.

74.1 In para 13 of the said decision, it was observed as under:

"13. These provisions of 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 to be 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

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and leaves 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."

74.2 In paragraph 24 of the decision, the contentions raised and urged at the hearing the question that fall for consideration have been narrated and it is relevant to extract the same:

(A) The Constitution (Fifty-Second Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule is destructive of the basic structure of the constitution as it is violative of the fundamental principles of Parliamentary democracy, a basic feature of the Indian constitutionalism and is destructive of the freedom of speech, right to dissent and freedom of conscience as the provisions of the Tenth Schedule seek to penalise and disqualify elected representatives for the exercise of these rights and freedoms which are essential to the sustenance of the system of Parliamentary democracy.

(B) Having regard to the legislative history and evolution of the principles underlying the Tenth Schedule, Paragraph 7 thereof in terms and in effect, brings about a change in the operation and effect of Article 136,, 226 and 227 of the Constitution of India and, therefore, the Bill introducing the amendment attracts the proviso to Article 368(2) of the constitution and would require to be ratified by the legislative of the States before the Bill is presented for Presidential assent.

(C) In view of the admitted non-compliance with proviso to Article 368(2) not only Paragraph 7 of the Tenth Schedule, but also the entire Bill resulting in the

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Constitution (Fifty-Second Amendment) Act, 1985, stands vitiated and the purported amendment is abortive and does not in law bring about a valid amendment.

Or whether, the effect of such non-compliance invalidates Paragraph 7 alone and the other provisions which, by themselves, do not attract the proviso do not become invalid.

(D) That even if the effect of non-ratification by the legislature of the States is to invalidate Paragraph 7 alone, the whole of the Tenth Schedule fails for non- severability. Doctrine of severability, as applied to ordinary statutes to promote their constitutionality, is inapplicable to constitutional Amendments.

Even otherwise, having regard to legislative intent and scheme of the Tenth Schedule, the other provisions of the Tenth Schedule, after the severance and excision of Paragraph 7, become truncated, and unworkable and cannot stand and operate independently. The Legislature would not have enacted the Tenth Schedule without Paragraph 7 which forms its heart and core.

(E) That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts the immunity under Articles 122 and 212. The Speaker and the Chairman in relation to the exercise of the powers under the Tenth Schedule shall not be subjected to the jurisdiction of any Court.

The Tenth Schedule seeks to and does create a new and non-justiciable area of rights, obligations and remedies to be resolved in the exclusive manner envisaged by the Constitution and is not amenable to , but constitutionally immune from curial adjudicative processes.

(F) That even if Paragraph 7 erecting a bar on the jurisdiction of Courts is held inoperative, the Courts' jurisdiction is, in any event, barred as Paragraph 6(1) which imparts a constitutional `finality'to the decision of the Speaker or the Chairman, as the case may be, and that such concept of `finality' bars examination of the matter by the Courts.

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(G) The concept of free and fair elections as a

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necessary concomitant and attribute of democracy which is a basic feature includes an independent impartial machinery for the adjudication of the electoral disputes. The Speaker and the Chairman do not satisfy these incidents of an independent adjudicatory machinery.

The investiture of the determinative and adjudicative jurisdiction in the Speaker or the Chairman, as the case may be, would, by itself, vitiate the provision on the ground of reasonable likelihood of bias and lack of impartiality and therefore denies the imperative of an independent adjudicatory machinery. The Speaker and Chairman are elected and hold office on the support of the majority party and are not required to resign their Membership of the political party after their election to the office of the Speaker or Chairman.

(H) That even if Paragraph 7 of the Tenth Schedule is held not to bring about a change or affect Articles 136, 226 and 227 of the Constitution, the amendment is unconstitutional as it erodes and destroys judicial review which is one of the basic features of the constitution."

74.3 The Hon'ble Supreme Court has dealt with the concept of Freedom of Speech of a Member and in paragraph 40 of the decision observed that,

"40. 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 Article 105(2) is a source of immunity from the consequences of unprincipled floor-crossing".

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74.4 In paragraph 44 of the said decision, it was observed that,

> ***"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.*** [Griffith and Ryle on "Parliament, Functions, Practice & Procedure (1989 Edn.)]"

74.5 In paragraph 46 of the said decision, it was observed that *"so far as his own personal views on freedom of conscience are concerned, there may be exceptional occasions when the elected representative finds himself compelled to consider more closely how he should act."*

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74.6 It is also relevant to extract paragraph 49 of the said decision:

> "49. 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

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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-crossings 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. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end..." are constitutional."

74.7 The findings to the contentions raised, by a majority view, are as follows:

Contention (A)

"53.Accordingly we hold:

"That the Paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected Members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The Provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 194 of the Constitution.

The provisions are salutory and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.

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The contention that the provisions of the Tenth Schedule, even with the exclusion of Paragraph 7, violate the basic structure of the Constitution in they affect the democratic rights of elected Members and, therefore, of the principles of Parliamentary democracy is unsound and is rejected."

Contention (B)

"62. In the present cases, though the amendment does not bring in any change directly in the language of Article 136, 226 and 227 of the Constitution, however, in effect paragraph 7 curtails the operation of those Articles respecting matters falling under the Tenth Schedule. There is a change in the effect in Article 136, 226 and 227 within the meaning of clause (b) of the proviso to Article 368(2). Paragraph 7, therefore, attracts the proviso and ratification was necessary.

Accordingly, on Point B, we hold:

"That having regard to the background and evolution of the principles underlying the Constitution (52nd Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule in the Constitution of India, the provisions of Paragraph 7 of the Tenth Schedule of the constitution in terms and in effect bring about a change in the operation and effect to Articles 136, 226 and 227 of the Constitution of India and, therefore, the amendment would require to be ratified in accordance with the proviso to sub-Article (2) of Article 368 of the Constitution of India."

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Contentions (C) and (D)

"77. We accordingly hold on contentions `C' and `D':

"That there is nothing in the said proviso to Article 368 (2) which detracts from the severability of a provision on account of the inclusion of which the Bill containing the Amendment requires ratification from the rest of the

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provisions of such Bill which do not attract and require such ratification. Having regard to the mandatory language of Article 368(2) that "thereupon the Constitution shall stand amended" the operation of the proviso should not be extended to constitutional amendments in Bill which can stand by themselves without such ratification.

That, accordingly, the Constitution (52nd Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule in the Constitution of India, to the extent of its provisions which are amenable to the legal-sovereign of the amending process of the Union Parliament cannot be overborne by the proviso which cannot operate in that area. There is no justification for the view that even the rest of the provisions of the constitution (52nd Amendment) Act, 1985, excluding Paragraph 7 of the Tenth Schedule become constitutionally infirm by reason alone of the fact that one of its severable provisions which attracted and required ratification under the proviso to Article 368(2) was not so ratified.

That Paragraph 7 of the Tenth Schedule contains a provision which is independent of, and stands apart from the main provisions of the Tenth Schedule which are intended to provide a remedy for the evil of unprincipled and unethical political defections and, therefore, is a severable part. The remaining provisions of the Tenth Schedule can and do stand independently of Paragraph 7 and are complete in themselves workable and are not truncated by the excision of Paragraph 7."

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Contentions (E) and (F)

"42. In the result, we hold on contentions E and F : That the Tenth Schedule does not, in providing for an additional grant for disqualification and for adjudication of disputed disqualifications, seek to create a nonjusticiable 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

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

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

The Speaker/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review. However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairman. 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 repurcussions and consequence.”

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Contention (G)

“118. It would, indeed, be unfair to the high traditions of that great office to say that the investiture, in it of this Jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the

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High office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. The Robes of the Speaker to change and elevate the man inside.

119. Accordingly, the contention that the vesting of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and to take far reaching decisions in the functioning of Parliamentary democracy. Vestiture of power of adjudicate questions under the Tenth Schedule in such a constitutional functionaries should not be considered exceptionable."

Contention (H)

"120. In the view we take of the validity of Paragraph 7 it is unnecessary to pronounce on the connection whether judicial review is a basic feature of the Constitution and Paragraph 7 of the Tenth Schedule violates such basic structure."

RAVI S. NAIK'S CASE

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75 In ***Ravi S.Naik v. Union of India and Others [1994 Supp (2) SCC 641],*** the question arose for consideration before the Hon'ble Supreme Court of India pertains to disqualification of a Member of the Legislative Assembly under Article 191(2) r/w. Tenth Schedule of the Constitution of India.

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75.1 The facts of the said case briefly narrated would disclose that elections for the Goa Legislative Assembly were held in November, 1989 and the said Assembly is composed of 40 members. After the elections, Congress had secured 20 seats, Maharashtrawadi Gomantak Party (MGP) had secured 18 seats and 2 seats by independents. Congress party which secured 20 seats, with the support of one independent member, formed the Government. After a short time, 7 members left the Congress and formed the Goan People's Party (GPP) and MGP formed a coalition Government under the banner of Progressive Democratic Front (PDF). At first, Mr.Churchill Alemao became the Chief Minister but later on, Dr.Luis Proto Barbosa was sworn in as the Chief Minister. On 04.12.1990, MGP withdrew its support to the PDF Government and on 06.12.1990, a notification was issued summoning the Assembly on 10.12.1990 and the Chief Minister, namely Dr.Barbosa was required to seek vote of confidence and before the Assembly could meet, Dr.Barbosa tendered his resignation as the Chief Minister on 10.12.1990 and it was accepted and on the same day, the leader of the Congress Legislature Party staked his claim to form the Government with the support of 20 members consisting of 13 members

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of Congress, 4 members of GPP and 2 members of MGP. President's rule was imposed based on the Governor's letter dated 11.12.1990.

75.2 In the interregnum, one Mr.Ramakant Khalap, filed two petitions under Article 191(2) of the Constitution before the Speaker of State Legislative Assembly, in and by which, he sought for disqualification of two MLAs, namely Bandekar and Chopdekar on the ground of defection under Article 191(2) read with paragraph 2(1)(a) and 2(1)(b) of the Tenth Schedule to the Constitution. The Speaker, vide order dated 13.12.1990, declared both the appellants/Members as disqualified from being Members of the Goa Legislative Assembly. Challenging the same, writ petitions were filed and amendment to the prayer was also made and the High Court had granted interim orders, staying the operation of the order disqualifying the said Members.

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75.3 The Proclamation with regard to President's rule was revoked and Ravi S.Naik/appellant before the Hon'ble Supreme Court was sworn in as the Chief Minister. On 25.01.1991, One Dr.Kashinath G.Jhalmi belonging to MGP, filed a petition before the Speaker seeking disqualification of Naik on the ground of defection under Article 191(2)

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read with Paragraph 2(1)(a) of the Tenth Schedule. The Speaker, vide order dated 15.02.1991, declared Thiru.Naik as disqualified from being a Member of the Goa Legislative Assembly and it was put to challenge in a Writ Petition. Two MLAs, who originally filed petitions for disqualification, prayed for review of the order of disqualification dated 13.12.1990 and the said petition was allowed by the Speaker and it was put to challenge before Panaji Bench of High Court of Bombay and it was dismissed. Thereafter, very many legal proceedings took place and the Bombay High Court had declared that the order of the Speaker, reviewing the decision is liable to be ignored and the order disqualifying Ravi S.Naik continue to operate and both the writ petitions were dismissed on 14.05.1993 and therefore, Ravi S.Naik, aggrieved by the same, has filed Special Leave Petitions and it was converted as Civil Appeal Nos.2904 and 3309 of 1993.

75.4 The Hon'ble Supreme Court has taken into consideration ***Kihoto Hollohan's case*** and with regard to paragraph 2(1)(a) of the Tenth Schedule, in paragraph 11 observed that ***"Even in the absence of a formal resignation from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his***

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membership of the political party to which he belongs". Technical arguments relating to filing of the petition as well as infraction of the principles of natural justice were also advanced. The Hon'ble Supreme Court has dealt with the plea of insufficient time for submission of response and in paragraph 24 of the said decision observed that sufficient time was given for submitting reply. Arguments were also advanced as to reliance of newspaper reports in the impugned order and in paragraph 25 observed that ***"..The reference of newspaper reports and to the talk which Speaker had with the Governor, in the impugned order or disqualification does not, in these circumstances, introduce an infirmity which would vitiate the said order as being passed in violation of the principles of natural justice"***.

75.5 The Hon'ble Supreme Court has also dealt with the plea of denial of opportunity to adduce evidence and in paragraph 26 of the decision concluded that denial of opportunity pleaded by the appellant is without substance. The Hon'ble Supreme Court while dealing with the appeal of Ravi S.Naik, has formulated the question whether as a result of the said group being constituted, there was a split in the MGP as contemplated by paragraph 3 of the Tenth Schedule and in paragraph 43

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of the decision, the Hon'ble Supreme Court has taken note of the fact that the findings rendered by the Speaker that the order passed by the Division bench were binding upon him and the said act cannot be termed as perverse or *mala fide*, has expressed view that they are unable to agree with the findings of the High Court and held that the action of the Speaker in ignoring the stay order passed by the High Court, while passing the order dated 15.02.1991, cannot be condoned on the view that in the absence of the decision of this Court it was open for the Speaker to proceed on his own interpretation of paragraphs 6 and 7 of the Tenth Schedule and ignore the stay order passed by the High Court.

75.6 Ultimately, the Hon'ble Supreme Court of India had allowed the appeal filed by Ravi S.Naik and thereby set aside the order passed by the Speaker disqualifying him as a Member of the Legislative Assembly.

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YEDDYURAPPA'S CASE

76 The judgment in ***Balachandar L. Jarikolhi v. B.S.Yeddyurappa [(2011) 7 SCC 1]***, is the sheet anchor case projected by the petitioners.

76.1 Facts of the said case would read among other things that Thiru B.S.Yeddyurappa, leader of the BJP Legislative party, had filed a petition under Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 against Tvl.M.P.Renukacharya and 12 others, claiming that they had incurred disqualification from the membership of the House under Tenth Schedule of the Constitution of India. On 06.10.2010, the above said MLAs, belonging to BJP had given identical letters to the Governor of the State of Karnataka stating among other things that they got disillusioned with the functioning of the Government headed by Thiru B.S.Yeddyurappa and were convinced that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution and that Thiru B.S.Yeddyurappa had forfeited the confidence of the people as the Chief Minister of the State of Karnataka. The Governor of Karnataka, based on the said letters, had addressed a letter to Thiru B.S.Yeddyurappa, Chief Minister of Karnataka indicating that a doubt had arisen about the majority support enjoyed by the Government in the Legislative Assembly and therefore, requested him to prove the majority on the Floor of the Assembly and on the same day, a petition for disqualification was filed. The concerned MLAs were

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informed about the petition for disqualification on 07.10.2010 and they were granted time till 5.00 p.m. on 10.10.2010 to submit their response, if any with a direction to appear in person and submit their objections orally or in writing to the Speaker, failing which it would be presumed that they had no explanation to offer and further action would thereafter be taken *ex parte*, in accordance with law.

76.2 The concerned MLAs had submitted their interim replies dated 09.10.2010 and took a stand that none of the documents seeking disqualification had been provided to them and they also requested to supply the said documents and reserved their right to give their reply. In the interim reply, the concerned MLAs also took a stand that time schedule for submitting response have not been adhered to and they have no intention to withdraw their support to BJP, but only on the Government headed by Thiru B.S.Yeddyurappa as the Chief Minister.

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76.3 The Speaker took up the disqualification application submitted by Thiru B.S.Yeddyurappa along with the response to the show cause notice and during the course of the hearing, one of the MLAs, namely Thiru Renukacharya had filed a petition indicating his intention

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to support the Government and also for withdrawal of any action proposed against him and reiterated his confidence in the Government headed by Thiru B.S.Yeddyurapa. One Thiru K.S.Easwarappa, State President of the BJP also filed an affidavit and it was also taken into consideration by the Speaker.

76.4 The Speaker had formulated the following issues for consideration:

(a) Whether the respondents are disqualified under Para 2(1)(a) of the Tenth Schedule to the Constitution of India, as alleged by the applicant?

(b) Is there a requirement to give seven days' time to the respondents as stated in their objection statement?

76.5 The Speaker had recorded a finding that MLAs having been elected from a political party and having consented to and supported the formation of a Government by the leader of the said party, had voluntarily given up their membership of the party by withdrawing their support to the Government in the form of letters to the Governor and they

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had gone from Karnataka to Goa and other places and had declared that they were a separate group and that they were together and that they had withdrawn their support to the Government. The Speaker also relied upon media reports and the affidavit of Mr.Easwarappa and taking into consideration the judgment in ***Seaford Court Estates Ltd. v. Asher [(1949) 2 KB 481]***, was of the view that in the event of a difference of opinion regarding leadership in a political party, the matter had to be discussed in the platform of the party and not by writing a letter to the Governor withdrawing support to the Government and therefore, liable for disqualification under Tenth Schedule. The Speaker, in order to arrive at the finding, has also placed reliance upon the judgments in ***Ravi S.Naik v. Union of India and Others [1994 Supp (2) SCC 641], Jagjit Singh v. State of Haryana [(2006) 11 SCC 1] and Rajendra Singh Rana v. Swami Prasad Maurya [(2007) 4 SCC 270].*** The Speaker ultimately concluded that the said MLAs, except two, had suffered disqualification and accordingly, passed the impugned order, which was put to challenge in writ petitions and the said writ petitions were listed before a Division Bench.

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76.6 The Hon'ble Chief Justice of High Court of Karnataka held that there had been substantive compliance as to the said Rules which had been held to be directory in nature and also observed that it would not be possible, merely on account of the violation of the procedure contemplated under the Rules, to set aside the order of the Speaker, unless the violation of the procedure was shown to have resulted in prejudice to the appellants/disqualified MLAs and rejected their claim. The learned Chief Justice, as to non-adherence of the principles of natural justice, relied upon ***Ravi S.Naik case (cited supra)*** and also upheld the reliance placed by the Speaker upon newspaper cuttings and ultimately reached the conclusion that the order of disqualification requires no interference.

76.7 The other learned Judge [Hon'ble Mr.Justice N.Kumar], in his separate verdict, among other things, held that the act of no confidence in the leader of the Legislative Party and if he happened to be the Chief Minister who is heading the Council of Ministers and had written to the Governor in that regard, such act by itself would not amount to an act of floor-crossing and the Governor can recommend the imposition of President's rule under Article 356 of the Constitution or

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call upon the leader of the opposition to form an alternative Government after the fall of the earlier Government and before embarking upon either of the two options, the Governor was expected to explore the possibility of formation of an alternative Government and the Speaker could call upon the leader who enjoyed the majority support of the Members of the House to form an alternative Government. Ultimately the learned Judge has reached the conclusion that the act of no confidence in the leader of the Legislative Party does not amount to his voluntarily giving up the membership of the political party and the act of expressing no confidence in the Government formed by the party, with a particular leader as the Chief Minister, would not also amount to a voluntary act of giving up the membership of the political party. It was also observed by the learned Judge that dissent is not defection and the Tenth Schedule while recognizing dissent prohibits defection and citing the said reasons, has quashed the order of disqualification. On account of difference of opinion between the Chief Justice and his companion Judge, the matter was referred to a third Judge, who formulated the following issue:

> *"Whether the impugned order dated 10.10.2010 passed by the Speaker of the Karnataka State Legislative Assembly is in consonance with the provisions of Para 2(1)(a) of the Tenth Schedule to the Constitution of India."*

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76.8 The third Judge has concurred with the decision rendered by the Hon'ble Chief Justice and therefore, the matter reached the portals of the Hon'ble Supreme Court. The Hon'ble Supreme Court, after hearing the arguments advanced by the respective learned counsel appearing for the parties and on perusal of the materials, framed the following questions in paragraph 113 of the said decision:

> *(a) Did the appellants voluntarily give up their membership of the Bharatiya Janata Party?*
>
> *(b) Since only three days' time was given to the appellant to reply to the show-cause notices, as against the period of 7 days or more, prescribed in Rule 7(3) of the Disqualification Rules, were the said notices vitiated?*
>
> *(c) Did the Speaker act in hot haste in disposing of the disqualification application filed by Shri B.S.Yeddyurappa introducing a whiff of bias as to the procedure adopted?*
>
> *(d) What is the scope of judicial review of an order passed by the Speaker under Para 2(1)(a) of the Tenth Schedule to the Constitution, having regard to the provisions of Article 212 thereof?*

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76.9 The Hon'ble Supreme Court has rendered its findings and it is relevant to extract the same:

> "122. Although, Mr Sorabjee was at pains to point out that the language used in the letter was similar to the language used in Article 356 of the Constitution, which, according to him, was an invitation to the Governor to take action in accordance with the said article, the same is not as explicit as Mr Sorabjee would have us believe. The "constitutional process", as hinted at in the said letter did not necessarily mean the constitutional process of proclamation of President's rule, but could also mean the process of removal of the Chief Minister through constitutional means. On account thereof, the Bharatiya Janata Party was not necessarily deprived of a further opportunity of forming a Government after a change in the leadership of the legislature party. In fact, the same is evident from the reply given by the appellants on 9-10-2010, in reply to the show-cause notices issued to them, in which they had re-emphasised their position that they not only continued to be members of the Bharatiya Janata Party, but would also support any Government formed by the Bharatiya Janata Party headed by any leader, other than Shri B.S. Yeddyurappa, as the Chief Minister of the State. The conclusion arrived at by the Speaker does not find support from the contents of the said letter of 6-10-2010, so as to empower the Speaker to take such a drastic step as to remove the appellants from the membership of the House.
>
> 123. The question which now arises is whether the Speaker was justified in concluding that by leaving Karnataka and going to Goa or to any other part of the country or by allegedly making statements regarding the withdrawal of support to the Government led by Shri Yeddyurappa and the formation of a new Government, the appellants had voluntarily given up their membership of BJP and were contemplating the formation of a Government excluding the Bharatiya Janata Party. The Speaker has proceeded on the basis that the allegations

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must be deemed to have been proved, even in the absence of any corroborative evidence, simply because the same had not been denied by the appellants.

124. The Speaker apparently did not take into consideration the rule of evidence that a person making an allegation has to prove the same with supporting evidence and the mere fact that the allegation was not denied, did not amount to the same having been proved on account of the silence of the person against whom such allegations are made. Except for the affidavit filed by Shri K.S. Eswarappa, State President of BJP, and the statements of two of the thirteen MLAs, who had been joined in the disqualification application, there is nothing on record in support of the allegations which had been made therein. Significantly, the said affidavits had not been served on the appellants. Since Shri K.S. Eswarappa was not a party to the proceedings, the Speaker should have caused service of copies of the same on the appellants to enable them to meet the allegations made therein.

125. In our view, not only did the Speaker's action amount to denial of the principles of natural justice to the appellants, but it also reveals a partisan trait in the Speaker's approach in disposing of the disqualification application filed by Shri B.S. Yeddyurappa. If the Speaker wished to rely on the statements of a third party which were adverse to the appellants' interests, it was obligatory on his part to have given the appellants an opportunity of questioning the deponent as to the veracity of the statements made in the affidavit. This conduct on the part of the Speaker is also indicative of the "hot haste" with which the Speaker disposed of the disqualification petition as complained of by the appellants.

137. It was in the appeal filed by Shri Bandekar and Shri Chopdekar that the issue of voluntary resignation from the membership of the Maharashtrawadi Gomantak Party fell for consideration of the High Court, while in *Ravi S. Naik case* [1994 Supp (2) SCC 641] the question was

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whether a valid split of the aforesaid party had been effected with Shri Naik forming a new party with seven other Members of the said party. The said question was answered in Shri Ravi Naik's favour and his appeal was allowed and the order of his disqualification from the House was set aside. The other appeal filed by Shri Bandekar and Shri Chopdekar was dismissed and their disqualification by the Speaker was upheld.

(Ravi S.Naik's Case)

138. In other words, the High Court approved the proposition that it was not necessary for a Member of the House to formally tender his resignation from the party but that the same should be inferred from his conduct. It was held that a person may voluntarily give up his/her membership of a political party, even though he/she had not tendered his/her resignation from the membership of that party. However, the Division Bench of the High Court approved the said proposition in the facts and circumstances of that case, where, after the Government was initially formed, there was an exodus from the principal party resulting in the formation of a new party which stood protected under Para 4 of the Tenth Schedule to the Constitution.

151. As mentioned hereinbefore, the disqualification application filed by Shri Yeddyurappa contained only bald allegations, which were not corroborated by any direct evidence. The application did not even mention the provision under which the same had been made. By allowing Shri K.S. Eswarappa, who was not even a party to the proceedings, and Shri M.P. Renukacharya and Shri Narasimha Nayak to file their respective affidavits, the shortcomings in the disqualification application were allowed to be made up. The Speaker, however, relied on the same to ultimately declare that the appellants stood disqualified from the membership of the House, without even serving copies of the same on the appellants, but on their learned advocates, just before the hearing was to be conducted. If one were to take a realistic view of the

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matter, it was next to impossible to deal with the allegations at such short notice. In the circumstances, we cannot but hold that the conduct of the proceedings by the Speaker and the decision given by the Speaker on the basis thereof did not meet even the parameters laid down in *Jagjit Singh case* [(2006) 11 SCC 1] .

152**.** We cannot also lose sight of the fact that although the same allegations, as were made against the appellants by Shri Yeddyurappa, were also made against Shri M.P. Renukacharya and Shri Narasimha Nayak, their retraction was accepted by the Speaker, despite the view expressed by him that upon submitting the letter withdrawing support to the BJP Government led by Shri Yeddyurappa, all the MLAs stood immediately disqualified under Para 2(1)(*a*) of the Tenth Schedule to the Constitution, and they were, accordingly, permitted to participate in the confidence vote for reasons which are not required to be spelt out.

154. Having considered all the different aspects of the matter and having examined the various questions which have been raised, we are constrained to hold that the proceedings conducted by the Speaker on the disqualification application filed by Shri B.S. Yeddyurappa do not meet the twin tests of natural justice and fair play. The Speaker, in our view, proceeded in the matter as if he was required to meet the deadline set by the Governor, irrespective of whether, in the process, he was ignoring the constitutional norms set out in the Tenth Schedule to the Constitution and the Disqualification Rules, 1986, and in contravention of the basic principles that go hand in hand with the concept of a fair hearing."

Ultimately, the Hon'ble Supreme Court allowed the appeals and thereby set aside the order of the Speaker and disqualified the said MLAs.

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77 The main thrust of arguments advanced by the learned Senior Counsel appearing for the parties are based upon the above cited three decisions and other decisions were also cited regarding principles of natural justice, malice in law and malice in fact and perversity in findings.

78 It is to be remembered at this juncture that in the light of the ratio laid down in ***Kihoto Hollohan's case***, the order of the Speaker can be subject to judicial review under Articles 226 and 227 of the Extraordinary Jurisdiction of the High Court and Plenary Jurisdiction of the Hon'ble Supreme Court under Article 136 of the Constitution of India. The scope of judicial review under the said Articles would be confined to jurisdictional errors only i.e., **infirmities based on Violation of Constitutional Mandate, Mala fides, Non-Compliance to the Rules of Natural Justice and Perversity.**

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79 This Court, keeping in mind the said ratio, has to find out whether the impugned order of the first respondent/Speaker in disqualifying the petitioners suffers on account of the above cited jurisdictional errors.

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80 In the writ petitions, written arguments were also filed on behalf of both parties and the petitioners challenge the impugned order passed by the first respondent/Speaker on the following grounds:

(A) Violation of Principles of Natural Justice;

(B) Perversity, Malafides/ Bias/Partisan Attitude, Abuse of Power; and

(C) Merits.

81 Therefore, this Court has to test the impugned order independently only on limited grounds pointed out and ultimately is to concur with either of the verdicts.

82 The Hon'ble Chief Justice has concluded that the view taken by the first respondent/Speaker on the petition for disqualification submitted by the second respondent/Whip is a possible, if not, plausible view and unable to held that the said decision is unreasonable, irrational or perverse and it does not warrant interference under Article 226 of the Constitution of India and therefore, dismissed the writ petitions.

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83 The Hon'ble Mr.Justice M.Sundar has concluded that the impugned order of the first respondent/Speaker has been tested in the light of the principles laid down in ***Kihoto Hollohan's case*** (cited supra) and therefore, the impugned order warrants interference and accordingly, has set aside the impugned order insofar as the 18 writ petitioners are concerned and allowed all the writ petitions.

84 As already pointed out, in the light of conflicting opinion/verdicts, these writ petitions have been placed before this Bench.

85 Law as to interference on the order passed by the Speaker in exercise of powers under Tenth Schedule has been settled long back. As observed in paragraph 109 of the ***Kihoto Hollohan's case***, the scope of judicial review under Articles 136, 226 and 227 of the Constitution of India in respect of the order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only i..e, infirmities based on Breach of Constitutional Mandate, Mala fides, Non-Compliance of the Principles of Natural Justice and Perversity. Therefore, this Court has to test the impugned order passed by the first respondent in the light of the above cited principles.

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86 It is not in dispute that the petitioners were elected as Members of Legislative Assembly under “Two Leaves” Symbol of the “AIADMK” Party. Miss J.Jayalalitha, former Chief Minister died on 05.12.2016 and on 06.12.2016, Thiru O.Panneerselvam sworn in as the Chief Minister and he tendered his resignation on 06.02.2017 and thereafter, Thiru Edapadi K.Palanisamy sworn in as the Chief Minister on 16.02.2017. In the Floor Test held on 18.02.2017, he proved his majority and the petitioners herein had also voted in favour of Thiru E.Palanisamy in the Floor Test.

87 Tvl. E.Madhusudhanan, then Presidium Chairman of “AIADMK” and two others had filed an application under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, before the ECI, challenging the alleged nomination of Tmt.V.K.Sasikala as General Secretary of “AIADMK” party on the ground that General Council of the said party had no power to make such nomination and also she did not fulfill the qualification prescribed for holding the post of General Secretary on the ground that she did not have the mandatory five years continuous membership of the party and they also sought for allotment of “Two Leaves” Symbol to their group and it is also their

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claim that the entire rank and file of "AIADMK" party was supporting them.

88 ECI, taking note of the fact that By-Election to fill up the vacancy in Dr.Radhakrishnan Nagar Assembly Constituency in Chennai has already been notified on the date of filing the petition under Symbols Order, sent a copy of the said dispute/application submitted by Tvl.E.Madhusudhanan and two others to the respondents, namely Tmt.V.K.Sasikala and another, calling upon them to submit their response by 20.03.2017 and both groups had submitted voluminous documents in support of their claim.

89 ECI has taken into consideration the urgency involved, especially on account of prescription of last date for filing of nomination to the election of MLA in respect of Dr.Radhakrishnan Nagar Assembly Constituency and has also considered the materials and pending final determination of the dispute raised by the petitioners, had passed the interim order dated 22.03.2017, which has been extracted above in paragraph 29. The result and purport of the said interim order is that neither of the groups shall be permitted to use the name of the party viz.,

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"AIADMK" simplicitor and both the groups were also directed not to use the "Two Leaves" symbol reserved for "AIADMK" party and both the groups were granted liberty to choose for their respective groups, showing, if they so desire, linkage with their parent party "AIADMK" and that they were also allotted different symbols as they may choose from the list of free symbols notified by the Election Commission.

90 It is also alleged that in the Floor Test held on 18.02.2017, Thiru.O.Panneerselvam and 11 others had voted against Thiru.E.Palanisamy, in violation of the Whip issued by the second respondent. Four of the writ petitioners had also filed petitions before the first respondent/Speaker seeking disqualification of Thiru O.Pannerselvam and 11 others under Paragraph 2(1)(b) of the Tenth Schedule, as they voted against Thiru.E.Palanisamy, in violation of the party Whip. Subsequently, difference of opinion between Thiru E.Palanisamy group and Thiru O.Panneerselvam group had resolved amicably and on 21.08.2017, Thiru O.Panneerselvam was sworn in as the Deputy Chief Minister and Thiru K.Pandiarajan was sworn in as a Minister.

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91 Thiru T.T.V.Dinakaran, representing "AIADMK (Amma)" group, in his capacity as Deputy General Secretary of the said group, addressed a letter dated 21.08.2017 to all the MLAs of "AIADMK (Amma)" group stating among other things that as per the instructions of the General Secretary Tmt.V.K.Sasikala in the month of February 2017, MLAs of AIADMK party supported Thiru E.Palanisamy, vide memorandum submitted to the Governor of Tamil Nadu and also cast their votes in the Floor test, but subsequently, the attitude of Thiru.E.Palanisamy, as the Chief Minister, is totally against the policy of the party and also joined with Thiru.O.Panneerselvam and his group, who has brought disrepute to the party from February, 2017 and despite the fact that Thiru O.Panneerselvam has been expelled from the party and neither the General Secretary nor the Deputy General Secretary had taken back the said group. It is further alleged in the letter that the Government headed by Thiru.E.Palanisamy is facing lot of allegations of corruption from all corners of the State and it is also totally against the vision of the party supremo, namely Miss J.Jayalalitha and majority of the MLAs of "AIADMK (Amma)" party had also expressed displeasure against the functioning of the Chief Minister. Therefore, a request has been made to the MLAs of "AIADMK (Amma)" party to meet the Governor of Tamil

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Nadu and to withdraw the earlier support given to the Chief Minister Thiru E.Palanisamy, which will ensure that fresh Chief Minister will be selected from the party in the interest of public and complete the legislative tenure.

92 Accordingly, petitioners herein and Thiru S.T.K.Jakkaiyan met the Governor of Tamil Nadu and submitted individual representation dated 22.08.2017 stating among other things that they got disillusioned with the functioning of the Government headed by Thiru E.Palanisamy, as there have been abuse of power, favouritism, misuse of Government machinery, widespread corruption and for the past four months, allegations of corruption against Thiru E.Palanisamy is levelled from various sectors vehemently and the said act had also caused severe damage to the name of the party. It is further stated that the situation has arisen that governance of the State cannot be carried on in accordance with the provisions of the Constitution and Thiru E.Palanisamy, as the Chief Minister, had forfeited the confidence of the people. Therefore, the petitioners expressed their lack of confidence on Thiru E.Palanisamy and as such, they withdraw their earlier support given to him and also specifically indicated that they have not given up their membership of

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"AIADMK" and they are only doing their duty as a conscious citizen to expose the abuse and misuse of the Constitutional provision and accordingly, requested the Governor to intervene and institute the Constitutional process as the Constitutional Head of the State.

93 The second respondent/Chief Government Whip of AIADMK Legislative Party, becoming aware of the said representations through media reports, submitted a petition dated 24.08.2017 under Tenth Schedule of the Constitution of India read with the Disqualification Rules, 1986, to the first respondent/Speaker praying for disqualification of their membership of the Legislative Assembly with immediate effect. The contents of the said petition would read among other things that the allegations in the representation given to the Governor were not only false and absurd, but were also not substantiated by any proof whatsoever and a person, being a member of the "AIADMK" Party, shall abide by Rule 5 of the Rules and Regulations of the "AIADMK" Party. It is further stated that though the said MLAs claim that they have not given up their membership, in fact by their acts, they had voluntarily surrendered their membership and have embraced a totally different ideology from that of "AIADMK" party and by their very conduct, they

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have dissociated themselves from the party and thereby voluntarily surrendered their membership of “AIADMK” party.

94 The said MLAs also failed to avail the “Internal Dispute Redressal Mechanism” and approached the Governor of Tamil Nadu to take action on an intra party matter and attempts made by them in the form of submission of representations will amount to voluntarily surrendering of membership and they do no want to identify themselves with the party and as such, they became ineligible to continue as legislators of “AIADMK” party as per Tenth Schedule of the Constitution of India. The second respondent/Whip, along with the said petition dated 24.08.2017, had also enclosed copy of the letters/representations submitted by the writ petitioners and Thiru S.T.K.Jakkaiyan to the Governor dated 22.08.2017, compact disc containing media reports as well as newspaper articles dated 23.08.2017. The first respondent/Speaker, upon receipt of the said petition from the second respondent through the fourth respondent, sent individual notices dated 24.08.2017, furnishing copy of the petition dated 24.08.2017 with annexures received from the second respondent/Whip and drawn their attention to Rule 7(3) of the Disqualification Rules, 1986 with a request

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to furnish their comments to the first respondent, within 7 days from the date of receipt of the letter.

95 The petitioners, in response to the said notice, submitted their interim reply/comments through the ninth respondent, namely Thiru P.Vetrivel/ petitioner in W.P.No.25260 of 2017 dated 30.08.2017 and it is his specific stand that they are only against the style of functioning and rather corrupt and illegal activities of the present Chief Minister and they have not concluded/resigned from the membership of the political party, namely "AIADMK". It is further indicated that the covert intention behind the present proceedings is to increase majority in the Legislative Assembly by reducing the number of members through disqualification and as such, the proceedings relating to disqualification is vitiated by *mala fides*, bias, procedural irregularities and want of jurisdiction. They also took a stand in the interim reply that reliance has been placed upon compact disc and media articles and unless the requirement of Section 65-B of the Indian Evidence Act has been complied with, the said materials cannot be relied upon by the first respondent. Attention of the first respondent was also drawn to Dispute Case No.2 of 2017, pending before ECI under Paragraph 15 of the Symbols Order and despite the

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interim order dated 22.03.2017 passed by ECI restraining both the groups from using the party name as well as "Two Leaves" symbol, the second respondent has used the same for several times.

96 The petitioners would also contend that their right of expression of dissent is protected under Article 19(1)(a) of the Constitution of India and reiterated that they have never given up their membership of "AIADMK" Party and they have approached the Governor of Tamil Nadu only after his efforts to address his party regarding his grievances with the Chief Minister's conduct ended in failure and addressing the Governor regarding a matter of public interest regarding the conduct of a Chief Minister cannot be termed as voluntarily opting out of the party and therefore, prayed for deferment of the proceedings with a request to issue summons to the second respondent/Whip to attend the hearing for the purpose of cross examination and examination of witness on their behalf with a final request to dismiss the petition for disqualification as not maintainable on the ground of want of jurisdiction of the first respondent. Along with the interim reply dated 30.08.2017, three documents were also enclosed.

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97 The first respondent, after taking note of the interim reply of the petitioner in W.P.No.25260 of 2017 dated 30.08.2017, had sent a communication dated 31.08.2017, granting extension of time till 05.09.2017 for submission of final comments and also informed him that hearing will be conducted between 3.00 p.m. and 4.00 p.m. on 07.09.2017 and he can submit his final comments before 05.00 p.m. on 05.09.2017. It has been further stated in the said communication that if no response is forthcoming, it would be presumed that he has nothing to offer and decision will be taken based on available records.

98 The first respondent has forwarded a copy of the representation of the petitioners dated 22.08.2017 submitted to the Governor, to the third respondent/Chief Minister for his comments and the third respondent submitted his comments dated 30.08.2017 to the first respondent pointing out that in the Floor Test held on 18.02.2017, the writ petitioners and Thiru S.T.K.Jakkaiyan supported him and they unilaterally submitted representations to the Governor and it is nothing but *mala fide* attempt to achieve the ulterior motive of disrupting the Government and the party *perse*. The third respondent has also pointed out that if the petitioners really had an issue with him, they would have

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approached the Legislative Party or the office of the first respondent and would not have approached the Governor with a request to institute the Constitutional process and their acts would amount to conspiring to work against the party interest and it also amounts to voluntarily giving up their membership of the party, though they may claim otherwise. It was also pointed out by the third respondent that the petitioners and another, who are hiding themselves from public at large except for their fleeting appearances before media, have not attended the legislative party meetings after their meeting with the Governor and their absence would only show that they are acting against the party itself and requested the first respondent to take note of his comments and pass appropriate orders on the petition for disqualification submitted by the second respondent.

99 The fourth respondent has forwarded the comments of the third respondent dated 30.08.2017 to the petitioner in W.P.No.25260 of 2017, namely Thiru P.Vetrivel and invited his comments and in response to the same, the ninth respondent in the disqualification petition/petitioner in W.P.No.25260 of 2017 has submitted his second reply/comments dated 05.09.2017. In the said comments/reply, it was pointed out that between 14.06.2017 and 19.07.2017, he and other MLAs

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have met the third respondent, but he had attempted to pacify them by dragging the matter and assured to allocate time shortly, but it did not materialize and he can substantiate the same by cross examining the third respondent/Chief Minister. In the said comments, additional prayers were also made requesting the first respondent to furnish copy of the letter sent to the third respondent from the fourth respondent, direction to the third respondent to furnish copy of the invitations extended to the petitioners to attend the Legislature Party meeting held on 22.08.2017, 15 days time to submit his final reply on furnishing the above documents and to hold an enquiry before the Committee under Rule 7(5) of the Disqualification Rules.

100 On 05.09.2017, the petitioners had submitted a common petition to the first respondent praying for furnishing of documents as required by them and to grant 15 days time to submit their final reply and thereafter to fix the date and time for personal hearing and further prayed for deferment of the personal hearing from 07.09.2017 to some other date. On 07.09.2017, the fourth respondent has sent a communication as to conducting of enquiry and in response to the same, the ninth respondent, namely Thiru P.Vetrivel/petitioner in W.P.No.25260 of 2017

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has submitted that as stated in his earlier interim reply dated 30.08.2017, only as per the majority view, he approached the Governor of Tamil Nadu and submitted representations dated 22.08.2017 and also as per the instructions of their party's Deputy General Secretary Thiru T.T.V.Dinakaran's lettter dated 21.08.2017, which is enclosed as Annexure VII. It was also pointed out in the said reply that his request made for furnishing of documents as well as time sought for submitting final reply after receipt of the copies of documents have not at all been considered and therefore, prayed for reiterating their request for furnishing of documents sought for in his interim reply dated 05.09.2017 as well as his Counsel's petition dated 05.09.2017 and also sought 15 days time from the date of receipt of copies of documents to him, enabling him to file his final reply and to fix the date of personal hearing after filing of his final reply and further sought to adjourn the personal hearing from 14.09.2017 to some other date on account of the above said bonafide reasons.

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101 The first respondent has fixed the date of hearing on 14.09.2017 and on that day, Thiru P.Vetrivel/ninth respondent/petitioner in W.P.No.25260 of 2017 appeared along with his Counsel and submitted

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a common petition on his behalf and on behalf of other MLAs except Thiru S.T.K.Jakkaiyan, pointing out their earlier representation and reiterated the prayer to furnish the documents required by them, permission to cross examine the second respondent/Whip, to examine witnesses on their behalf and to cross-examine the third respondent/Chief Minister, to refer the matter to the committee and to provide adequate police protection to the respondents through Karnataka Police to attend the personal enquiry from Kudagu of Karnataka with to and fro police protection on any date, with 5 days prior intimation. The grievance expressed by the petitioners is that on 14.09.2017, the first respondent did not indicate that he is going to pass orders on merits, however he did pass the order on 18.09.2017 (impugned herein) and on the next day through media reports, the petitioners became aware of the impugned order of disqualification.

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102 In the impugned order dated 18.09.2017, the first respondent, after culling out the contents of the petition for disqualification submitted by the second respondent/Whip dated 24.08.2017 as well as the interim replies/comments submitted by Thiru P.Vetrivel and other MLAs, had observed in paragraph 12 that "after

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despatch of the notice dated 07.09.2017, one of the 19 respondents, namely Thiru S.T.K.Jakkaiyan, met him in his office and handed over a letter wherein he has stated that he was pressurized to submit the representation dated 22.08.2017 to the Governor and having realized that the same was a mistake, had withdrawn the same and he had also revoked the Vakalat given to his Advocate and also withdrawn the reply statements submitted by him on 30.08.2017 and 05.09.2017". The first respondent has also noted in the impugned order that on the date of hearing on 14.09.2017, Thiru S.T.K.Jakkaiyan and Thiru P.Vetrivel appeared before him and it was represented by Thiru P.Vetrivel that other MLAs would be coming around by 12.30 p.m. and accordingly, the first respondent deferred the personal hearing for the petitioners to be present, however Thiru P.Vetrivel alone appeared along with his Advocate at 1.15 p.m. and the learned Advocate had filed a memo withdrawing the vakalat filed by him for Thiru S.T.K.Jakkaiyan. The first respondent/Speaker has also taken note of the reply/comments submitted by the writ petitioners and after taking note of the contents of the same, in paragraph 18 of the impugned order, had deduced the admitted facts from the pleadings.

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103 In paragraph 20 of the impugned order, the first respondent had formulated the following preliminary questions:

> (1) Whether I would have jurisdiction to determine the petition for disqualification on the ground of defection as conferred upon him as Speaker of the Tamil Nadu Legislative Assembly, under Tenth Schedule to the Constitution.
>
> (2) Whether I have acted with malice or bias and therefore, am disqualified to try the petition?
>
> (3) Whether the petitioner was entitled to prefer the petition in this regard?
>
> (4) Whether sufficient time has been given to the Respondents to put forward their case?
>
> (5) Whether an opportunity to cross-examine the petitioner is to be given to the respondents and should any further documents be given to them?

104 The first respondent/Speaker, after extracting Article 212 of the Constitution of India and also legal positions, expressed his opinion at paragraph 23 of the impugned order that the proceedings before him need not be in strict compliance of Section 65-B of the Evidence Act, Civil Rules of Practice and Code of Civil Procedure and he shall ensure compliance of the rules of natural justice and fair play.

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105 The first respondent/Speaker took up the preliminary issue as to whether he is having jurisdiction to determine the petition for disqualification submitted by the second respondent/Whip and after taking note of the rules framed under Paragraph 8 of the Tenth Schedule and also Full Bench judgment of the Punjab and Haryana High Court in ***Prakash Singh Badal v. Union of India & Others [AIR 1987 Punjab & Haryana 263]*** concluded that he is having jurisdiction to entertain the petition for disqualification.

106 As regards the second issue as to whether he has acted with malice or bias and therefore, became disqualified to try the petition for disqualification, the first respondent/Speaker concluded that the Disqualification Rules, 1986 do not permit or require the issue relating to disqualification to be sent to the Committee and the allegation of bias is unsubstantiated with a view to discredit him and prevent him from hearing the said petition and the allegations are also unsubstantiated. The first respondent/Speaker had also noted that he have been in public life since 1972 and have been a Member of Legislative Assembly from 1977 on various occasions and upon perusal of the records, found that on earlier occasions in which proceedings under Tenth Schedule were

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conducted by the Speaker and the only issue is he has to call upon and decide as to whether the writ petitioners had suffered disqualification under Paragraph 2(1)(a) of the Tenth Schedule. The first respondent/Speaker has also referred to Rule 6(2) of the Disqualification Rules and found that the second respondent is competent to file a petition seeking disqualification.

107 On the fourth issue i.e., whether sufficient time has been granted to the respondents/writ petitioners to put forward their case, the first respondent/Speaker observed that he has granted enough/sufficient opportunity to enable them to submit their response and however, they have been raising irrelevant technical plea one after another, which cannot go on for ever. The first respondent/Speaker had noted in paragraph 33 of the impugned order that while conducting proceedings under Tenth Schedule, he is guided by the principles of natural justice, reasonableness and fair play and he has also granted 7 days time to submit further comments and permitted them to be represented by a Lawyer.

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108 The first respondent/Speaker has also extracted paragraph 15 of the Apex Court decision in ***Mahachandra Prasad Singh (Dr.) v. Chairman Bihar Legislative Council [2004 (8) SCC 747]*** and also paragraphs 13 and 14 of the decision in ***Jagjit Singh v. State of Haryana & Ors. [(2006) 11 SCC 1]*** and concluded that he has offered reasonable and sufficient opportunity to the respondents/writ petitioners to put forward their case.

109 As regards the fifth issue i.e., whether an opportunity to cross examine the petitioner/second respondent herein/Whip is to be given to the respondents/writ petitioners herein and should any further documents be furnished to them, the first respondent/Speaker in paragraph 38 of the impugned order has concluded that since the proceedings under Tenth Schedule is not a strict proceeding under Code of Civil Procedure or Criminal Procedure Code and that the proceedings can be based on documents and records, none of which have been restricted to the personal knowledge of the petitioner/Whip or the third respondent/Chief Minister and there is no need to give opportunity for cross examination of either of them and therefore, examination of the witnesses would not be necessary. The first respondent further observed

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that all that is required is consideration as to whether the available datas would show whether or not the writ petitioners/respondents have voluntarily given up their membership of the party and therefore, opined that the prayer sought for by the writ petitioners/respondents in the petition for disqualification seeking for documents and cross examination have to be dismissed.

110 The first respondent in paragraph 39 of the impugned order has also noted that except Thiru P.Vetrivel and Thiru S.T.K.Jakkaiyan, none of the other MLAs had attended the personal hearing on 14.09.2017 and however, on behalf of others, their Advocates had appeared and insofar as the letter requesting the third respondent/Chief Minister to offer his comments, the said document is an internal office record and therefore, there is no obligation to furnish the same and pointed out that the copy of the response dated 30.08.2017 submitted by the third respondent have been furnished to the petitioners.

111 The first respondent/Speaker has also rejected the request made by the writ petitioners in one of the representations/replies for giving them adequate police protection to come from Kudagu from

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Karnataka, from where they were staying to Chennai to attend the hearing on the ground that his power begins and ends within the State of Tamil Nadu and the question of giving police protection would arise only if the respondents/writ petitioners are keen on appearing in person before him.

112 The first respondent, in paragraph 42 of the impugned order, had dealt with the issue relating to lack of opportunity/non-granting of time to the writ petitioners and observed that opportunities have been provided to them to be present on 07.09.2017 and on 14.09.2017 and except two respondents, namely Thiru P.Vetrivel and Thiru S.T.K.Jakkaiyan, none of them were personally present and however, they were represented by their Counsel. It was also noted by the first respondent that despite the fact that in the communication dated 07.09.2017, the first respondent/Speaker had very specifically informed that in the event they did not choose to appear, the available records and pleadings would be taken into consideration and appropriate orders would be passed if they did not appear, though they were available at Chennai and having found that despite affording two opportunities, they did not appear, finds no reason to grant them further time and therefore,

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proceeded to dispose of the petition for disqualification based on the reply statements and elaborate submissions made on their behalf.

113 The first respondent/Speaker has formulated the main question/issue, viz., ***“Whether the respondents have committed acts that would attract disqualification as to the Members of the Legislative Assembly for having voluntarily given up the membership of their party?”*** The first respondent/Speaker, in paragraphs 45 and 46 of the impugned order, has dealt with the technical objections and observed that he has to proceed on the basis of the representation dated 22.08.2017 submitted by them to the Governor of Tamil Nadu and that during the personal hearing, the 17th respondent, namely Thiru S.T.K.Jakkaiyan had admitted as to submission of the said representation and further held that repeated claim for cross examination is also not warranted.

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114 The first respondent/Speaker, in paragraph 47 of the impugned order, has taken note of the submission made by the respondents therein that their case/act is fully covered by the decision of the Hon'ble Supreme Court of India in ***Yeddyurappa's case*** (cited supra) and the decision in ***Rajendra Singh Rana v. Swami Prasad Maurya***

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[(2007) 4 SCC 270] as to the object of the Tenth Schedule.

115 The first respondent/Speaker, in paragraph 51 of the impugned order, has dealt with the letter dated 21.08.2017 issued by T.T.V.Dinakaran, Deputy General Secretary of "AIADMK (Amma)" Party wherein he has instructed his MLAs to move the Governor of Tamil Nadu and withdraw their support given to Thiru E.Palanisamy, as the same would ensure a fresh Chief Minister be selected from the party in order to run the Government in the interest of public and complete the legislative tenure. The first respondent/Speaker has taken note of the fact that the said letter of Thiru T.T.V.Dinakaran was produced by him for the first time along with the reply dated 14.09.2017 and also taken into consideration the comments/replies dated 30.08.2017 submitted by the third respondent and he has observed that the interview given by the first respondent is a part of public record and having made such statements in public, the respondent should deny the said facts and in any event, their opposition for the continuance of Thiru E.Palanisamy/third respondent herein was more on the question of corruption, favouritism and abuse of power.

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116 Insofar as availment/non-availment of “Internal Dispute Redressal Mechanism” is concerned, the first respondent, in paragraph 54 of the impugned order, recorded the finding that their claim that they approached the third respondent on 14.06.2017 and 19.07.2017 to resolve the dispute is contrary to their own claim in their pleadings and as a Member of the Legislative Assembly of “AIADMK” party, they are having right to call for a meeting of the Legislative Party and as such, their claim/assertion that their efforts to meet the third respondent/Chief Minister had ended in failure/vain, cannot be believed and the only conclusion that can be reached is that they had not identified themselves with the “AIADMK” Party.

117 The first respondent has also considered an incidental question as to whether lack of confidence on the third respondent/Chief Minister and requesting to His Excellency, The Governor of Tamil Nadu for setting the Constitutional process in motion, would amount to voluntarily giving up of their membership of AIADMK party impliedly or expressly and proceeded to adjudicate the said issue and on such process, taken note of paragraph 11 of the decision of the Hon'ble Supreme Court in ***Ravi S.Naik's case*** (cited supra) and also the contents

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of the written comments. In paragraph 58 of the impugned order, the first respondent has recorded a finding that the Legislative Party, which elected the third respondent as the leader, have not chosen to replace him and hence, there is no necessity on the part of the respondents/writ petitioners to set in motion the Constitutional process and it is crystal clear from the reply that they have not withdrawn the said representation.

118 In paragraph 59 of the impugned order, the first respondent/Speaker has taken note of the fact that the leader of the opposition party, namely Thiru M.K.Stalin of "DMK" party had met the Governor of Tamil Nadu and sought for conducting a Flor Test on the ground that 19 MLAs had withdrawn their support to the Chief Minister. The first respondent has recorded a finding that he cannot view this as an isolated act or an unconnected incident and it is quite evident that the respondents/writ petitioners had deviated from their loyalty to their party and have voluntarily taken the side of the opposition party and it is clear from the sequence of events that the respondents/writ petitioners are acting in concert with the leader of the opposition party.

119 The first respondent/Speaker, in the following paragraphs,

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has recorded his further findings:

119.1 The respondents/writ petitioners have chosen to keep themselves away from the party and have distanced themselves from the decisions of the party and as such, it is not open to them to claim that they are acting as per majority view of the political party (Paragraph 60)

119.2 In the light of the categorical submissions, clear conduct of the respondents, facts and circumstances of the case and from the material on record, he has no hesitation in coming to the conclusion that inference can be drawn that the respondents/writ petitioners had voluntarily given up their membership of the political party, namely "AIADMK" and nowhere they have expressed lack of confidence on the Chief Minister was a decision of the political party and their conduct in submitting representation to the Governor was the result of the same and no material has also been produced to justify their meeting with the Governor of Tamil Nadu and their act is unilateral and would amount to voluntarily giving up of the membership of the political party, "AIADMK", to which they belong (Paragraph 61).

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119.3 The first respondent/Speaker has also dealt with the impact of the interim order dated 22.03.2017 passed by ECI in Dispute Case No.2 of 2017 under Paragraph 15 of the Symbols Order and observed that the petition for disqualification filed before him is on the ground of defection and also taken note of the admission that when the Floor Test was held on 18.02.2017, they had voted in favour of the third respondent and in the light of Tenth Schedule, he is required to determine whether the representation submitted to the Governor of Tamil Nadu would amount to voluntarily giving up their member and has decided the same accordingly. (Paragraph 62)

119.4 The first respondent/Speaker has also taken note of the stand of the respondents/writ petitioners that their claim is akin and also fully supported by ***Yeddyurappa's case*** and observed that they have given him a feeling that they had first read the said judgment and thereafter, drafted the representations dated 22.08.2017 and submitted the same and found that the said judgment is distinguishable on facts for the reason that in the case on hand, he has given reasonable and adequate opportunities to them to put forward their case and in their three reply statements, they took a stand of lack of opportunity. The first respondent/Speaker has

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also taken note of the earlier observation that they have not only identified themselves with an ideology different from that of their original party, but have also aligned themselves with the opposition party and as such, the said decision is of no help. (Paragraph 63)

119.5 The first respondent/Speaker has also taken note of the fact that the respondents/writ petitioners have not been seen in public since 22.08.2017, after their meeting with the Hon'ble Governor and they are presently staying at Kudagu, Karnataka (even as per their own admission), which would clearly indicate that they had distanced themselves from the party and have fallen to the control of persons outside their party and further taken note of the act of the ninth respondent/petitioner in W.P.No.25260 of 2017 in approaching this Court against the holding of the General Council Meeting and the same would go to show that the respondents/writ petitioners are making efforts to align themselves with a party other than the party from which they were elected. (Paragraph 64)

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120 In paragraph 65 of the impugned order, the first respondent has reached the conclusion that the respondents 1 to 16, 18 and 19/writ petitioners had voluntarily given up their membership and therefore, disqualified them as Members of the House in terms of Paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India read with Rule 8(1)(b) of the Disqualification Rules, 1986.

121 The first respondent/Speaker has separately dealt with the retraction of the 17th respondent, namely Thiru S.T.K.Jakkaiyan and in paragraph 69 of the impugned order, observed that he do not want to get into the allegations made by him in his initial reply statements filed before him and based on the submissions made by the 17th respondent during the personal hearing and also considering the fact that he has given letters explaining the circumstances for his change of decision and of the opinion that the initial circumstances that had prevailed for the issuance of the complaint does not exist now.

122 In paragraph 70 of the impugned order, the first respondent/Speaker concluded that the allegations pertain to Thiru S.T.K.Jakkaiyan are not subsisting and as such, no further action needs to

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be initiated against him and therefore, dismissed the petition for disqualification as against him.

123 The first respondent/Speaker, in the light of the order disqualifying the writ petitioners, had declared that the seats held by them in the Tamil Nadu Legislative Assembly had fallen vacant as per Article 190(3)(a) of the Constitution of India. It is to be noted that on entertainment of these writ petitions, an interim order came to be passed on 20.09.2017 not to conduct elections in respect of the said constituencies and the same is subsisting.

124 The Hon'ble Supreme Court in ***Kihoto Hollohan case (cited supra)*** while dealing with Contention-G, in paragraphs 115, 118 and 119 observed as follows:

> *"115. The question is, whether the investiture of the determinative jurisdiction in the Speaker would by itself stand vitiated as denying the idea of an independent adjudicatory authority. We are afraid the criticism that the provision incurs the vice of unconstitutionality ignores the high status and importance of the office of the Speaker in a Parliamentary democracy. The office of the Speaker is held in the highest respect and esteem in Parliamentary traditions. The evolution of the institution of Parliamentary democracy has as its pivot the institution of the Speaker. 'The Speaker holds a high, important and ceremonial office. All questions of the well being of the House are*

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matters of Speaker's concern.' The Speaker is said to be the very embodiment of propriety and impartiality. He performs wide ranging functions including the performance of important functions of a judicial character.

118. It would, indeed, be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. The robes of the Speaker do change and elevate the man inside.

119. Accordingly, the contention that the vesting of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such constitutional functionaries should not be considered exceptionable."

125 In ***Jagjit Singh v. State of Haryana and Others [(2006) 11 SCC 1]*** the Hon'ble Supreme Court has considered the issue pertaining to decision of the Speaker to disqualify a Member for defection and in paragraph 84 of the decision observed as under:

"84. Before parting, another aspect urged before us deserves to be considered. However, at the outset, we do wish to state that the Speaker enjoys a very high status and position of great respect and esteem in the parliamentary traditions. He, being the very embodiment of propriety and impartiality, has been assigned the function to decide

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whether a Member has incurred disqualification or not. In *Kihoto Hollohan judgment* [1992 Supp (2) SCC 651] various great Parliamentarians have been noticed pointing out the confidence in the impartiality of the Speaker and he being above all parties or political considerations. The high office of the Speaker has been considered as one of the grounds for upholding the constitutional validity of the Tenth Schedule in *Kihoto Hollohan case* [1992 Supp (2) SCC 651] ."

126 It is not in dispute that the Speaker is the sole and ultimate authority to decide the issue pertaining to disqualification of a Member under Tenth Schedule of the Constitution of India.

127 In exercise of powers conferred under paragraph 8 of the Tenth Schedule to the Constitution of India, the Tamil Nadu Legislative Assembly framed, "The Members of the Tamil Nadu Legislative Assembly (Disqualification On Ground Of Defection) Rules, 1986" and it is relevant to extract Rules 6 to 8 of the said Rules:

"**6. References to be by petitions.**--(1) No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this rule.

(2) A petition in relation to a member may be made in writing to the Speaker by any other member:

Provided that a petition in relation to the Speaker shall be addressed to the Secretary.

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(3) The Secretary shall,--
(a) as soon as may be after the receipt of a petition under proviso to sub-rule (2) make a report in respect thereof to the House; and
(b) as soon as may be after the House has elected a member in pursuance of the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule place the petition before such member.

(4) Before making any petition in relation to any member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.

(5) Every petition,--
(a) shall contain a concise statement of the material facts on which the petitioner relies; and
(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such person and the gist of such information as furnished by each such person.

(6) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), for the verification of pleadings.

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(7) Every annexure to the petition shall alsobe signed by the petitioner and verified in the same manner as the petition.

7. Procedure.--(1) On receipt of 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

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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 thereto 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 or leader shall, within seven days of the receipts of such copies or within such further period as the Speaker may for sufficient cause allow, forward his comments in writing thereon 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 or 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 petitioner 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 Information Sheet.

(6) Where 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

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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 for enquiry and determination by the Committee of any question as to breach of privilege of the House by a member, and neither the Speaker nor the Committee shall come to any finding that a member has become subject to dis-qualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

(8) The provisions of sub-rules, (1) to (7) shall apply with respect to a petition in relation to the Speaker as they apply with respect to a petition in relation to any other member and for this purpose, reference to the Speaker in the sub-rules shall be construed as including references, to the members elected by the House under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule.

8. Decision on petitions.--(1) At the conclusion of the consideration of the petition, the Speaker or, as the case may be, the member elected under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule shall be order in writing.--
(a) dismiss the petition, or
(b) declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule and cause copies of the order to be delivered or forwarded to the petitioner, the member in relation to whom the petition has been made and to the leader of the legislature party, if any, concerned.

(2) Every decision declaring a member to have become subject to disqualification under the Tenth Schedule shall be reported to the House forthwith if the House is in session and House is not in session, immediately after the House reassembles.

(3) Every decision referred to in sub-rule (1) shall be published in the Information Sheet and notified in the

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Official Gazette and copies of such decision forwarded by the Secretary to the Election Commission of India and the State Government."

128 Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners, during the course of arguments, raised an issue that the petition for disqualification of the petitioners submitted by the second respondent/Chief Government Whip to the first respondent/Speaker is not in strict compliance of Rule 5 of the Disqualification Rules.

129 Similar issue came up for consideration before the Hon'ble Supreme Court in the decision in ***Mahachandra Prasad Singh (Dr.) v. Chairman Bihar Legislative Council [2004 (8) SCC 747],*** and in paragraph 14 of the said judgment, a submission was made that the petition had to be signed and verified in the manner laid down in the Code of Civil Procedure and since the requisite affidavit had not been filed and the requirement of the rule had not been complied with, the petition was liable to be dismissed in view of sub-rule (2) of Rule 7 of the said Rules. Therefore, a question was formulated as to ***"whether the provisions of Rules 6 and 7 are so mandatory in nature that even a slight infraction of the Rules would render the entire proceedings initiated by the Chairman invalid, or without jurisdiction"***. The

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Hon'ble Supreme Court has dealt with the said issue and in paragraph 18 observed as follows:

> "18. There cannot be any dispute that sub-rules (1), (2) and (3) of Order 6 Rule 15 CPC were complied with. Learned counsel for the petitioner has, however, laid great emphasis on the fact that Shri Salman Rageev had not filed any affidavit in support of his petition and consequently the provisions of sub-rule (4) of Order 6 Rule 15 CPC which provides that the person verifying the pleadings shall also furnish an affidavit in support of his pleadings were not complied with. For the reasons stated earlier, we are of the opinion that the provisions of Rules 6 and 7 are directory in nature and on account of non-filing of an affidavit as required by sub-rule (4) of Order 6 Rule 15 CPC, the petition would not be rendered invalid nor would the assumption of jurisdiction by the Chairman on its basis be adversely affected or rendered bad in any manner. A similar contention was raised before a Bench presided by Venkatachaliah, C.J. in *Ravi S. Naik* v. *Union of India* [1994 Supp (2) SCC 641] but was repelled. The relevant portion of para 18 of the Report is being reproduced below: (SCC pp. 652-53)
>
>> "*18*.…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 case* [1992 Supp (2) SCC 651] . Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of Paragraph 6 as

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> construed by this Court in *Kihoto Hollohan case* [1992 Supp (2) SCC 651] 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 impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under Paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of Paragraph 6 of the Tenth Schedule as construed by this Court in *Kihoto Hollohan case* [1992 Supp (2) SCC 651]."

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130 A perusal of the petition for disqualification dated 24.08.2017 submitted by the second respondent/Whip would reveal that he verified the contents of the said petition as to the best of his knowledge, belief and understanding. Even otherwise, the concerned rule is procedural in nature and any infraction/defect is also curable in nature and as such, the ***preliminary objection as to the entertainment of the said petition by the first respondent/Speaker made by the learned***

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Senior Counsel appearing for the petitioners is liable to be rejected and accordingly rejected. (*)

131 The sole question/issue arises for consideration, as already pointed out, is whether the impugned order of the first respondent suffers on account of jurisdictional errors viz., infirmities based on violation of Constitutional Mandate, Mala fides, Non-Compliance of the Rules of Natural Justice and Perversity.

132 Let this Court test the impugned order on the above cited grounds:

(A) BREACH OF CONSTITUTIONAL MANDATE

133 This Court while dealing with the preliminary objection has held that infraction of Paragraph 6 of the Disqualification Rules is a curable defect and in the light of the judgment in ***Mahachandra Prasad Singh (cited supra),*** rejects the said preliminary objection.

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134 Mr.P.S.Raman and Mr.Mohan Parasaran, learned Senior Counsel appearing for the petitioners by inviting the attention of this Court to the interim order of the ECI dated 22.03.2017 and would submit that as per the said order, neither of the two groups led by Tvl.E.Madhusudhanan, O.Panneerselvam and S.Semmalai and the respondents, namely Tmt.V.Sasikala and Thiru T.T.V.Dinakaran were permitted to use the name of the party "AIADMK" simplicitor and neither of the two groups were also permitted to use "Two Leaves" symbol reserved for "AIADMK" party and on account of the compromise reached between them and that the proceedings before ECI came to an end, vide final order dated 23.11.2017, the question of petitioners voluntarily giving up their membership of the political party, namely "AIADMK" would not have arose at all, as between 22.03.2017 and 23.11.2017, there were no political party, namely "AIADMK" and the approach of the Hon'ble Mr.Justice M.Sundar to the said issue and the findings recorded by the learned Judge are correct and sustainable on facts and in law.

135 *Per contra*, Mr.C.A.Sundaram, learned Senior Counsel appearing for the respondents 1 and 4 and Mr.C.S.Vaidyanathan, learned

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Senior Counsel appearing for the third respondent would submit that there is no express prohibition or bar on the part of the first respondent/Speaker to proceed under Tenth Schedule on the petition filed by the second respondent/Whip and by virtue of the interim order passed by ECI, the party name and symbol alone has been frozen which does not mean that neither the party nor the symbol cease to exist and the approach of the Hon'ble Mr.Justice M.Sundar to the said issue is completely erroneous and wrong. It was further argued that ECI is the ultimate authority regarding symbols and Speaker is the sole and ultimate authority under Tenth Schedule and both the constitutional authorities exercise their powers independently. Further submission was also made that the Symbols Order came into being in the year 1968 in exercise of powers conferred under Article 324 of the Constitution of India read with Section 29A of the Representation of the People Act, 1951 (43 of 1951) [substituted by Notification No.O.N.56(E) dated 15.06.1989] and Rules 5 and 10 of the Conduct of Elections Rules, 1961. Tenth Schedule was added by The Constitutional (Fifty-Second Amendment) Act, 1985 with effect from 01.03.1985. The Parliament while substituting Notification No.O.N.56(E) dated 15.06.1989 as well as the Constitutional (Fifty-Second Amendment) Act, 1985 with effect from 01.03.1985 was very

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well aware of the field in which both the Constitutional authorities exercise their function and did not restrain/prohibit either of the Constitutional authorities to deal with the issue fallen within their jurisdiction, *dehors* the pendency of respective proceedings before ECI and as such, the findings recorded by Hon'ble Mr.Justice M.Sundar that in the light of ECI in seizin of the matter, the question whether MLAs have voluntarily given up their membership of "AIADMK" party, could not have been answered in the impugned order by the first respondent, is *per se* unsustainable and paragraph 62 of the impugned order cannot be termed as perverse and the approach of the first respondent/Speaker in that regard cannot be said to be in breach of the Constitutional Mandate.

136 Submissions were made on behalf of the respondents that Dispute Case No.2 of 2017, which was pending on the file of the ECI at the relevant point of time, has nothing to do with the power of the first respondent to deal with the issue as to disqualification of the writ petitioners under Paragraph 2(1)(a) of the Tenth Schedule of the Constitution, as both the proceedings altogether stands on different footing. It was further argued on behalf of the respondents that assuming that the said Dispute Case No.2 of 2017 came to be decided in favour of

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either parties, challenge would have been made if the views of Hon'ble Mr.Justice M.Sundar are accepted. The Speaker should lay off his hands and are denuded of his powers to decide the said issue and therefore, the said approach is in fact against the Constitutional Mandate. It was also argued that the Speaker is the repository and rather the sole authority to decide the issue pertains to disqualification of a member and admittedly, the writ petitioners got elected as MLAs of "AIADMK" under "Two Leaves" symbol and they may continue to remain, until the expiry of the term of their legislative membership or disqualification, whichever is earlier.

137 Attention of this Court was also drawn to the Representation of Peoples Act, 1951 as well as Tenth Schedule to the Constitution of India.

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138 Clause 1(c) of the Tenth Schedule defines ***"Original Political Party"***. As per the said 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.

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139 Clause (2) of the Tenth Schedule deals with ***Disqualification on ground of defection*** and as per sub-clause (1), "Subject to the provisions of paragraphs 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) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and such voting or abstention has not been condone by such political party, person or authority within fifteen days from the date of such voting or abstention."***

In these cases, impugned decision is that the petitioners had voluntarily given up their membership of the political party, namely "AIADMK" and as such, they are disqualified.

140 Section 2(f) of The Representation of the People Act, 1951 defines ***"political party"*** means an association or a body of individual

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citizens of India registered with the Election Commission as a political party under Section 29-A". Part IV-A of the said Act deals with ***"Registration of Political Parties"***. Section 29-A speaks about ***"Registration with the Election Commission of associations and bodies as political parties."*** As per Section 29-A(7), the Election Commission of India, after considering all the particulars as aforesaid [Section 29-A(2) to A(6)] in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purpose of this Part, or not so to register it, and the Commission shall communicate its decision to the association or body.

141 It was argued on behalf of the respondents that the political party referable to the party to which a member got elected and admittedly, the writ petitioners were elected as Members of the Legislative Assembly of "AIADMK" party tickets and it is also not seriously disputed by them and it is their stand that despite expressing objection as to the continuance of the third respondent as the Chief Minister, they continue to remain as members of the "AIADMK" party

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and as such, the political party means "AIADMK" party only. It is also urged that original political party has relevance only for the purpose of Paragraphs 3 and 4 of the Tenth Schedule and nothing to do with Tenth Schedule for the reason that Tenth Schedule speaks about original political party for the purpose of sub-paragraph (1) of paragraph (2).

142 In sum and substance, it is also the submission of the learned Senior Counsel appearing for the respondents that though the petitioners would state that they oppose the continuance of the third respondent as the Chief Minister, in-fact acted against the ideology of the party, through which they got elected as MLAs and by the said conduct, they acted in a prejudicial manner to the interest of the said party and departed from the ideology of the said political party and as such, their act would definitely attract paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India.

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143 In this regard, primordial submission made by the learned Senior Counsel appearing for the petitioners is that despite their opposition to the continuance of the third respondent as the Chief Minister on account of corruption, favouritism, misuse of Government

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machinery and other acts, it is merely an expression of disagreement against the style and functioning of the third respondent as the Chief Minister and it would not amount to voluntarily giving up their membership of the political party. The learned Senior Counsel appearing for the petitioners, developing the said argument, also made a submission that in the light of subsistence of interim orders dated 22.03.2017 passed by ECI in Dispute Case No.2 of 2017 under Paragraph 15 of the Symbols Orders, there is no party under the name of "AIADMK" for the reason that both groups were restrained from using the party name and symbol and as such, disqualification on account of voluntarily giving up of their membership of the political party have not arose for consideration and in any event, the Speaker ought to have deferred the proceedings till finality is reached in the said proceedings.

144 The Hon'ble Chief Justice, in Paragraphs 245 to 246 of the order, after referring to ***Kihoto Hollohan's case,*** has recorded the finding that the Speaker or Chairman of the House is the only and final authority to decide on the question of disqualification of a Member of the House. In paragraph 252 of the order, the Hon'ble Chief Justice, after referring to ***Mahachandra Prasad Singh's case***, held that the nature and degree of

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enquiry required to be conducted for various contingencies contemplated under Paragraph 2 of the Tenth Schedule might be different.

145 The Hon'ble Mr.Justice M.Sundar, in paragraph 14(z), 14(ab) to 14(an) of the order, has dealt with the said aspects and in paragraph 14(ag), after referring to paragraph 62 of the impugned order of the first respondent/Speaker, has noted that the impugned order dated 18.09.2017 is much prior to the final order of the ECI and in paragraph 14(ak) has recorded the conclusion that the said finding recorded by the Speaker has been arrived at without any oral evidence and enhances the error and it also amounts to perversity, which is one of the grounds for judicial review qua Speaker's Order. In paragraph 14(an), the learned Judge concluded that the question whether MLAs have voluntarily given up membership of "AIADMK" political party during the aforesaid period could not have been answered in the impugned order and further more, this is also violation of Constitutional Mandate (one of the four grounds for judicial review qua Speaker's Order), as ECI, the ultimate authority in this regard *inter alia* under Article 324 of the Constitution of India was in seizin.

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146 Part XV of the Constitution of India deals with Elections. Article 324 speaks about Superintendence, direction and control of elections to be vested in an Election Commission. Tenth Schedule was added by "The Constitution (Fifty Second Amendment) Act, 1985". Article 191 of the Constitution deals with "Disqualification for Membership" and as per Article 191(2) a person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

147 In the considered opinion of the Court, pendency of Dispute Case No.2 of 2017 before ECI under Paragraph 15 of the Symbols Order and the subsistence of interim order dated 22.03.2017 passed therein, cannot act as a restraint on the powers of the Speaker, being exercisable under Tenth Schedule of the Constitution of India for the following reasons:

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148 The Elections Symbols (Reservation and Allotment) Order, 1968 came to be framed in exercise of powers conferred by Article 324 of the Constitution read with Section 29A of the Representation of the People Act, 1951, substituted by Notification No.O.N.56(E) dated

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15.6.1989 and Rules 5 and 10 of the Conduct of Election Rules, 1961. The said order came to be framed to provide for specification, reservation, choice and allotment of symbols at elections in Parliamentary and Assembly Constituencies, for the recognition of political parties in relation thereto and for matters connected therewith.

149 Vires of the above said Symbols Order was put to challenge in the decision in ***Kanhiya Lal Omar v. R.K. Trivedi and Others [(1985) 4 SCC 628],*** and while dealing with the said issue, Tenth Schedule of the Constitution was also taken note of and that apart, earlier decisions of the Hon'ble Apex Court in ***Sadiq Ali v. Election Commission of India [(1962) 4 SCC 664], All Party Hill Leaders' Conference, Shillong v. Captain M.A. Sangma [(1977) 4 SCC 161], Roop Lal Sathi v. Nachhattar Singh [(1982) 3 SCC 487] and Mohinder Singh Gill v. Chief Election Commissioner, New Delhi [(1978) 1 SCC 405]*** were referred to in paragraphs Nos.14, 15 and 16 respectively and it is relevant to extract paragraph 10 to 13 of the said judgment:

> "**10**...The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of

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the House concerned....

11. para 15 of the Symbols Order which dealt with the power of the Commission in relation to splinter groups or rival sections of a recognised political party came up for consideration before this Court in *Sadiq Ali* v. *Election Commission of India* [(1972) 4 SCC 664 : (1972) 2 SCR 318 : 47 ELR 349] .

12. The Court observed in that case at pages 341-343 thus: (SCC pp. 681-2, paras 40-41)

"It would follow from what has been discussed earlier in this judgment that the Symbols Order makes detailed provisions for the reservation, choice and allotment of symbols and the recognition of political parties in connection therewith. That the Commission should specify symbols for elections in parliamentary and Assembly constituencies has also been made obligatory by Rule 5 of Conduct of Elections Rules. Sub-rule (4) of Rule 10 gives a power to the Commission to issue general or special directions to the Returning Officers in respect of the allotment of symbols. The allotment of symbols by the Returning Officers has to be in accordance with those directions. Sub-rule (5) of Rule 10 gives a power to the Commission to revise the allotment of a symbol by the Returning Officers insofar as the said allotment is inconsistent with the directions issued by the Commission. It would, therefore, follow that Commission has been clothed with plenary powers by the abovementioned Rules in the matter of allotment of symbols. The validity of the said Rules has not been challenged before us. If the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbols and for issuing directions in connection therewith, it is plainly essential that the Commission should have the power to settle a dispute in case claim for the allotment of the symbol of a political party is made by two rival claimants. In case, it is a dispute between two individuals, the method for the settlement of that dispute is provided by para 13 of the Symbols Order. If on the other hand, a dispute arises between two rival groups for allotment of a symbol of a political party on the ground

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that each group professes to be that party, the machinery and the manner of resolving such a dispute is given in para 15. para 15 is intended to effectuate and subserve the main purposes and objects of the Symbols Order. The paragraph is designed to ensure that because of a dispute having arisen in a political party between two or more groups, the entire scheme of the Symbols Order relating to the allotment of a symbol reserved for the political party is not set at naught. The fact that the power for the settlement of such a dispute has been vested in the Commission would not constitute a valid ground for assailing the vires of and striking down para 15. The Commission is an authority created by the Constitution and according to Article 324, the superintendence, direction and control of the electoral rolls for and the conduct of elections to Parliament and to the Legislature of every State and of elections to the office of President and Vice-President shall be vested in the Commission. The fact that the power of resolving a dispute between two rival groups for allotment of symbol of a political party has been vested in such a high authority would raise a presumption, though rebuttable, and provide a guarantee, though not absolute but to a considerable extent, that the power would not be misused but would be exercised in a fair and reasonable manner.

There is also no substance in the contention that as power to make provisions in respect to elections has been given to the Parliament by Article 327 of the Constitution, the power cannot be further delegated to the Commission. The opening words of Article 327 are "subject to the provisions of this Constitution". The above words indicate that any law made by the Parliament in exercise of the powers conferred by Article 327 would be subject to the other provisions of the Constitution including Aritcle 324. Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. It, therefore, cannot be said that when the Commission issues direction, it does so not on its own behalf but as the delegate of some other authority. It may also be mentioned in this context that when the Central Government issued Conduct of Elections

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> Rules, 1961 in exercise of its powers under Section 169 of the Representation of the People Act, 1951, it did so as required by that section after consultation with the Commission."
>
> **13.** The above decision upholds the power of the Commission to recognise political parties and to decide disputes arising amongst them or between splinter groups within a political party. It also upholds the power of the Commission to issue the Symbols Order. The Court has further observed that it could not be said that when the Commission issued the Symbols Order it was not doing so on its own behalf but as the delegate of some other authority. The power to issue the Symbols Order was held to be comprehended in the power of superintendence, direction and control of elections vested in the Commission."

The Hon'ble Supreme Court, in paragraph 17 of the said decision, observed that ***"It may be a specific or general order. One has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved"***. Ultimately, the Hon'ble Supreme Court concluded that any of the provisions of the Symbols Order suffers from want of authority on the part of the Commission, which has issued it and the Symbols Order cannot be struck down for the reasons i.e., existence of such evils, malpractices etc. and ultimately upheld the legality of the order.

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150 As rightly contended by the learned Senior Counsel appearing for the respondents 1 and 2, the scope of operation and exercise of powers by ECI under Symbols Order and the Speaker under the Tenth Schedule operates entirely on a different field and pendency of either of the proceedings is not a bar. Therefore, the said authorities can exercise their powers, which fall within their exclusive domain. It is also to be pointed out at this juncture that the Tenth Schedule was introduced/inserted by the Constitution (Fifty Second Amendment) Act, 1985 with effect from 01.03.1985 and the Symbols Order came to be framed in the year 1969 and the Parliament, at the time of adding 52nd Amendment Act, 1985 with effect from 01.03.1985 was very well aware of the existence of the Symbols Order issued by ECI, which also a Constitutional Authority and despite that did not frame any provision restraining the Speaker from proceeding under Tenth Schedule, despite pendency of proceedings under Symbols Order.

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151 In ***Kanhiya Lal's case*** (cited supra) the Hon'ble Apex Court, in paragraph 17 observed that the source of power enabling the Election Commission to frame Symbols Order is the Constitution, which is the

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highest law of the land and it is also the repository and source of all legal powers and any power granted by the Constitution for a specific purpose be construed liberally so that the object for which the power is granted is effectively achieved.

152 Though vehement and forceful submissions were made by the learned Senior Counsel appearing for the petitioners by drawing the attention of this Court to the operative portion of the interim order dated 22.03.2017 passed by ECI in Dispute Case No.2 of 2017, instituted by Tvl.E.Madhusudhanan and two others against Tmt.V.Sasikala and another, in the considered opinion of the Court, it cannot be said that by virtue of the interim order passed by ECI, the political party, namely "AIADMK" cease to exist and that the "Two Leaves" symbol also got erased and the purport of the interim order is that neither of the two groups were permitted to use the name of the party "AIADMK" simplicitor and were permitted to use "Two Leaves" symbol and it was further ordered that both the groups shall be known by such names as they may choose for their respective groups, showing, if they so desire, linkage with their parent party "AIADMK" and they shall also be allotted such different symbols as they may choose from the list of free symbols

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notified by ECI. Ultimately, the Symbol Order proceedings in Dispute Case No.2 of 2017 came to be an end, vide final order dated 23.11.2017.

153 It is very pertinent to point out at this juncture that though the present stand of the petitioners is that the first respondent ought to have deferred the proceedings till the conclusion of the proceedings under Symbols Order by ECI, have not taken such a stand at the earliest point of time. The petitioner in W.P.No.25260 of 2017, in his rejoinder to the counter affidavit filed on behalf of the first respondent dated October, 2017, in paragraph 13(3) stated that ***"I submit that the reason cited in defence of the Speaker is vague and malicious. I submit that pendency of the petition before Election Commission has nothing to do with the disqualification petition, which is totally independent"*** and in paragraph 3(4) stated that ***"I submit that assuming this was true, then the same is applicable to me and 17 other MLAs to the dispute before the Election Commission"***. (emphasis supplied)

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154 Thus, it appears that it was the stand of atleast one of the petitioners that Symbol Order proceedings in Dispute Case No.2 of 2017 is totally independent of the proceedings under Tenth Schedule before

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the first respondent and in the light of the same, it is not necessary/obligatory on the part of the first respondent to defer the proceedings under Tenth Schedule till the conclusion of Symbol Order proceedings by ECI. Even otherwise, both Constitutional functionaries under the scheme of things are at liberty to act in their own domain and there is no clog or restraint on their power.

155 It is to be noted at this juncture that "The Election Symbols (Reservation and Allotment) Order, 1968" came to be framed in exercise of powers conferred under Article 324 of the Constitution of India read with Section 29-A of the Representation of the People Act, 1951 and Rules 5 and 10 of the Conduct of Elections Rules, 1961. Neither in the Representation of the People Act, 1951 nor in the Election Symbols (Reservation and Allotment) Order, 1968, any provision restraining the Speaker to proceed with the issue of disqualification under Tenth Schedule is available. The Speaker has been vested with such powers under the Constitution of India and as such, he is entitled to exercise such powers, *dehors* the pendency of proceedings under Paragraph 15 of the Symbols Order.

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156 It is also to be noted at this juncture that as per the interim order dated 22.03.2017 passed by ECI in Dispute Case No.2 of 2017 under Paragraph 15 of the Symbols Order, two groups to the said petition were not permitted to use the name of the party "AIADMK" and also "Two Leaves" symbol reserved for the said party and they were also granted liberty to chose symbols for the respective groups, if so desire, linkage with the parent party "AIADMK" and accordingly, the group led by Thiru T.T.V.Dinakaran, which the petitioners belong, is using "AIADMK (Amma)" and the group led by Thiru E.Palanisamy is using "AIADMK (Puratchi Thalaivi Amma)". The name of the political party, namely "AIADMK" has never been divested/erased/taken away and as such despite seizin of the said issue by ECI, the Speaker, by virtue of Constitutional powers vested upon him under Tenth Schedule, can adjudicate and decide the issue pertains to disqualification under Paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India. ***Therefore, the course adopted by the first respondent/Speaker in taking up the petition submitted by the second respondent/Chief Government Whip, cannot be characterized as a Breach of Constitutional Mandate.*** (*)

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(B) MALAFIDES

157 It is the submission of the learned Senior Counsel appearing for the petitioners that the petitioner in W.P.No.25260 of 2017, namely Thiru P.Vetrivel has submitted a petition dated 20.03.2017 to the first respondent/Speaker seeking disqualification of Thiru Semmalai, MLA of Salem Legislative Assembly Constituency and Thiru. Chinnaraj, representing Mettupalayam Legislative Assembly, as they voted against the Whip in the Floor Test held on 18.02.2017 and three other MLAs had also filed petitions against Thiru O.Panneerselvam and his group of MLAs on similar allegations and however, the Speaker had not even issued notice to them and kept it pending. Attention of this Court was also invited to Paragraph 62 of the impugned order, wherein the first respondent/Speaker has dealt with the issue as to deferment of the proceedings on account of the interim order dated 22.03.2017 passed by ECI under Paragraph 15 of the Symbols Order and reached the conclusion that the petition filed before him is one for disqualification on the ground of defection and in respect of the present petition, he is required to determine whether the representation given by the respondents/writ petitioners along with Thiru S.T.K.Jakkaiyan dated 22.08.2017 submitted to the Governor of Tamil Nadu would impliedly or

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expressly amount to voluntarily giving up their membership of the political party and he held against him.

158 According to the learned Senior Counsel appearing for the petitioners, the petition for disqualification filed against Thiru O.Panneerselvam and other MLAs under Paragraph 2(1)(b) of the Tenth Schedule have not been touched upon ; whereas in respect of the petition for disqualification dated 24.08.2017 submitted by the second respondent against the writ petitioners, cognizance has been taken and by showing undue urgency and haste it came to be decided and ended against them and thereby, the first respondent/Speaker has acted with *malafides*.

159 It is the submission of the learned Senior Counsel appearing for the respondents 1 and 4 that exercise to be carried out to determine the petition for disqualification under Paragraph 2(1)(b) of the Tenth Schedule is entirely different from that of Paragraphs 2(1)(a) for the reason that elaborate exercise is required while deciding a petition filed under Paragraph 2(1)(b) and assuming that the Speaker had deferred the decision, still it would not be a ground to test the legality of the order of the first respondent and with the same available material, this Court, in

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exercise it's power of judicial review, cannot take a different view. It is also urged that a different and favourable treatment given to Thiru S.T.K.Jakkaiyan by the first respondent/Speaker would also amount to *mala fide* act and also in violation of principles of natural justice.

160 The fourth respondent has field a common counter affidavit dated 04.10.2017 for himself and on behalf of the first respondent and it is relevant to extract the same:

> *"13. The other disqualification which has been made against Hon. Speaker is that of bias. The petitioners' claim that Hon.Speaker had not acted when a petition for disqualification was given against Mr.O.Paneerselvam and 10 others and that Hon.Speaker have chosen to act immediately when the disqualification petition was given against the petitioners alone is incorrect. I submit that the said allegation is entirely false and the same has been manufactured for the purpose of making an allegation of bias.* ***I submit that the disqualification petition against Mr.O.Paneerselvam and 10 others is a matter which is completely different and is not connected to the present issue and does not have to be decided in the present proceeding. In any case, to avoid further allegations, it is submitted that any further***

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action in the petition against Mr.O.Paneerselvam and 10 others had to be deferred by Hon.Speaker, since the very same issue was pending before the Hon'ble Election Commission of India. Immediately after the petition was received by Hon.Speaker against Mr.O.Paneerselvam and 10 others on 20th March 2017, the Hon'ble Election Commission had passed certain orders on 22nd March 2017 in the proceedings before it which made it proper to defer any further proceedings on that petition. Further it is not open for the petitioners to raise the said issue in the disqualification petition filed against them. *Apart from these allegations made against Hon.Speaker personally, the petitioners before this Hon'ble Court have not made any substantial submission for Hon.Speaker to reply to separately."*

161 In paragraph 14 of the common counter affidavit filed by the fourth respondent, it is averred that the Speaker/first respondent as a Legislator himself, when called upon to decide the issue of disqualification, cannot turn a blind eye to the incidents that transpire in public view and further submitted that the Speaker has to consider the totality of the circumstances including the turn of events and then decide whether the act committed by the petitioners herein really amounted to voluntarily giving up their membership of the party and having

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considered all the documents filed before him, the facts therein and the surrounding circumstances and only thereafter, the first respondent/Speaker had decided on the same.

162 The Hon'ble Chief Justice has dealt with the said issue in paragraph Nos.249 to 262 of the order. In paragraph 263, the Hon'ble Chief Justice concluded that the first respondent has passed the impugned order after giving the writ petitioners sufficient opportunities and it cannot be said that the order impugned is vitiated by malice in law, malice in fact or mala fides and be it noted that in the writ petitions, there is no allegation against the Speaker of harbouring any personal enmity against the writ petitioners. In paragraph 264, the Hon'ble Chief Justice, after taking note of ***Prathap Singh v. State of Punjab [AIR 1964 SC 72]*** wherein was observed that ***"mala fide in the sense of improper motive should be established only by direct evidence, that is, it must be discernible from the order impugned"*** and concluded that onus is on the writ petitioners in a writ petition to establish mala fides and/or malice in law and/or malice in fact by cogent materials and the writ petitioners have failed to do. The Hon'ble Chief Justice further noted that when the petition was submitted by Thiru E.Madhusudhanan and Others

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representing Thiru O.Panneerselvam group before ECI under Symbols Order, the petitioners were in the same faction of Thiru E.Palanisamy/third respondent and Thiru S.Rajendiran/ Second respondent/Whip.

163 The Hon'ble Mr.Justice M.Sundar further elaborated on the issue of *mala fide* act on the part of the first respondent and taken into consideration the case of Thiru S.T.K.Jakkaiyan, who rescinded/altered his position and his case was taken up separately and found that the findings recorded in respect of Thiru S.T.K.Jakkaiyan has been inserted between Paragraphs 66 to 71 and therefore, it cannot be said that the case of Thiru S.T.K.Jakkaiyan has been dealt with separately. The learned Judge, in paragraph 14(bg) of his verdict observed that "Treating S.T.K. Jakkaiyan on a different footing merely because he changed his political position/stand is *mala fides*, according to writ petitioners". In the very same paragraph, the learned Judge observed that "this Court is unable to brush aside this argument as the impugned order does not give any reason much less compelling constitutional reason for adopting a different yardstick for S.T.K. Jakkaiyan" and ultimately concluded that the impugned order is hit by *mala fides*.

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164 The Hon'ble Chief Justice in paragraph 363 of the order observed that "it is not necessary to enter into question of whether the disqualification has rightly or wrongly been dismissed against Mr.S.T.K.Jakkaiyan. Suffice it to note that there can be no equality to a wrong and two wrongs do not make a right". The Hon'ble Chief Justice, in the very same paragraph, after referring to the judgments in ***Union of India v. International Trading Co., [(2003) 5 SCC 437]*** and ***National Aluminium Co. Ltd., v. Bharat Chandra Behera [(2013) 16 SCC 622]***, has further observed that the said observation is not, however, to be construed as any finding of this Court that the dismissal of the qualification petition in respect of Thiru S.T.K.Jakkaiyan is illegal.

165 It is to be noted at this juncture that the learned counsel who originally appeared for the writ petitioners had appeared for Thiru S.T.K.Jakkaiyan also and he has withdrawn his appearance insofar as Thiru S.T.K.Jakkaiyan is concerned and thereafter, he met the Speaker with a copy of the representation given to the Governor, retracting his earlier version and submitted another letter to the Speaker, based on which the Speaker has dealt with the said issue and dismissed the

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disqualification petition insofar as Thiru S.T.K.Jakkaiyan is concerned. If at all anybody is aggrieved, it is the political party, namely AIADMK, may be for the reason that initially he opposed the continuance of Thiru E.Palanisamy as the Chief Minister and later on, for the reasons stated in his representation, had changed his stand. Admittedly, the said political party did not make an issue out of it and no efforts have been taken to array Thiru S.T.K.Jakkaiyan as respondent in the writ petitions, so that he can respond to the allegations.

166 The first respondent/Speaker has specifically formulated a question *Whether he has acted with malice or bias and therefore, disqualified to try the petition?"* and in paragraph 28 of the impugned order, observed that he is in public life since 1972 and have been a Member of Legislative Assembly from 1977 on various occasions and in order to prevent him from hearing the petition, unsubstantiated allegations of bias has been initiated. The first respondent/Speaker, after going through the records, found that on 5 occasions proceedings were conducted under Tenth Schedule against the Members of the House and as such, the instance/allegation of is not germane or relevant to the present issue.

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167 It is also a well settled position of law that Speaker is the sole authority to decide the issue pertaining to disqualification of a Member of the House under Tenth Schedule of the Constitution of India.

168 The first respondent/Speaker, in paragraph 16 of the impugned order, stated that the 17th respondent, namely Thiru S.T.K.Jakkaiyan appeared before him on 14.09.2017 at 10.47 a.m. and had made his submissions and had also filed a letter (dated 14.09.2017) and he will discuss the contents and the submissions while dealing with the same. The first respondent/Speaker has dealt with the petition for disqualification, after deciding the preliminary objections and in paragraphs 40 to 64 has dealt with the said issue and in paragraph 65 of the impugned order concluded that the petitioners had voluntarily given up their membership of their political party and therefore, disqualified them as Members of the House in terms of Paragraphs 2(1)(a) of the Tenth Schedule of the Constitution read with Rule 8(1)(b) of the Disqualification Rules.

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169 In paragraphs 66 to 70 of the impugned order, the first respondent/Speaker has dealt with the issue relating to Thiru S.T.K.Jakkaiyan and in paragraph 69, after taking note of the contents of the two letters dated 14.09.2017 and 07.09.2017, submitted by him, observed that he do not want to get into the allegations made by him in his initial reply statements filed before him and expressed an opinion that the initial circumstance which had prevailed at the time of issuance of the complaint by the petitioner/second respondent herein against him does not exist and in paragraph 70 concluded that the allegations against Thiru S.T.K.Jakkaiyan are not subsisting and as such, no further action needs to be initiated against him and in paragraph 71 concluded that the petition for disqualification filed against him is to be dismissed.

170 The Hon'ble Supreme Court in ***Mahachandra Prasad Singh (Dr.) v. Chairman Bihar Legislative Council [2004 (8) SCC 747]*** in paragraphs 13, 15 and 16 observed that the nature and degree of inquiry required to be conducted for various contingencies contemplated by Paragraph 2 of the Tenth Schedule may be different. Under Paragraph 2(1)(a) of the Tenth Schedule, inquiry would be a limited one, but enquiry required for the purpose of Paragraph 2(1)(b) of the Tenth

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Schedule would be very elaborate on factual aspects. In paragraph 16, the Hon'ble Supreme Court observed that ***"..These Rules have been framed by the Chairman in exercise of power conferred by Paragraph 8 of the Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by Paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule".*** It was further observed in paragraph 13 of the said decision that ***"No rules can be framed which have the effect of either enlarging or restricting the content and amplitude of the relevant constitutional provisions. Similarly, rules should be interpreted consistent with the aforesaid principles".*** In paragraph 16 it was further observed that ***"The Rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not tot to frustrate or obstruct the same by introduction of innumerable technicalities.***

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Being subordinate legislation, the Rules cannot make any provision which may have th effect of curtailing the content and scope of the substantive provision, namely Tenth Schedule." (emphasis supplied)

171 In the case on hand, the Speaker, despite Rule 7(3)(b) of the Disqualification Rules, have granted time on three occasions to submit response of the petitioners and however, the petitioners, in the form of three replies, wanted certain documents and it is their grievance that despite the said requests, the documents sought for by them have not been furnished and they have also been denied opportunity to cross-examine the respondents 2 and 3.

172 It was also vehemently argued by the learned Senior Counsel appearing for the petitioners that the Speaker has to decide the question of disqualification with reference to the date on which the Member had voluntarily given up his membership and therefore, the Speaker ought not to have dealt with the case of Thiru S.T.K.Jakkaiyan, based upon his subsequent retraction.

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173 The Hon'ble Supreme Court in the decision in ***Jagjit Singh v. State of Haryana [(2006) 11 SCC 1],*** after considering ***Kihoto Hollohan case*** as well as ***Ravi S. Naik case*** cited supra, in paragraph 11 observed that,

> "11. The Speaker, while exercising power to disqualify Members, acts as a Tribunal and though validity of the orders thus passed can be questioned in the writ jurisdiction of this Court or High Courts, the scope of judicial review is limited as laid down by the Constitution Bench in *Kihoto Hollohan* v. *Zachillhu* [1992 Supp (2) SCC 651] . The orders can be challenged on the ground of ultra vires or mala fides or having been made in colourable exercise of power based on extraneous and irrelevant considerations. The order would be a nullity if rules of natural justice are violated."

174 The word "Malice" in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause ***[S.R.Venkataraman v. Union of India, AIR 1979 SC 49]***. Malice in fact is where the malice is not established by legal presumption or proof of certain facts, but is to be found from the evidence in the case. ***[P.Ramanatha Aiyar's – The Law Lexicon]***. "Malice in law" or "legal malice" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in

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disregard of the rights of others ***[State of A.P. v. Goverdhanlal Pitti, AIR 2003 SC 1941: (2003) 4 SCC 739].***

175 It is a settled position of law that there must be specific pleadings as to malafides and bias and it must also be strictly proved.

176 Insofar as the submission made by the learned Senior Counsel appearing for the petitioners that there was deliberate inaction on the part of the first respondent/Speaker to take action against Thiru O.Panneerselvam and his group of MLAs, despite petition being filed for their disqualification by the petitioners under Paragraph 2(1)(b) of the Tenth Schedule, it is to be noted at this juncture that Paragraphs 2(1)(b) deals with "Member/Members who remain in the party, but acted in a manner which contradicts the directions of the party they belong".

177 In ***Mahachandra Prasad Singh (Dr.) v. Chairman Bihar Legislative Council [2004 (8) SCC 747],*** in paragraph 15, the Hon'ble Supreme Court has observed as follows:

> "15. It may be noticed that the nature and degree of inquiry required to be conducted for various contingencies contemplated by Paragraph 2 of the Tenth Schedule may be different. So far as clause (*a*) of Paragraph 2(1) is

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> concerned, the inquiry would be a limited one, namely, as to whether a member of the House belonging to any political party has voluntarily given up his membership of such political party. The inquiry required for the purpose of clause (*b*) of Paragraph 2(1) may, at times, be more elaborate. For attracting clause (*b*) it is necessary that the member of the House (*i*) either votes or abstains from voting; (*ii*) contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf; (*iii*) without obtaining the prior permission of such political party, person or authority; and (*iv*) such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. Therefore, for the purpose of clause (*b*), inquiry into several factual aspects has to be conducted. It may be noticed that clause (*b*) does not say that the prior permission has to be in writing and, therefore, it can be oral as well. Similarly, the manner in which condonation has to be expressed has not been indicated. Therefore, for holding that a member of a House has incurred a disqualification under clause (*b*) of Paragraph 2(1) findings on several aspects will necessarily have to be recorded. Similarly, for application of Paragraph 4, inquiry has to be made whether the original political party merged with another political party, whether the member of the House has become member of such other political party or, as the case may be, of a new political party formed by such merger or whether he has not accepted the merger and opted to function as a separate group."

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178 It is also brought to the knowledge of this Court during the course of arguments by the learned Senior Counsel appearing for the second respondent/Whip that W.P.No.26017 of 2017 was filed by Thiru R.Sakkrapani, Whip of DMK party, W.P.No.25783 of 2017 was filed by Thiru P.Vetrivel/petitioner in W.P.No.25260 of 2017, W.P.No.27854 of

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2017 was filed by Thiru Thanga Thamizh Selvan, W.P.No.27855 was filed by Thiru.N.G.Partiban and W.P.No.27856 of 2017 was filed by Thiru M.Rengasamy against the Speaker and Secretary of the Tamil Nadu Legislative Assembly and also against Thiru O.Panneerselvam and other MLAs praying for issuance of a Writ of Mandamus directing the Speaker to consider and pass orders on the petition for disqualification under Paragraph 2(1)(b) of the Tenth Schedule of the Constitution of India read with Rule 6 of the Disqualification Rules and those writ petitions were taken up together and disposed of by the Hon'ble First Bench by the common order dated 27.04.2017, dismissing all the writ petitions with an observation ***"that the question of issuance of Mandamus on the Speaker is pending consideration before the Supreme Court and as such, it is difficult to conceive how this Court can disqualify concerned MLAs and render the proceedings before the Supreme Court infructuous".***

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179 ***In the light of the same, this Court is not inclined to give any finding as to whether the alleged inaction on the part of the first respondent in not taking up and disposing of the petition for disqualification filed against Thiru O.Panneerselvan and 10 other***

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MLAs under Paragraph 2(1)(b) of the Tenth Schedule of the Constitution of India would amount to bias, partisan attitude, since the said issue is pending consideration before the Hon'ble Supreme Court of India. (*)

180 In ***Yeddyurappa's case*** (cited supra), reliance has been placed upon the judgment in ***Sangramsinh P.Gaekwad v. Shantadevi P.Gaekwad [(2005) 11 SCC 314]*** wherein it was observed that allegation of *mala fide* has to be pleaded with full particulars in support of the charge and making bald allegations that the Chief Minister had influenced the Speaker to get the appellants therein removed from the membership of the House before the trust vote scheduled to be held on 11.10.2010, without any materials in support of such allegations, could not and did not amount to *mala fides* on the part of the Speaker.

181 In ***S.Pratap Singh v. State of Punjab [(1964) 4 SCR 733],*** allegations of *mala fides* have been levelled against a Civil Surgeon in the employment of the State Government in a departmental proceedings. In paragraph 8 of the said decision, it was observed as follows:

> "8. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an

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> abuse or a misuse by Government of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the appellant has to establish in this case, though this may, sometimes be done [see Edgingdon v. Fitzmaurice, 29 CD 459]. The difficulty is not lessened when one has to establish that a person in the position of a minister apparently acting in the legitimate exercise of power has, in fact, been acting mala fide in the sent of pursuing an illegitimate aim. We must, however, demur to the suggestion that mala fide in the sense of improper motive should be established only by direct evidence that it must be discernible from the order impugned or must be shown from the notings in the file which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts."

In paragraph 10 of the decision, it was observed that "*.... charges of personal hostility are easily and very often made by persons who are subjected to penal or quasi penal proceedings against those who initiate them....*".

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182 The petitioner in W.P.No.25260 of 2017, after receipt of notice from the first respondent, submitted his interim reply dated 30.08.2017 and in paragraph 5 it is averrred that the act of the first respondent in taking cognizance of the petition seeking disqualification under Rule 6 of the Disqualification Rules inspite of its jurisdictional infirmity and procedural defects, is nothing but abuse of process and

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reveals *mala fides*, since the petition ought to have been dismissed at the outset on account of non-compliance of Rule 6(5)(b) of the Disqualification Rules and in paragraph 6, averred that the covert intention behind the present proceedings is to increase the majority in the legislative assembly by reducing the number of members through disqualification and as such, entire proceedings is vitiated by *mala fides*, bias, procedural irregularities and want of jurisdiction.

183 The petitioner in W.P.No.25260 of 2017, in paragraph 16 of the affidavit filed in support of the said writ petition, averred that the impugned order passed by the first respondent has been done in undue haste, being motivated, working in tandem with the political parties, in a *mala fide* manner and is devoid of jurisdiction and in paragraph 18, it is averred that postponing of decision in the disqualification petition filed against 11 MLAs would also amount to *mala fides* on the part of first respondent and in paragraph 21, it is stated that delivering of the impugned order at 11 a.m. on 18.09.2017 was done with a view to prevent him from effectively challenging the said order and it was served only in the evening hours at 08.30 p.m., which would amount to *mala fide* act on the part of the first respondent/Speaker.

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184 In ground (W), the petitioner in W.P.No.25260 of 2017 took a stand that the first respondent had acted with malice and bias and therefore, disqualified in trying the petition for disqualification and his decision, on the face of it, looks partisan and he is acting in tandem with the third respondent/Chief Minister, which also stand fortified in the light of non-taking action on the disqualification petition filed against Thiru O.Panneerselvam and 10 other MLAs.

185 The petitioner in W.P.No.25260 of 2017, in his rejoinder to the common counter affidavit filed on behalf of the first respondent has also took a stand that treating Thiru S.T.K.Jakkaiyan separately would amount to lack of fair play and transparency and also speaks volume about the biased and *mala fide* procedure adopted by the first respondent/Speaker. In paragraph 20 of the said rejoinder, the petitioner averred that the order passed by the first respondent lacks jurisdiction and the act of the first respondent is actuated by *mala fide*, motivated and completely in tandem with the political parties and in paragraph 27, it is further averred that the act of the Speaker in relying upon newspaper reports is enough to allege that he decided the petition for extraneous

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consideration. Similar averments have also been made in the rejoinder filed to the counter affidavit of the second respondent. Ofcourse, the said allegations along with other allegations have been denied by the respondents 2, 3 and 4.

186 It is a well settled position of law that the burden of proving absence of good faith is upon the person who pleads and asserts it. Proof of *mala fides* is a heavy burden to discharge. A mere suspicion, however, is not a proof.

187 Arguments have been advanced on behalf of the writ petitioners that treating Thiru S.T.K.Jakkaiyan differently, who had also submitted representation dated 22.08.2017 along with the petitioners and later on exhibited his retraction, would also amount to *mala fide* act on the part of the Speaker. Attention of this Court was also invited to paragraph 144 to 146 of ***Yeddyurappa's case*** (cited supra) and it is the submission of the learned Senior Counsel appearing for the petitioners that different treatment given to Thiru M.P.Renukacharya and Thiru Narasimha Nayak has also been taken into consideration and a finding was given that the appellant therein was not given adequate opportunity

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to deal with the contents of the affidavit filed by two MLAs and time for submission of reply to the show cause notice was also pre-poned. However, the learned Senior Counsel appearing for the first respondent sought to distinguish the said issue by pointing out that the Speaker of Karnataka Legislative Assembly had also heavily relied on the contents of the affidavits of two MLAs to arrive at a conclusion to disqualify them under Paragraph 2(1)(a) of the Tenth Schedule and in the case of hand, the first respondent did do so and in fact dealt with the retraction in the case of Thiru S.T.K.Jakkaiyan separately after dealing with the issue of disqualification of the writ petitioners by drawing the attention of this Court to the impugned order passed by the first respondent.

188 In paragraph 45 of the impugned order, the first respondent has recorded the fact that the ninth respondent/petitioner in W.P.No.25260 of 2017 has sought police protection, vide communication dated 14.09.2017 to travel from Kudagu, Karnataka State to Chennai and that on 30.08.2017, all the petitioners and Thiru S.T.K.Jakkaiyan were present in Puducherry and for that purpose, had relied upon the statement made by the 17th respondent and reached the conclusion that the respondents have made false statements before him. It is the submission

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of the respective learned Senior Counsel appearing for the respondents that the petition of the ninth respondent would indicate that it was signed at Chennai on 14.09.2017 and since they sought for police protection to travel from Kudagu, Karnataka to Chennai, it can be presumed that they were not really at Chennai and accordingly, the Speaker has correctly drawn his views. Similarly, in respect of interim replies dated 30.08.2017, the Speaker also found that they were available at Puducherry. In sum and substance, it is the submission of the learned Senior counsel appearing for the first respondent that the Speaker had relied upon subsequent statement of the 17th respondent, namely Thiru S.T.K.Jakkaiyan only to draw the conclusion that the writ petitioners were not actually available at Chennai and not for any other purpose. In paragraph 64 of the impugned order, the first respondent has also recorded a finding that the respondents have not been seen in public since 22.08.2017, after their meeting with the Hon'ble Governor and that they are presently at Kudagu, Karnataka (as per their own admission), which clearly shows that they have distanced themselves from the party and have fallen to the control of persons outside their party.

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189 It is not in dispute that the respondents in the petition for disqualification/petitioners herein except Thiru S.T.K.Jakkaiyan did ask for police protection to travel from Kudagu, Karnataka to Chennai and therefore, some materials were available before the first respondent/Speaker to reach the conclusion. Whether the first respondent/Speaker can reach such a conclusion? and whether it would amount to proper consideration and appreciation of the materials available on record? ; cannot be gone into by this Court for the following reasons.

190 As already observed by this Court, allegation of *mala fides* and bias are not only required to be averred but also to be strictly proved and the burden lies very heavy on persons like the writ petitioners not only to aver, but to substantiate the same. No doubt, there were averments as extracted by this Court in the earlier paragraphs, but it is to be seen whether those averments have been substantiated.

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191 In paragraph 118 of ***Kihoto Hollohan's case*** (cited supra), it is observed that ***"it is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or***

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even found, to have discharged their functions not in keeping with the great traditions of that high office. The robes of the Speaker do change and elevate the main inside". The Hon'ble Supreme Court of India has also dealt with the arguments advanced that the vesting of adjudicatory functions in the Speakers/Chairmen would by itself vitiate the provision on the ground of likelihood of political bias and rejected the same as unsound.

192 In paragraph 84 of the ***Jagjit Singh's case*** (cited supra), it was observed that ***"the Speaker enjoys a very high status and position of great respect and esteem in the parliamentary traditions. He, being the very embodiment of propriety and impartiality, has been assigned the function to decide whether a Member has incurred disqualification or not. The High Office of the Speaker has been considered as one of the grounds for upholding the constitutional validity of the Tenth Schedule in Kihoto Hollohan case."***

193 In ***State of Haryana v. Rajendra [AIR 1972 SC 1004]***, the order of termination of service passed against the Government servant was put to challenge and it was allowed by the High Court of Delhi by

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setting aside the same and aggrieved by the said order, an appeal was filed before the Hon'ble Supreme Court. One of the grounds urged by the writ petitioner therein challenging the order of termination was that it was vitiated by *mala fides*. In paragraph 47 of the said decision it was observed that *"When in a writ petition a Government Order is challenged on more than one allegation of mala fides, the proper approach of the High Court should be to consider all the allegations together and find out whether those allegations when established, are sufficient to prove malice or ill-will on the part of the official concerned and whether the impugned order is the result of such malice or ill-will".*

194 In ***Union of India and Others v. Ashok Kumar [AIR 2006 SC 124]***, the order of removal from service was put to challenge before the Jammu and Kashmir High Court, which set aside the said order and an appeal was filed by the Union of India before the Hon'ble Apex Court and one of the grounds raised was *mala fide* act by terminating the respondent therein from service. The Apex Court has taken into consideration the decisions in ***Pratap Singh v. State of Punjab [AIR 1964 SC 72], E.P.Royappa v. State of Tamil Nadu and another [AIR 1974 SC 555], Indian Railway Constitution Co. Ltd. v. Ajay Kumar***

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[2003 (4) SCC 579] and Gulam Mustafa and Ors. v. The State of Maharashtra and Ors.[1976 (1) SCC 800] and in paragraphs 20 and 21, observed as follows:

> "20. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab, AIR 1964 SC 72). It cannot be overlooked that burden of establishing mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of Tamil Nadu an another (AIR 1974 SC 555), Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Railway Construction co. Ltd. v. Ajay Kumar 2003 (4) SCC 579).
>
> 21. As observed by this Court in Gulam Mustafa and Ors. v. The State of Maharashtra and Ors.[(1976) 1 SCC 800] mala fide is the last refuge of a losing litigant."

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The Hon'ble Apex Court has taken note of its earlier decisions and observed in the said paragraphs that allegations of *mala fides* are often more easily made than proved and the very seriousness of such allegations demand proof of a high order of credibility and the Courts would be slow to draw dubious inferences from incomplete facts before it by a party, particularly when the imputations are grave and they are made against the holder of office which has a high responsibility in the administration.

195 The Speaker, being the sole and ultimate authority to decide the issue pertaining to disqualification under the Tenth Schedule, is also an important Constitutional functionary and in the light of the settled position, *mala fides* cannot ordinarily be interfered, while the said authority exercises his powers. This Court in paragraph Nos.191 and 192 of the judgment, has also extracted the observations of the Hon'ble Apex Court in ***Kihoto Hollohan's case*** and ***Jagjit Singh's case*** as to the high position and esteem of the Speaker and in more than one place, pointed out that the order passed by the Speaker under the said provision cannot, normally be interfered with unless it comes within the scope of Paragraph 109 of ***Kihoto Hollohan's*** case.

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196 The impugned order of the first respondent is also sought to be attacked on the ground of perversity and also denial of fair and reasonable opportunity to the petitioners to submit their full response to the petition for disqualification submitted by the second respondent and that apart, further stand was taken that the case of Thiru S.T.K.Jakkaiyan was treated differently and without furnishing a copy of the representations submitted by Thiru S.T.K.Jakkiyan to the Governor as well as to the first respondent, reliance has been placed upon those documents to draw a conclusion that the petitioners are to be disqualified under Paragraph 2(1)(a) of the Tenth Schedule.

197 It is also argued on behalf of the petitioners that denial of permission to cross-examine the concerned reporters of Print and Visual Media, second respondent and the third respondent, had also resulted in violation of the principles of natural justice.

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198 A perusal of the impugned order passed by the first respondent/Speaker would disclose that the said authority has taken into consideration all the materials and carefully scanned and analyzed the

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same and reached a conclusion to disqualify the petitioners. This Court, while dealing with the aspect of judicial review, has also dealt with the scope of interference in the order passed by the Speaker under Tenth Schedule.

199 In the considered opinion of the Court, the allegations of *mala fide* on the part of one of the important Constitutional functionaries, namely the Speaker, have not been substantiated and the petitioners under the guise of raising a ground of attack, wants this Court to re-appreciate the materials placed before the Speaker and also to review the findings recorded by him. However, it is impermissible under law even in respect of an order passed by other Tribunals.

***200** The first respondent/Speaker, while answering preliminary question No.2 in paragraph No.28, given the reasons. This Court in paragraph Nos.190 to 194 had also dealt with the legal position and in it's considered opinion, petitioners had failed to probablise/substantiate the allegations as to mala fide act on the part of the first respondent. This Court also taking into consideration, the High Office of the Speaker and powers conferred on him under the*

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Tenth Schedule of the Constitution of India, cannot draw such an inference on mere surmises and conjectures. Therefore, the ground of attack as to the mala fide act on the part of the Speaker while passing the order of disqualification under Paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India is liable to be rejected and accordingly rejected. (*)

201 As regards the ground of attack that the case of Thiru S.T.K.Jakkaiyan has been treated differently and that the representations submitted by him to the Governor as well as to the first respondent have not been furnished, this Court is of the considered view that the alleged infirmity did not result in any prejudice to the petitioners. As already pointed out in paragraph 192 of this judgment that the retraction on the part of Thiru S.T.K.Jakkaiyan has been taken up separately by the first respondent/Speaker, after concluding that the petitioners had suffered disqualification under Paragraph 2(1)(a) of the Tenth Schedule and reliance on the statement made by Thiru S.T.K.Jakkaiyan by the Speaker was only for the purpose of reaching the conclusion that the petitioners were not available at Chennai.

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202 Therefore, the act of the first respondent/Speaker in treating the issue regarding disqualification of Thiru S.T.K.Jakkaiyan differently and while doing so exhibited bias, have not been substantiated or probablised by the petitioners. (*)

(C) - PERVERSITY

203 It was argued by Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners by drawing the attention of this Court to paragraph 59 of the impugned order wherein the first respondent has taken note of the visit made by the leader of the opposition party with the Hon'ble Governor and observed that he cannot view this as an isolated act or an unconnected incident and the act of the writ petitioners and another in submitting representations dated 22.08.2017, followed by the representation of the leader of the opposition cannot be lost sight of and it is quite clear from the sequence of events that the respondents are acting in concert with the leader of the opposition.

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204 It is the vehement and forceful submission of the learned Senior Counsel appearing for the petitioners that the material relied on by the first respondent to reach the said conclusion was not at all a part of

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record and extraneous materials have been placed reliance upon and for that, the petitioners were not even put on notice and therefore, finding reached in that regard that the writ petitioners had acted in tandem and in collusion with the leader of the opposition and thereby defeated their loyalty to the party and it would amount to disqualification as enumerated in Paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India is also perverse. Attention of this Court was also invited to paragraph 280 of the order of the Hon'ble Chief Justice, wherein it was observed that the facts and materials on record do not establish that the writ petitioners had colluded and/or were in collusion with the main opposition party. The Hon'ble Mr.Justice M.Sundar, while dealing with the said issue, in paragraph 14(ao) to 14(as) has reached the conclusion that in the absence of any shred of evidence or iota of material to suggest that the writ petitioners and DMK are acting in tandem and it is an assumption without any basis and it is not even a possible view and therefore, the impugned order of the first respondent clearly suffers from the vice of perversity.

205 Mr.C.A.Sundaram, learned Senior Counsel appearing for the first respondent/Speaker has reminded the Court that the Speaker while

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performing his function under Tenth Schedule, though termed as a Tribunal, is not a Tribunal in regular sense like that of Administrative Tribunal and other Tribunals and considering the fact that the Speaker is the sole and ultimate authority to decide the issue relating to disqualification under Tenth Schedule and also being an important Constitutional functionary, the order passed by him cannot be lightly interfered with except on four grounds enumerated in paragraph 109 of the ***Kihoto Hollohan's case*** (cited supra).

206 The learned Senior Counsel appearing for the first respondent/Speaker has drawn the attention of this Court to the dictionary meaning of the word "perverse" and would submit that "perverse" means showing a deliberate and stubborn intention to behave in a way that is wrong, unreasonable or unacceptable; a perverse decision is one that ignores the facts or evidence and would contend that the Speaker, in order to reach the conclusion, has placed reliance upon newspaper report annexed to the petition for disqualification, a copy of which has also been served on the petitioners and the fact of the leader of the opposition meeting the Hon'ble Governor on 22.08.2017 has not been disputed and it is also an admitted fact that the writ petitioners and Thiru

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S.T.K.Jakkaiyan had met the Hon'ble Governor on the very same day and submitted representations making certain allegations and expressing lack of confidence on the Chief Minister and on appreciation of the materials, has drawn certain inferences and therefore, it cannot be said that such inferences/findings were not based upon any material or evidence and this Court, under the guise of judicial review, cannot re-appreciate the same for the purpose of reaching a different conclusion. The learned Senior Counsel appearing for the first respondent would contend that the approach to the said issue made by the Hon'ble Mr.Justice M.Sundar is unsustainable.

207 This Court has considered this ground of attack while dealing with the issue relating to judicial review of the order passed by the Speaker/first respondent. (*)

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(D) – VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE

208 It is contended on behalf of the writ petitioners that the first respondent/Speaker had committed grave violation of the principles of natural justice while conducting the disqualification proceedings under

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Tenth Schedule and the following instances of violations have also been pointed out:

(a) Some of the representations given by the petitioners to the Hon'ble Governor of Tamil Nadu on 22.08.2017 did not contain signature and despite that, those representations have been taken into consideration.

(b) Despite the petitioners praying for sufficient opportunity/time in the form of representations to furnish documents as well as opportunity to cross-examine the second respondent/Whip as well as the third respondent/Chief Minister, especially with regard to availment of Internal Dispute Redressal Mechanism, the same has been unjustly denied.

(c) Thiru P.Vetrivel/petitioner in W.P.No.25260 of 2017 along with this Counsel appeared before the first respondent/Speaker on 14.09.2017 and sought for further time and though an impression was given to the effect that time sought would be given, it was not so and the first respondent has pronounced the impugned order on 18.09.2017.

(d) The request sought for by the petitioner to cross-examine Jaya Tv reporter and Thanthi TV reporter with

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regard to the telecast of the press meet has also been unjustly denied.

(e) The first respondent has failed to follow the Disqualification Rules, 1986 which contemplate that the procedure to be followed by the Speaker is the same as that of the Committee of Privileges of the Assembly [Rule 7(7) read with Rule 2(b)]. The rules relating to the procedure to be followed by the Committee of Privileges is the Rule of Procedure followed by the Select Committee of the House, who in-turn contemplates the issue of summons/process to witness, examination on oath etc., and consequently, the proceedings under the Tenth Schedule clearly contemplate examination of witnesses and cross-examination and despite request made to examine the witnesses, it has been unjustly and unfairly denied by the first respondent.

(f) The Speaker has also placed reliance upon extraneous materials to reach the conclusion that the petitioners have acted in tandem with the leader of the opposition and with regard to such conclusion, the petitioners were not even put on notice and no opportunity has been provided to them to substantiate the same.

(g) Similarly, behind the back of the petitioners, the first respondent had relied upon the letters of Thiru S.T.K.Jakkaiyan, M.L.A., who was originally with them to

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substantiate the finding as to disqualification under Paragraph 2(1)(a) of the Tenth Schedule and in similar facts and circumstances in ***Yeddyurappa's case***, the Hon'ble Supreme Court of India frowned upon such an act of the Speaker of the Karnataka Legislative Assembly and that was one of the reasons to interfere with the order of disqualification and as such, the impugned order of the first respondent warrants interference on that ground also.

209 *Per contra*, it is contended on behalf of the respondent that fair and sufficient opportunities were given to the writ petitioners and though 7 days period has been mandated under Disqualification Rules for submitting final reply, the first respondent/Speaker had granted three opportunities and every time, interim replies were submitted and the writ petitioners developed a habit to seek for further time and even in the communication dated 07.09.2017, the first respondent made it very clear that last opportunity was given for their presence/appearance on 14.09.2017 with a further direction to file reply, if any and though the petitioner in W.P.No.25260 of 2017, namely Thiru P.Vetrivel along with his Counsel had appeared before the first respondent on 14.09.2017, they made a written request praying for further time and therefore, the Speaker had proceeded further and taking into consideration the

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materials placed and on proper and correct appreciation of the same and after affording the petitioners fair and reasonable opportunities, had rightly reached the conclusion to disqualify them and in the light of limited grounds available to interfere with such a decision, the impugned order of the Speaker cannot be faulted with.

210 The response of the third respondent/Chief Minister was sought for by the first respondent as to the allegations made by them and the third respondent has submitted his comments dated 30.08.2017 and such a response was sought for by the first respondent in terms of Rule 7(3)(b) of the Disqualification Rules and though it was open to the petitioners to substantiate their contention that they tried to avail the internal dispute redressal mechanism, they failed to produce even an iota of material and nothing prevented them to examine themselves to substantiate the fact of availment of such a mechanism.

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211 Attention of this Court was also invited to the impugned orders of the first respondent, orders of the Hon'ble Chief Justice and the Hon'ble Justice M.Sundar and it is the submission of the respective learned Senior Counsel appearing for the respondents that the Speaker,

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though was under mandate to grant 7 days time to file reply to the petition for disqualification filed by the second respondent, had granted time on three occasions and despite that the petitioners intended to drag on the proceedings and submitted only interim replies and sought to furnish certain documents and extension of time to submit reply, forgetting the fact that they did not dispute the fact of meeting the Governor and submitting representations dated 22.08.2017, which alone is sufficient to attract paragraph 2(1)(a) of the Tenth Schedule and the fact of giving interview to print and visual media immediately on submission of the representation to the Governor have also not been denied.

212 It is further submitted that though it is contended on behalf of the petitioners that they tried to avail "Internal Dispute Redressal Mechanism" and it became an exercise of futility, the fact remains that atleast one of them should have let in oral evidence to substantiate the said stand and they failed to do so and instead, they wanted to cross-examine the third respondent/Chief Minister and therefore, it has been rightly denied and in the facts and circumstances, it cannot be said that the petitioners had been put to serious prejudice on account of denial of

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cross-examination. Moreover, fair and reasonable opportunity may not include cross-examination of the witnesses also and it is also open to the adjudicating authority to adjudicate the issues based on the materials placed and the Speaker has precisely done that in a fair, reasonable and lawful manner and therefore, it cannot be faulted with and also in the light of limited scope of judicial review available under Articles 226 of the Constitution of India.

213 In sum and substance, it is the submission made on behalf of the petitioners that the first respondent have failed to follow the disqualification rules while dealing with the proceedings under Tenth Schedule and within 26 days, has commenced and concluded the proceedings anticipating that in the event of Floor Test being conducted, these petitioners may vote against the third respondent/Chief Minister. The reasonable request made by the petitioners to cross-examine the respondents 2 and 3 has also been unfairly and unjustly denied and cumulative effect of the same had also resulted in perversity and as such, the impugned order of disqualification warrants interference.

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214 *Per contra*, it is the submission made on behalf of the respondents that the first respondent/Speaker had scrupulously complied with the disqualification rules and also exhibited equity and fair play and also adopted the procedures strictly in tune with the majesty of the Constitutional office he holds and considered and analyzed the materials placed before him in detail and rightly reached the conclusion to disqualify the petitioners and in the light of very limited scope of judicial review available to this Court under Article 226 of the Constitution of India, the impugned order cannot be interfered with.

215 The respective learned Senior Counsel appearing for the parties made vehement and forceful submission on this point/issue relating to violation of the principles of natural justice and laid considerable time and great emphasis to convince this Court.

216 It is not in dispute that the petitioners did meet the Governor of Tamil Nadu on 22.08.2017 and submitted representations expressing disillusion with the functioning of the Government headed by the third respondent by alleging that there is abuse of power, favouritism, misuse of Government machinery, widespread corruption on his part, which

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came from various sectors/quarters and also took a stand that the third respondent is corrupt and encouraging corruption from several sectors, which also tainted the name and image of the party, namely “AIADMK”. The petitioners would state that they supported the third respondent in the Floor Test held on 18.02.2017 and however, the situation has arisen wherein governance of the State cannot be carried out in accordance with the provisions of the Constitution. They also expressed the act of dissent on the part of Thiru.O.Panneerselvam, who made serious allegations against the Government headed by the third respondent and on account of the same, they expressed lack of confidence on the third respondent. The petitioners along with Thiru S.T.K.Jakkaiyan had also indicated that they have not given up their membership of the political party, namely “AIADMK” and they are doing their duties as conscious citizen to expose the abuse and misuse of the Constitutional provision. The act of the petitioners and another meeting the Governor and submitting the said representation had been widely published in news dailies and press interview was also given by one or some of them.

217 The second respondent/Chief Government Whip, on becoming aware of the submission of said representation through news

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dailies and media houses, had met the first respondent and submitted a petition dated 24.08.2017, praying for disqualification of 19 MLAs, which include Thiru S.T.K.Jakkaiyan, who had subsequently retracted from his earlier stand, under Tenth Schedule of the Constitution read with the Tamil Nadu read with the Disqualification Rules. The second respondent, along with the said petition, had enclosed the representation/letters given by the concerned MLAs to the Governor, CD containing media reports and newspaper articles. The said petition for disqualification was also verified by the second respondent on 24.08.2017. Arguments were advanced on behalf of the petitioners that the petition for disqualification has not been duly verified in the manner laid down in the Civil Procedure Code, 1908 and annexures to the same have not been signed and verified in the same manner and therefore, there was a violation of Rule 6 of the Disqualification Rules.

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218 In ***Ravi S.Naik's case*** (cited supra), one of the arguments put forward was that the petitions that were filed by Mr.Khalap before the Speaker did not fulfill the requirements of clause (a) of sub-rule (5) of Rule 6 of the Disqualification Rules and while dealing with the said issue in paragraph 18, the Hon'ble Supreme Court observed that "..The

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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***. ".... We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates..... They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in ***Kihoto Hollohan case"***.

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219 The Members of the Tamil Nadu Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 came to be framed by the Speaker/first respondent, in exercise of powers conferred under paragraph 8 of the Tenth Schedule of the Constitution of India and it deals with the procedure to be adopted while considering the issue

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relating to disqualification. Even for the sake of arguments, if the petition for disqualification submitted by the second respondent is not in tune with the Disqualification Rules, in the considered opinion of this Court, it amounts to an irregularity of procedure and by virtue of Article 212(1) of the Constitution of India, the validity of the proceedings in the legislative of a State shall not be called in question on the ground of alleged irregularity in procedure.

220 It was also contended on behalf of the petitioners that Annexure-I to the petition for disqualification also contains the alleged representations submitted by the petitioners and another and the sender column has been left as blank and the said fact/lapse have not been taken note of by the first respondent. It is not in dispute that the representations submitted by the petitioners and Thiru S.T.K.Jakkaiyan were similarly worded and as such, the point urged/raised in that regard is liable to be rejected.

221 The second respondent was appointed as the Chief Government Whip in the Tamil Nadu Legislative Assembly by the Governor of Tamil Nadu, vide S.O.Ms.No.69 of the Legislative

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Assembly Secretariat dated 25.05.2016 and as such, he is also competent to present the petition for disqualification under Tenth Schedule. The first respondent/Speaker, immediately on receipt of the petition for disqualification along with annexures from the second respondent, had forwarded the same to the petitioners as well as to Thiru S.T.K.Jakkaiyan, vide communication dated 24.08.2017 by following Rule 7 of the Disqualification Rules.

222 Vehement and forceful submissions were also made to the effect that the first respondent/Speaker has proceeded to adjudicate the issue relating to disqualification in haste by exhibiting urgency and in that process, has adopted unjustifiable and unreasonable procedure and despite request for time has been made, it has been unjustly denied without any rhyme or reason.

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223 Rule 7 of the Disqualification Rules, 1986 speaks about procedure to be followed on receipt of the petition for disqualification under Rule 6 and it is relevant to extract the same:

> **7. Procedure**.--(1) On receipt of petition under rule 6, the Speaker shall consider whether the petition complies with the requirements of that rule.

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(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 thereto 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 or leader shall, within seven days of the receipts of such copies or within such further period as the Speaker may for sufficient cause allow, forward his comments in writing thereon 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 or 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 petitioner 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 Information Sheet.

(6) Where 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.

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(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 for enquiry and determination by the Committee of any question as to breach of privilege of the House by a member, and neither the Speaker nor the Committee shall come to any finding that a member has become subject to dis-qualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

(8) The provisions of sub-rules, (1) to (7) shall apply with respect to a petition in relation to the Speaker as they apply with respect to a petition in relation to any other member and for this purpose, reference to the Speaker in the sub-rules shall be construed as including references, to the members elected by the House under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule."

Rule 7(3)(b) would say that "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 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 thereon to the Speaker.

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224 A perusal of Volume-II of the typed set of documents filed by the petitioner in W.P.No.25260 of 2017, namely Thiru P.Vetrivel would disclose the following facts:

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(i) The Speaker, vide communication dated 24.08.2017, has forwarded the petition for disqualification along with annexures, to the petitioners and interim replies/comments dated 30.08.2017 have been submitted and the said interim replies/comments runs to 18 pages containing 33 paragraphs.

(ii) The petitioner in W.P.No.25260 of 2017, in the said interim reply, prayed for grant of adjournment and further time to give detail explanation with other related documents, to permit him to engage a Lawyer to represent on his behalf and to plead legal plea on his behalf, to issue summons to the second respondent/Whip to submit the petition for disqualification before the first respondent or the Committee for cross examination on the basis of verification affidavits and petition filed by him, to permit him to examine witnesses on his part with further permission to mark documents through such witnesses as exhibits and to dismiss the petition filed by the second respondent/Whip as not maintainable on the ground of want of jurisdiction of the first respondent.

(iii) The first respondent/Speaker, upon receipt of the petition for disqualification, had also forwarded the same to the third respondent for his comments, who, vide communication dated 30.08.2017, has submitted his comments and in paragraph 3, took a stand that if really the respondents in the petition for disqualification had an issue with him, they would have approached the legislative party or the office of the first

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respondent and would not have approached the Hon'ble Governor with a prayer to set the Constitutional Scheme of things in motion.

(iv) The petitioner in W.P.No.25260 of 2017 submitted his reply dated 05.09.2017 and after referring to his earlier interim reply as well as the letters dated 30.08.2017 as well as the comments of the third respondent dated 30.08.2017, wherein he would state among other things that the petition for disqualification submitted against 11 MLAs headed by Thiru O.Panneerselvam has been kept in cold storage and whereas immediate action has been taken in the petition for disqualification dated 24.08.2017 submitted by the second respondent. That apart, several opposition parties had also called upon the Governor and also requested the Hon'ble President of India to intervene in the matter and further the Governor of Tamil Nadu has took a stand that the complaint against the Chief Minister is purely an internal matter and despite that the petition for disqualification submitted by the second respondent being perused with great haste.

(v) The petitioner in W.P.No.25260 of 2017, in paragraph No.15 of his interim reply dated 05.09.2017 had said something about availment of the Internal Dispute Redressal Mechanism and prayed for furnishing the copy of the letter sent by the fourth respondent to the third respondent, to direct the third respondent to furnish copies as to extending of the invitation to attend the legislative party meeting, grant of 15 days time to submit his final reply on furnishing of the above documents and to permit him to have the

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enquiry before the Committee under Rule 7(5) of the Disqualification Rules and along with the said reply, the petitioner had also enclosed the comments of the third respondent dated 30.08.2017 and the covering letter of the fourth respondent dated 03.09.2017.

(vi) The petitioner in W.P.No.25260 of 2017 once again submitted his representation dated 05.09.2017 to the first respondent, praying for furnishing of the required documents and to grant 15 days time for giving final reply and thereafter to fix the date and time for the personal hearing of the petitioners through their Counsel on proper intimation.

(vii) The petitioner in W.P.No.25260 of 2017 has submitted his second reply/comments dated 14.09.2017 in response to the letter of the fourth respondent dated 07.09.2017, by reiterating his earlier stand and also enclosed the copy of the letter of their Deputy General Secretary, namely Thiru T.T.V.Dinakaran dated 21.08.2017, praying for furnishing of required documents as sought by him, vide reply dated 05.09.2017 and his Advocate's petition dated 05.09.2017, to grant 5 days time from the date of receipt of the copies of documents to him, enabling him to file his final reply, to fix the date of his personal hearing after filing of his final reply and to adjourn the personal hearing from 14.09.2017 to some other date.

225 It is to be pointed out at this juncture that the first

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respondent did not concede to the said request and passed the impugned order of disqualification dated 18.09.2017. In the light of the above facts and circumstances, it is to be seen "***Whether the writ petitioners have been afforded with reasonable, sufficient and fair opportunity to defend themselves and that whether the principles of natural justice have been adhered to by the first respondent?***"

226 As per paragraph 109 of ***Kihoto Hollohan's case***, nature of function that is exercised by the Speaker/Chairman under paragraph 6 of the Tenth Schedule, is amenable to judicial review under Articles 136 and 226 and 227 of the Constitution and it would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity and therefore, one the grounds for interference is non-adherence/non-compliance to the rules of natural justice.

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227 In ***Ravi S.Naik's case*** (cited supra) one of the grounds urged was violation of the principles of natural justice for the reason that in the impugned order, the Speaker has referred to certain extraneous materials, namely newspaper reports containing photos and the talks the Speaker

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had with the Governor and another grievance was that the appellant before the Hon'ble Supreme Court was denied opportunity to adduce evidence before the Speaker.

228 Natural Justice has many facets and all its facts are steps to ensure justice and fair play. The Hon'ble Supreme Court in ***Suresh Koshy George v. University of Kerala [AIR 1969 SC 198]*** had an occasion to consider the principles of natural justice in the context of a case where disciplinary action was taken against a student who was alleged to have adopted malpractice in the examination. In paragraphs 8 and 7, it is observed as follows:

> "7..... *The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been made by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.*
>
> *8.* ***In Russell v. Duke of Norfolk [(1949) 1 All ER 109 (CA)], Tucker, L.J.*** *observed: (All ER p.118 D-F)*
>
> *'There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice depends on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a*

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reasonable opportunity of presenting the case.'"

229 In ***Ravi S. Naik's case*** (cited supra), the Hon'ble Supreme Court has dealt with the said issue in paragraphs 20 to 27 of its judgment and also placed reliance upon the judgments in ***Maneka Gandhi v. Union of India [(1978) 1 SCC 248], Union of India v. Tulsiram Patel [(1985) 3 SCC 398], H.W.R. Wade: Adminisgtrative Law, 6th Edn. P.530, Clive Lewis: Judicial Remedies in Public Law (1992) p.290, Malloch v. Aberdeen Corpn. [(1971) 2 All ER 1278], A.M.Allison v. B.L. Sen [AIR 1957 SC 227]***.

230 Incidentally arguments were also advanced as to the reliance made by the Speaker upon newspaper reports. In paragraph 20 of the said judgment, it was observed by the Hon'ble Supreme Court that *"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.... Whether the requirements of natural justice have been complied with or not has to be considered in the context of the fact and circumstances of a particular case."* The Hon'ble Supreme Court has also taken note of the observations in Clive Lewis's Judicial Remedies in Public Law (1992)

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that *"the 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*" and extracted the same in paragraph 21 of the judgment.

231 In ***Yeddyurappa's case***, which is the sheet anchor of the petitioners, one of the grounds of challenge to the order of the Speaker of the Karnataka Legislative Assembly in disqualifying certain MLAs was violation of the principles of natural justice and in paragraph 125, on facts, found that the act of the Speaker amounts to denial of opportunity to the appellant and also exhibited partisan trait in disposing of the disqualification petition filed by Thiru B.S.Yeddyurappa and if the Speaker wished to rely on the statements of a third party which were adverse to the appellants interest, it was obligatory on his part to have given the appellants an opportunity of questioning the deponent as to the veracity of the statements made in the affidavit and the said conduct of the Speaker is also indicative of the "hot haste" with which the Speaker disposed of the disqualification petition and also further observed that there was violation of Rule 7 of the Disqualification Rules for the reason that the appellants were granted 3 days time as against the mandatory

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time limit of 7 days. In the said decision, denial of right of cross examination was also considered and reliance was placed upon ***Jagjit Singh's case*** (cited supra).

232 In ***Jagjit Singh's case***, challenge was made to the order of disqualification passed by the Haryana Legislative Assembly and one of the grounds urged was the violation of the principles of natural justice and that the orders of disqualification were came to be passed in utter haste with a view to deprive them of their right to vote. The Hon'ble Supreme Court, in the said judgment, has also taken into consideration ***Ravi S.Naik's case, Tulsiram Patel's case, Maneka Gandhi's case, Ridge v. Baldwin [(1963) 2 WLR 935]*** and in paragraph 13, formulated the question whether reasonable opportunity has been provided or not cannot be put in a straitjacket and would depend on the fact situation of each case and it is very relevant to extract paragraph 14 of the said judgment:

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> "14. At the outset, we may mention that while considering the plea of **violation of principles of natural justice, it is necessary to bear in mind that the proceedings under the Tenth Schedule are not comparable to either a trial in a court of law or departmental proceedings for disciplinary action against an employee. But the proceedings here are against an elected representative of the people and the**

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judge holds the independent high office of a Speaker. The scope of judicial review in respect of proceedings before such Tribunal is limited. We may hasten to add that howsoever limited may be the field of judicial review, **the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated**. The yardstick to judge the grievance that reasonable opportunity has not been afforded would, however, be different. **Further, if the view taken by the Tribunal is a reasonable one, the Court would decline to strike down an order on the ground that another view is more reasonable. The Tribunal can draw an inference from the conduct of a Member, of course, depending upon the facts of the case and totality of the circumstances**."

(emphasis supplied)

233 The Hon'ble Supreme Court, in paragraph 17 of the above cited decision, has also considered the plea put forward on behalf of the appellant that if the liberty to let in evidence and cross examination would be granted, they would show that they did not join the Indian National Congress despite what had happened in print and electronic media. The Hon'ble Supreme Court, while considering the said plea, has also considered the decisions in ***National Textile Workers' Union v. P.R.Ramakrishnan [(1983) 1 SCC 228], Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664], Ridge v. Baldwin [1963 (2) WLR 935], John v. Rees [(1969) 2 WLR 1294]*** and formulated a question in paragraph 20 as to "whether sufficient opportunity was granted to the petitioners or nor? It is relevant to extract the following portions of the

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said judgment:

> "**24.** Dealing with the argument that reference had been made to newspapers and opportunity to adduce evidence was denied, it was held that the Speaker was drawing an inference about the fact which had not been denied by the appellants themselves viz. that they had met the Governor along with two other persons in the company of Congress (I) MLAs. The talk between the Speaker and the Governor also referred to the same fact. It was noted that the controversy was confined to the question whether from the said conduct an inference could be drawn that they had voluntarily given up membership. Rejecting the grievance about the denial of opportunity to adduce evidence, in *Ravi S. Naik case* [1994 Supp (2) SCC 641] it was noticed that the appellants were the best persons who could refute the allegations but they did not come forward to give evidence and also failed to seek permission to cross-examine one Dr. Jahlmi in respect of the statement made by him before the Speaker that the appellants had given up their membership of their political party.
>
> **25.** We will consider at an appropriate place later the contention urged in the present case, that unlike *Ravi S. Naik case* [1994 Supp (2) SCC 641] the petitioners had disputed the allegations made in the petition and had also sought permission for leading evidence and for cross-examination of Ashwani Kumar which was illegally denied to them.
>
> **26.** Considering that rules of natural justice are flexible, let us now examine the facts of the present case where the petitioners filed their replies to the complaint and were asked by the Speaker to watch the video recording and point out doctoring thereof, if any. The question is that having failed to do so, can they be heard on the facts of the present case, to say that non-grant of opportunity to cross-examine Ashwani Kumar and to adduce evidence has resulted in violation of rules of natural justice on having simply denied that they have not joined Indian National Congress? Had they availed of the opportunity and pointed out how the recording was not

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correct and it was doctored and then not permitted to lead evidence, the argument that there has been violation of principles of natural justice may have carried considerable weight. The petitioners cannot be permitted to sit on the fence, take vague pleas, make general denials in the proceedings before the Tribunal of the nature under consideration. ***Under these circumstances, mere denial of opportunity to cross-examine or adduce evidence may not automatically lead to violation of principles of natural justice. The principles of natural justice cannot be placed in such a rigid mould. The court, on facts of a case despite denial of opportunity to lead evidence, may come to the conclusion that reasonable opportunity has been afforded to the person aggrieved. The principles of natural justice are flexible and have to be examined in each case."*** (emphasis supplied)

234 In ***Union of India v. T.R.Varma [AIR 1958 SC 882]***, the order of dismissal of a Government servant from service was put to challenge by the Government servant and it was set aside by the High Court of Punjab and it was taken up by way of appeal by the Union of India before the Hon'ble Supreme Court and one of the grounds urged was that the respondent/Government servant was denied opportunity to cross-examine witnesses, who gave evidence in support of the charge. The learned Senior Counsel appearing for the petitioners has placed reliance upon the said decision and submitted that despite repeated requests made to summon the respondents 2 and 3 and subject themselves to cross-examination, the said request has been unjustly

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denied. A perusal of the said judgment would disclose that the respondent/Government servant was denied opportunity to cross-examine and it is relevant to paragraph 10 of the said judgment:

> "**10.** Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a court of law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in *New Prakash Transport Co.* v. *New Suwarna Transport Co.* [(1957) SCR 98] where this question is discussed."

Ultimately, the Apex Court, in the above cited decision, found that there was no violation of the principles of natural justice and therefore, allowed the appeal filed by Union of India.

235 In ***Mahachandra Prasad Singh's case*** (cited supra), it was

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the stand of the appellant therein that the Chairman of the Bihar Legislative Assembly did not afford opportunity of personal hearing to the appellant and also relied upon certain materials, copy of which have not been furnished and consequently, rules of natural justice have been violated. The Hon'ble Supreme Court repelled the said contention by taking into consideration of the fact which would show that the Chairman of the Bihar Legislative Assembly has afforded opportunity to the appellant, but he himself did not avail them.

236 The learned Senior Counsel appearing for the petitioners has placed heavy reliance upon the decision in ***Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and Others [(2015) 8 SCC 519]*** which dealt with nature, scope and applicability of the principles of natural justice and in the said judgment, almost all the earlier decisions rendered by the Apex Court have been referred to more particularly ***Mohinder Singh Gill v. Chief Election Commissioner [(1978) 1 SCC 405], Maneka Gandhi v. Union of India [(1978) 1 SCC 248], Board of Mining Examination v. Ramjee [(1977) 2 SCC 256], Malloch v. Aberdeen Corpn. [(1971) 1 WLR 1578], ECIL v. B.Karunakar [(1993) 4 SCC 727]*** and the famous and often quoted

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judgment, ***A.K.Kraipak v. Union of India [(1969) 2 SCC 262]***. The issue involved in the said decision pertains to withdrawal of the notification granting exemption of Central Excise in respect of goods falling under Chapter 21.06 (pan masala) and Chapter 24 (tobacco and tobacco substitutes including cigarettes, chewing tobacco etc.). Three issues have been formulated by the Apex Court and Issue No.2 was that "Whether recovery proceedings can be initiated without show-cause notice under Section 11-A of the Excise Act, which is mandatory? It is relevant to extract paragraph 38 of the said decision:

> "**38.** But that is not the end of the matter. While the law on the principle of *audi alteram partem* has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It

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> is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on."

In paragraph 47 of the said decision, the Hon'ble Supreme Court has taken note of the observations in paragraph 64 of the decision in ***Escorts Farms Ltd. v. Commissioner [(2005) 7 SCC 725]*** and in paragraph 48 observed that "non-issuance of notice before sending communication dated 23.06.2003 has not resulted in any prejudice to the appellant, namely Dharampal Satyapal".

237 Thus, propositions that emerge from the above cited decisions are that straitjacket formula cannot be made applicable and the compliance of the principles of natural justice depend upon facts and circumstances of each case and while doing so, totality of the situation should be taken into consideration and if it is found that the acts of concerned authority or the order passed by them suffers on account of non-compliance, it can be set right.

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238 The Apex Court in the decision in ***Scheduled Caste and Weaker Section Welfare Association (Regd.) and another v. State of Karnataka and Others [(1991) 2 SCC 604]*** observed that "....***What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose***.."

239 This Court, keeping in mind the propositions and principles laid down in the above cited decisions, has carefully scanned and analyzed the grounds urged on behalf of the learned Senior Counsel appearing for the petitioners.

240 It is an admitted fact that the petitioners and Thiru S.T.K.Jakkaiyan did meet the Governor of Tamil Nadu and submitted representations dated 22.08.2017, expressing lack of confidence on the third respondent, especially the manner and style of functioning. Some of the MLAs or atleast one of them did give press release as to the contents of the said representation. The second respondent/Whip, on becoming aware of the submission of such representations to the

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Governor by the petitioners and another praying for intervention and setting in motion the Constitutional process, had submitted the petition dated 24.08.2017 to the first respondent/Speaker under Tenth Schedule seeking their disqualification and also enclosed copies of the representation and other annexures.

241 The first respondent, upon receipt of the said representation along with annexures, furnished copies of the same as well as annexures and invited the comments of the petitioners and another and also granted time till 05.09.2017 to submit their response and fixed the date of personal hearing on 07.09.2017 and on 07.09.2017, on the request made, adjourned the hearing till 14.09.2017 and also specifically indicated that no further time will be given and a detailed interim reply has been submitted on 30.08.2017 and the first respondent has elicited the response of the third respondent/Chief Minister also and furnished copies to the petitioners and another, for which also, they have submitted their response on 05.09.2017.

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242 Though Rule 7(3)(b) of the Disqualification Rules mandates the concerned member to submit their response within 7 days, the Speaker had granted time which was more than 7 days as contemplated under the said rules. The petitioners, in their response, also took a stand that the representations dated 22.08.2017 said to have been given by some of the petitioners were blank in respect of senders' column and this Court has also pointed out the contents of the representation dated 22.08.2017 submitted by Thiru P.Vetrivel/petitioner in W.P.No.25260 of 2017 as well as the contents of other representations were one and the same. The petitioners also did not dispute the submission of the said representations and also did not seriously deny the interview given to media as to the contents of the said representations.

243 The first respondent/Speaker, on receipt of the petition for disqualification, has sought the response of the third respondent by sending a communication dated 24.08.2017 and the third respondent has responded to the same, vide reply dated 30.08.2017 and it was also furnished to the petitioners. However, the petitioners wanted a copy of the covering letter dated 24.08.2017 and also pleaded that the denial made by the third respondent as to the availment of Internal Dispute

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Redressal Mechanism is false and they also wanted to examine the third respondent as well as the third respondent and also questioned the jurisdiction of the first respondent/Speaker.

244 The first respondent has dealt with the said preliminary issue and in paragraph 27 has taken note of the Full Bench decision of Punjab and Haryana High Court in ***Prakash Singh Badal v. Union of India [AIR 1987 P&H 263]*** and had held that he has jurisdiction to entertain the petition under Tenth Schedule. The first respondent has also dealt with the issues relating to *mala fide* and in paragraph 28 observed that he is in public life ever since 1972 and have been a Member of Legislative Assembly from 1977 on various occasions and on perusal of records, found that on earlier five occasions, proceedings under Tenth Schedule were conducted against the Members of the House by the Speaker and as such, instances of bias set out in the petition are relating to matters not germane or relevant to the present issue. In paragraph 29, the first respondent/Speaker held that the second respondent, being a Whip in terms of Rule 6(2) of the Disqualification Rules is entitle to prefer the petition. This Court has also held that Thiru.S.Rajendran was appointed as Chief Government Whip in the Tamil Nadu Legislative Assembly, vide

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S.O.No.69, Legislative Assembly Secretariat dated 25.05.2016 by the Governor of Tamil Nadu and as such, he is competent and is having *locus standi* to file a petition for disqualification.

245 The first respondent/Speaker has also formulated a issue "Whether sufficient time has been given to the respondents to put forward their case? and dealt with the said issue in paragraphs 32 to 37 of the impugned order and while doing so, it also considered the decisions of the Hon'ble Apex Court in ***Mahachandra Prasad Singh's case and Jagjit Singh's case*** (cited supra). The Speaker has also dealt with the plea of the petitioners praying for opportunity to cross-examination and furnishing of further documents. In paragraph 38 of the impugned order, the Speaker held that in the petition for disqualification, it is for the petitioner/Whip to prove the claim and the same does not require any cross-examination and the comments dated 30.08.2017 of the third respondent did not contain any annexure and therefore, there is no need for cross-examination and insofar as the cross-examination of the second respondent is concerned, it is not necessary for the reason that proceedings under Tenth Schedule is based on documents, none of which are restricted to the personal knowledge of the second respondent or the

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third respondent.

246 The first respondent also found that though the respondents/writ petitioners sought for examining witnesses on their side, they did not reveal the name or identity and in the present proceedings, examination of witnesses would not be necessary and on the date of fixing hearing on 14.09.2017, only Thiru P.Vetrivel/petitioner in W.P.No.25260 of 2017 and Thiru S.T.K.Jakkaiyan appeared and others did not attend and also dealt with the issue relating to covering letter addressed to the third respondent inviting his response and found that the covering letter is an internal record and he is under no obligation to furnish the same.

247 The principles, on which this Court can exercise of its jurisdiction under Article 226 of the Constitution of India by way of issuance of a Writ of Certiorari are that when the decision of the Tribunal, namely the first respondent is unreasonable in the sense that no Tribunal would reasonably reach such a decision.

248 In ***G.Veerappa Pillai v. Raman and Raman Ltd. [1952 SCR***

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583] the Hon'ble Apex Court held that "***the Court in exercise of Article 226 of the Constitution of India can issue Writ of Certiorari in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice.***" It has been further observed that "***However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made***." (Emphasis supplied)

249 It is also a well settled principle of law that judicial review is not against the decision, but is against the decision making process and it is not an appeal from a decision, but the review of the manner in which decision is made. [see ***Bank of India & Ors. v. T.Jogram, AIR 2007 SC 2793 and Government of A.P. And Others v. Mohd. Nasrullah Khan, AIR 2006 SC 1214]***

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250 This Court, on a perusal and consideration of the materials, finds that on receipt of the representation dated 24.08.2017 submitted by the second respondent seeking disqualification of the petitioners along with annexures, the first respondent had forwarded the same and sought their response and the petitioners also responded the same in the form of three interim replies and of-course, they raised various grounds which have been extracted in the earlier paragraphs and prayed for furnishing of some documents and opportunity to cross-examine the second respondent/Whip as well as the third respondent/Chief Minister pertaining to this response dated 30.08.2017.

251 This Court has already pointed out that though under Rule 7(3)(b) of the Disqualification Rules, 7 days time to be granted to submit response, the first respondent has granted more time and also indicated that on 14.09.2017, the petition would be taken up for personal hearing and no further time would be granted and despite that the petitioner in W.P.No.25260 of 2017 appeared along with his Counsel and prayed for further time.

252 It is the submission of the learned Senior Counsel appearing

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for the petitioners that on 14.09.2017, the petitioner in W.P.No.25260 of 2017, namely Thiru P.Vetrivel appeared along with his Counsel and asked for pass over and it was passed over and there was no indication on the part of the first respondent that he will reserve orders and only through visual media on 18.09.2017, they became aware of the impugned order of disqualification. The decisions relied on by the learned Senior Counsel appearing for the petitioners as to adherence to the principles of natural justice had also laid down the proposition that the principles of natural justice cannot be straight jacket formula and those principles have application depending upon the facts and circumstances of each case.

253 It is to be pointed out at this juncture that even as per the version of the petitioners, they tried their level best to avail the "Internal Dispute Redressal Mechanism" and of course the said fact has not been stated in the representation dated 22.08.2017 submitted to the Governor of Tamil Nadu. The petitioners, on receipt of the notice and annexures from the first respondent, submitted their first interim reply and another detailed reply on 24.08.2017 and in paragraph 23 has indicated that he had approached the Governor only after his efforts to address his party regarding his grievances with the Chief Minister's conduct ended in

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failure and took a similar stand in his further interim reply dated 05.09.2017. The first respondent sought the response of the third respondent, who vide reply dated 30.08.2017, requested that if the petitioners had an issue with him, he would have approached the party or the office of the first respondent and would not have approached the Governor seeking to set the Constitutional scheme of things in motion.

254 In the light of such stand, it is made clear that there exists a system/methodology to solve the intra party dispute. It is the specific case of the petitioners that the CD containing interview of the petitioner in W.P.No.25260 of 2017, which was telecast in Jaya Plus news channel do not support the version and even in the visuals appearing in the CD, he has not mentioned his intention either directly or indirectly that he has voluntarily giving up his membership of the political party he belongs and his oral examination as well as examination of the Reporter, Cameraman and Editor of Jaya TV would prove that the case of the second respondent/Whip is false and that apart, all efforts have been made to avail "Internal Dispute Redressal Mechanism", the third respondent was approached. The Speaker, in paragraph 38 of the impugned order, has dealt with the said issue and formed an opinion that

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the prayer sought for by the petitioners in that regard have to be dismissed.

255 It is also to be pointed out at this juncture that in paragraph 15 of the interim reply/comments of the petitioners dated 05.09.2017 it is stated that there are ample news reports both visual and print media to substantiate that Thiru P.Vetrivel and other MLAs had met the third respondent and had put their genuine grievance as cited in his earlier interim reply dated 30.08.2017. The petitioners, despite taking such a stand, did not produce the said material either by way of enclosure along with their reply and did not even made any attempt to file and mark those newspaper reports before the first respondent during the course of disqualification proceedings.

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256 A perusal of the impugned order would reveal that the second respondent had enclosed copies of CD and it has been furnished to the petitioners. The first respondent/Speaker had relied upon the contents of the petition for disqualification submitted by the second respondent as well as newspaper reports to reach the conclusion that they are acting in tandem or in collusion with the opposition party. In

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paragraphs 59 and 60 of the impugned order, the Speaker has also taken note of the fact that the ninth respondent therein/Thiru P.Vetrivel has filed a Civil Suit on the file of this Court restraining them from conducting the General Body Meeting and also cited one of the instances to reach the conclusion that the petitioners had distanced themselves from the decisions of the party.

257 It is the submission of the learned Senior Counsel appearing for the petitioners that proceeding with the disqualification proceedings without furnishing copy of the documents sought would also amount to violation of the principles of natural justice and it also amounts to placing reliance upon extraneous materials to reach the conclusion.

258 The third respondent, in his Sur rejoinder dated October 2017 to the Rejoinder filed by the petitioners to the counter affidavit filed by the third respondent, in paragraph 10 had stated about filing of C.S.No.707 of 2017 on the file of this Court filed by Thiru P.Vetrivel/petitioner in W.P.No.25260 of 2017 and filing of Interlocutory Application seeking for injunction restraining the holding of General Body Meeting of "AIADMK" party to be held on 12.09.2017 and

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dismissal of the same with cost of Rs.1 lakh and pendency of the appeal against the said order. If it is really the case of the petitioners that they made serious attempts to resolve the differences/internal disputes, nothing prevented them to bring it to the knowledge of the third respondent in the form of written representations. This Court, during the course of hearing, put a specific question to the learned Senior Counsel appearing for the petitioners as to the availability of any bye-law in the party and it was replied in negative.

259 In the considered opinion of the Court, opportunity of hearing does not automatically include personal hearing.

260 The learned Senior Counsel appearing for the petitioners has placed reliance upon Rule 7(7) of the Disqualification Rules. It is to be pointed out at this juncture that though the second respondent has enclosed CDs along with the petition for disqualification and copies of the same have also been furnished to the petitioners, they did not dispute the fact of giving interview to the visual and print media.

261 In paragraph 25 of ***Ravi S.Naik's case***, reliance placed by

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the petitioners as to the photographs provided in newspapers have also been taken into consideration and it was held that "***reference of newspaper reports and to the talk which Speaker had with the Governor, in the impugned order or disqualification does not, in these circumstances, introduce an infirmity which would vitiate the said order as being passed in violation of the principles of natural justice".*** Even otherwise, copies of the same have also been enclosed along with the petition for disqualification.

262 No doubt, the second respondent/Whip did not examine himself, but the same would not preclude any of the petitioners to examine themselves to substantiate their version and however, they did not do so. This Court, even assuming that there was infraction of Rule 7(7) of the Disqualification Rules, still is of the considered view that procedural irregularities would not vitiate the impugned order and also in terms of Article 212(1) of the Constitution of India and of-course, decision of the Speaker under Tenth Schedule can be subject to judicial review on the limited grounds available, as enumerated in Paragraph 109 of ***Kihoto Hollohan's case.*** Therefore, it cannot be said that the petitioners have been put to serious prejudice on account of alleged non-

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adherence of the principles of natural justice, especially with regard to the denial of opportunity to cross-examine the second respondent/Whip, visual and print media reporters and the third respondent/Chief Minister.

263 ***An incidental issue was also raised as to the finding recorded by the second respondent in Paragraphs 59 to 63 of the impugned order as to their collusion or acting in cohesion with the opposition party and heavy reliance has been placed upon Yeddyurappa's case.***

264 This Court in order to consider/decide this issue, is to consider the scope of judicial review of the Speaker/first respondent's order and dealt with the same under the following caption.

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A. JUDICIAL REVIEW

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265 The said issue was also considered by the Hon'ble Chief Justice as well as the Hon'ble Mr.Justice M.Sundar.

266 The Hon'ble Chief Justice, in paragraph 280 of the order, has recorded a finding that "*the facts and materials on record do not*

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establish that the writ petitioners had colluded and/or were in collusion with the main opposition party and that the writ petitioners did not join any political party or contest election on the ticket of any party other than the party on whose ticket they got elected, and in any case not on the date of the impugned order". The Hon'ble Mr.Justice M.Sundar in paragraph 14(as) of the order has recorded a finding that "*in the absence of any shred of evidence or even an iota of material to suggest that the two (18 writ petitioners and DMK) are acting in tandem, there is no hesitation whatsoever in holding that the conclusion made in the impugned order regarding the two acting in cahoots is not another plausible view, but is an assumption with no basis. It is not even a possible view. There can be no assumption and nothing in the realm of surmises and conjectures in constitutionality deciding very important issues like disqualification. Therefore, the impugned order clearly suffers from the vice of perversity as it comes to the conclusion that 18 writ petitioners were acting in cahoots with th principal opposition party when there was no materials before it*". In paragraph 14(at) of the order, the learned Judge observed that *"Making an assumption without any material before the Tribunal is clearly perverse"*. In effect, the learned Judge concluded that the said finding recorded by the first

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respondent/Speaker in paragraph 59 of the impugned order is clearly perverse.

267 Mr.C.A.Sundaram, learned Senior Counsel appearing for the first respondent would submit that the said finding recorded by the learned Judge in paragraphs 14(as) that there is no shred of evidence and not even an iota of evidence to suggest that the 18 writ petitioners and DMK are acting in tandem, is clearly wrong for the reason that as per the annexure to the petition for disqualification in the form of newspaper reports, the leader of the opposition had met the Governor on the same day when the petitioners met the Governor and submitted representations and therefore, drawn certain inferences and assuming the conclusion reached by drawing such inference may not be sustainable, still this Court, by re-appreciating the materials, cannot reach an altogether different conclusion and also invited the attention of this Court to certain materials in the typed set of documents.

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268 The learned Senior Counsel appearing for the first respondent has invited the attention of this Court to the reply/comments dated 05.09.2017 filed by the ninth respondent in the disqualification

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petition/petitioner in W.P.No.25260 of 2017, namely Thiru P.Vetrivel, especially to paragraph 10, wherein it is stated that several opposition parties have been calling upon the Governor of Tamil Nadu and the Hon'ble President of India to intervene the matter, but the Governor of Tamil Nadu took a stand that it is purely an internal party matter. The learned Senior Counsel appearing for the first respondent further invited the attention of this Court to the newspaper article in Times of India dated 23.08.2017, which say about DMK asking the Governor to call for a Floor Test.

269 This Court, during the course of arguments, pointed out to the respective learned Senior Counsel appearing for the parties that when the petitioners immediately met the Governor of Tamil Nadu and submitted representations dated 22.08.2017, the Governor had stated that it is purely an "internal party matter", which was also recorded in paragraph 10 of the reply by the ninth respondent in the disqualification petition/petitioner in W.P.No.25260 of 2017 and however, the said fact was not stated in the affidavit filed in support of the writ petition. It was further pointed out by this Court that the ninth respondent therein/petitioner in W.P.No.25260 of 2017, in paragraph 6 of the

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rejoinder dated October, 2017 has stated that the response of the Governor on submission of the representation was that it is an "internal party dispute" and however, it was not brought to the knowledge of the First Bench of this Court when arguments were advanced.

270 The learned Senior Counsel appearing for the parties, on instructions, also submitted that the above said averment have not been brought to the knowledge of the First Bench of this Court during arguments. Therefore, the fact remains that the response of the Governor, immediately on submission of the representations dated 22.08.2017 by the petitioners and another was that, he cannot do anything as it is purely an "intra party affair" and in the opinion of the Court, such a stand of the Governor is in tune with ***Nabam Rebia's case.*** Of-course despite the Governor made known his stand that he cannot interfere with an "intra party affair", which led to the natural consequence that he cannot replace the Chief Minister, the petitioners reiterated and pursued their stand.

271 It is also the submission of the learned Senior Counsel appearing for the first respondent that assuming that certain reasons assigned by the first respondent in the impugned order are unsustainable,

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the said portion/part can be ignored/severed and still rest of the conclusions/reasons would sustain the order of disqualification passed against the writ petitioners. However, the said plea is strongly opposed by Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners, who would submit that Severability Doctrine has no application to the Writ of Certiorari and over all broad outlook of the first respondent to the materials placed while deciding the issue relating to disqualification under Tenth Schedule have to be considered. It is again reiterated that the impugned order of the Speaker/first respondent warrants interference, as it squarely falls within the parameters for judicial review/interference as laid down in Paragraph 109 of ***Kihito Hollohan's case***.

272 Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners, by way of reply to the arguments advanced on behalf of the respondents, has invited the attention of this Court to the decision in ***Dhirajlal Girdharilal v. Commissioner of Income Tax [AIR 1955 SC 271]*** and would submit that the said appeal arise out of the order of the High Court of Bombay in summarily dismissing the application filed under Section 66(2) of the Indian Income Tax Act, 1922, requiring the Income Tax Appellate Tribunal to state a case and refer to it the questions

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of law said by the appellant to arise out of the order of the Tribunal. It was argued before the Apex Court that the Income Tax Appellate Tribunal, to a certain extent, had drawn upon its own imagination and had, made use of a number of surmises and conjectures in reaching the result and it was argued on behalf of the Revenue that eliminating the irrelevant material employed by the Tribunal in reaching the conclusion, there was sufficient material on which the finding of fact could be supported. The learned Senior Counsel appearing for the petitioners has invited the attention of this Court to paragraph 9 of the said judgment, wherein it was observed that *"In our opinion, this contention is well founded. It is well established that when a Court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant materials used by it in arriving at its finding. Such a finding is vitiated because of the use of admissible material and thereby an issue of law arises."*

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273 Attention of this Court was also invited to the decision in ***Union of India and Others v. Shakuntala Gupta (Dead) by Lrs. [(2002) 7 SCC 98],*** wherein the issue was as to the non-compliance of Section

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17(3-A) of the Land Acquisition Act, 1894 and the Hon'ble Apex Court in paragraph 15 of the said judgment, found that "...The urgency sought to be expressed in the impugned notification cannot be held to be sufficient for the purposes, of Section 17(1) in this case when it has already been held to be bad in ***Banwari Lal & Sons (P) Ltd. v. Union of India [DRJ 1991 Supp 317]"***.

274 This Court has already observed that there were materials before the first respondent and on appreciation and consideration, he reached certain conclusions and based on the same, passed the impugned order of disqualification. In the light of availability of limited grounds to interfere with the decision of the Speaker, overall approach of the Speaker to materials made available is to be considered to find out whether the impugned order of disqualification is sustainable or liable to be interfered with?

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275 Incidentally, Whether it is open to this Court to re-appreciate the materials and reach an altogether different conclusion ?

276 This Court has already referred to the judgment in ***Hari***

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Vishnu Kamath v. Syed Ahmad Ishaque and Others [(1955) 1 SCR 1104], which in-turn placed reliance upon the judgments in ***Veerappa Pillai v. Raman & Raman Ltd., [1952 SCR 583] and T.C.Basappa v. T.Nagappa [AIR 1954 SC 440]***, which laid down the proposition that ***"patent error can be corrected by certiorari but not a mere wrong decision"***.

277 Error apparent on the face of the record has been explained by the Hon'ble Apex Court in the decision in ***Satyanarayan Laxminarayan Hedge and Others v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137]*** and in paragraph 17 of the said decision, it was observed that "*.. **An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record and the alleged error is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments.... Such an error can be cured by a Writ of Certiorari according to the rule governing the powers of the superior Court to issue such a writ***."

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278 In ***Union of India and Another v. G.Ganayutham [(1997) 7 SCC 463]***, the Hon'ble Supreme Court has dealt with the issue relating to service matter and after placing reliance upon the decision in ***Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223]***, famously known as "Wednesbury's case", extracted the following portion of the said judgment in paragraph 12 and it is useful and relevant to extract the same:

> "12. This case is treated as laying down various basic principles relating to judicial review of administrative or statutory discretion. Before summarising the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* [(1948) 1 KB 223 : (1947) 2 All ER 680] (KB at p. 229: All ER p. 682). It reads as follows:
>
> "… It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no *sensible* person could even dream that it lay within the powers of the authority. … In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one

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another."

Lord Greene also observed (KB p. 230: All ER p. 683)

"… it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. *It is not what the court considers unreasonable*. … The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another."

The Hon'ble Apex Court, taking note of the said judgment, has observed that "*The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.*"

279 In ***Deputy Inspector General of Police & Another v. K.Ravinder Rao [AIR 2008 SC 1099]***, which again deals with service matter and in paragraph 6, the Hon'ble Supreme Court observed that *"It is strange that the High Court sitting under Article 226 of the Constitution of India re-appreciated th evidence and came to a different conclusion which is not within the scope of the High Court..... Time and again, this Court has emphasized that under Article 226 of the Constitution of India, appreciation of evidence should not be done in*

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matters of this nature unless the finding appears to be perverse.... In the present case, finding having been examined in detail by the Tribunal and the Tribunal also having found no perversity in the finding of the Inquiring Officer, we fail to appreciate the approach of the High Court."

280 It is also to be remembered at this juncture as observed in paragraph 11 of ***Ravi S.Naik's case*** "Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs". In paragraph 23 to 27 of the said judgment the Hon'ble Apex Court has referred to the inference drawn by the Speaker on the basis of MLAs belong to other political party meeting the Governor and also repelled the contention that the denial of opportunity to adduce evidence is also without substance and ultimately, held that the order of the Speaker in the said case was not in violation of the principles of natural justice.

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281 In ***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Others [(2007) 3 SCC 184]***, powers privileges and immunities of

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Parliament and State Legislatures and availability of source of power of expulsion came up for consideration and one of the grounds raised was possibility of bias or likelihood of misuse. In paragraph 700, Hon'ble Mr.Justice C.K.Thakker, in the concurring opinion, observed as follows:

> "700. Again, it is well-established principle of law that the mere possibility or likelihood of abuse of power does not make the provision ultra vires or bad in law. There is distinction between *existence* (or availability) of power and *exercise* thereof. Legality or otherwise of the power must be decided by considering the nature of power, the extent thereof, the body or authority on whom it has been conferred, the circumstances under which it can be exercised and all other considerations which are relevant and germane to the exercise of such power. A provision of law cannot be objected to only on the ground that it is likely to be misused."

In paragraph 704, after referring to the observations of Sarkar.J. in ***U.P. Assembly case (Special Reference No.1 of 1964) [AIR 1965 SC 745],*** the learned Judge, in paragraph 705 of the judgment has observed as follows:

> "705. *I am in wholehearted agreement with the above observations. On my part, I may state that I am an optimist who has trust and faith in both these august units, namely, legislature and judiciary. By and large, constitutional functionaries in this country have admirably performed their functions, exercised their powers and discharged their duties effectively, efficiently and sincerely and there is no reason to doubt that in coming years also they would continue to act in a responsible manner expected of them. I am equally confident that not only all the constituents of the*

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State will keep themselves within the domain of their authority and will not encroach, trespass or overstep the province of other organs but will also act in preserving, protecting and upholding the faith, confidence and trust reposed in them by the Founding Fathers of the Constitution and by the people of this great country by mutual regard, respect and dignity for each other. On the whole, the situation is satisfactory and I see no reason to be disappointed for the future."

While considering the scope of judicial review in in matters concerning parliamentary proceedings, in Paragraphs 389, 391 and 431, the Hon'ble Chief Justice, speaking for the majority, had observed as follows:

"The scope of judicial review in matters concerning parliamentary proceedings is limited and restricted. Parliament indeed is a coordinate organ and its view do deserve deference even while its acts are amenable to judicial scrutiny. The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the Courts. The area of powers, privileges and immunities of the legislature is exceptional and extraordinary and its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards such as on grounds of lack of jurisdiction or the impugned decision being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

The truth or correctness of the material will not be questioned by the Court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature. Even if some of the material on which the

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action is taken is found to be irrelevant, the Court would still not interfere so long as there is some relevant material sustaining the action.

The legislature, as a body, cannot ordinarily be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the Court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the Court may examine the validity of the said contention, the onus on the person alleging being extremely heavy." (emphasis supplied)

The Hon'ble Mr.Justice C.K.Thakker, in his concurring opinion, has dealt with the submission as to the adequacy of the material on the part of the Speaker of the Lok Sabha to expel them and in paragraph 453 of the judgment observed as follows:

"453.***In these proceedings, this Court cannot allow the truthfulness or correctness of the material to be questioned or permit the petitioners to go into the adequacy of the material or substitute its own opinion for that of the legislature. Assuming some material on which the action is taken is found to be irrelevant, this Court shall not interfere so long as there is some relevant material sustaining the action. We find this material was available in the form of raw footage of video recordings, the nature of contents whereof are reflected in the inquiry reports and on which subject the petitioners have not raised any issue of fact***."

In the considered opinion of the Court, the said principle enunciated clinches the issue for the reason that there were certain materials in the form of newspaper reports before the first respondent as to the act of

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cohesion between the opposition party and the petitioners and the said Constitutional Authority has recorded his findings and therefore, it cannot go into the truthness or correctness of the said material as well as adequacy of the material and it cannot re-appreciate the same and substitute the opinion of the Speaker by arriving at an altogether different conclusion. The Speaker, while exercising such a power under Tenth Schedule, cannot be equated with any other Tribunal and of course, his decision is always subject to judicial review on the limited grounds available. As regards the submission that the first respondent has placed reliance on extraneous material, that the petitioners had acted in collusion with the leader of the opposition and that the copy of the said material have not been furnished, it is to be pointed out at this juncture that the petitioner in W.P.No.25260 of 2017, in his reply affidavit dated 05.09.2017, made a statement that several other parties had also called upon the Governor and also requested the Hon'ble President of India to intervene and as such, it cannot be said that the petitioners have been put to prejudice on account of reliance upon alleged extraneous material and non-adherence to the principles of natural justice. Even otherwise, if the said portion of the order is eschewed/set aside, still the other reasons assigned in the impugned order are sustainable and the overall approach

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of the first respondent is in tune with the Tenth Schedule.

282 In ***Chief Constable of North Wales Police v. Evans [(1982) 3 All ER 14]***, it was observed that "judicial review is not with the merits of the decision, but with the manner in which decision was made. Judicial review is entirely different from an ordinary appeal".

283 In the considered opinion of the Court, the first respondent had considered all the relevant materials and though it is vehemently submitted that he has placed reliance upon extraneous and irrelevant materials and in doing so, have not afforded any opportunity whatsoever to refute the same, in the light of the above discussion, this Court finds that there were materials available on record and the first respondent/Speaker has taken cognizance of the same and on appreciation, reached the conclusion and therefore, it cannot be said that no reasonable or sensible person, who had applied his mind to the issue to be decided, could have arrived at the findings to disqualify the petitioners.

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284 The allegation of bias and *mala fides* has also not been

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substantiated for the reason that the Speaker is the sole authority to decide the issue relating to disqualification. Though an argument was advanced that since bias and *mala fides* had been alleged against the Speaker/first respondent, he should have relegated the adjudicatory function to a Committee in terms of Rule 7(4) of the Disqualification Rules, the first respondent/Speaker has dealt with the said petition in paragraph 28 of the impugned order and held that the instances of bias according to the respondents/writ petitioners set out in the petition are relating to matters not germane or relevant to the present issue.

285 The Speaker, being the ultimate authority under the Tenth Schedule to decide the issue relating to disqualification under Para 2[1][a], did not violate the principles of natural justice. One of the grounds of attack, viz., *mala fide*, has not also been substantiated. As regards perversity, the materials placed have been appreciated in a particular manner and in the light of limited scope of judicial review available to this Court, this Court cannot re-appreciate the same like any other appellate Forum and reach a different conclusion.

286 ***In the light of the discussions made above and findings***

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reached, this Court is of the considered view that the reasons assigned by the first respondent in the impugned order do not warrant interference in the light of limited grounds enumerated in paragraph 109 of Kihoto Hollohan case. (*)

YEDDYURAPPA'S CASE

287 The sheet anchor / primordial submission made on behalf of the petitioners is that the facts leading to the said case as well as the decision rendered by the Hon'ble Apex Court in ***Yeddyurappa case*** (cited supra) are squarely applicable to this case and the contentions put forward in this regard, have been simply brushed aside by the first respondent.

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288 *Per contra*, respective learned Senior Counsel appearing for the respondents would contend that immediately on submission of the representations dated 22.08.2017 to the Governor of Tamil Nadu, it was made known to them by the Governor that he cannot do anything as it is purely an intra party affair and despite that they persisted that the third respondent should be removed.

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289 The learned Senior Counsel appearing for the petitioners, by drawing the attention of this Court to ***Yeddyurappa's case***, also made a submission that even according to the second respondent/Whip, the petitioners had opposed the style and functioning of the third respondent as the Chief Minister and they continue to exhibit loyalty to the political party, namely "AIADMK" and developing the said argument would contend that expressing dissent against the style and functioning of the third respondent/Chief Minister would not amount to defection and Freedom of Speech is guaranteed under Article 19(1)(a) of the Constitution of India.

290 In response to the same, it is the submission of the learned Senior Counsel appearing for the petitioners that the petitioners did admit that there is an "Internal Dispute Redressal Mechanism" and though contended that their repeated efforts had ended in failure, had failed to place any material whatsoever, though it was open to them to submit their written representation.

291 In ***Yeddyurappa's case***, the order of disqualification dated

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under Paragraph 2(1)(a) to the Tenth Schedule of the Constitution of India passed by the Speaker of the Karnataka Legislative Assembly was put to challenge before the Division Bench of Karnataka High Court. The Hon'ble Chief Justice of the Karnataka High Court, upheld the order and the Hon'ble Mr.Justice N.Kumar had expressed his dissent on certain issues and therefore, it was placed before the third Judge, namely Hon'ble Mr.Justice V.G.Sabhajit, who concurred with the findings rendered by the Hon'ble Chief Justice and thereby, upheld the order of disqualification passed by the Speaker. The Hon'ble Supreme Court, after taking note of the rival submissions and materials placed, in paragraph 130 formulated the following questions for consideration:

> (*a*) Did the appellants voluntarily give up their membership of the Bharatiya Janata Party?
>
> (*b*) Since only three days' time was given to the appellants to reply to the show-cause notices, as against the period of 7 days or more, prescribed in Rule 7(3) of the Disqualification Rules, were the said notices vitiated?
>
> (*c*) Did the Speaker act in hot haste in disposing of the disqualification application filed by Shri B.S. Yeddyurappa introducing a whiff of bias as to the procedure adopted?

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(*d*) What is the scope of judicial review of an order passed by the Speaker under Para 2(1)(*a*) of the Tenth Schedule to the Constitution, having regard to the provisions of Article 212 thereof?

In paragraph 116 of the order, after referring to ***Kihoto Hollohan's case*** as to the signing and verification of the petition, proceeded to the said issue and in paragraph 122, it was held that "*...constitutional process as hinted at the said letter did not necessarily mean the constitutional process of proclamation of President's rule, but could also mean the process of removal of the Chief Minister through constitutional means. On account thereof, the Bharatiya Janata Party was not necessarily deprived of a further opportunity of forming a Government after a change in the leadership of the legislative party*". The Hon'ble Supreme Court has also taken into consideration the letter of retraction and found that the Speaker had also relied upon the statement of a third party which were adverse to appellant's interest and it was obligatory on his part to have given the appellants an opportunity of questioning the deponent as to the veracity of the statements made in the affidavit and on account of letters addressed to the Governor, the Apex Court found that the impugned order of disqualification warrants interference and accordingly

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set aside the order.

292 The learned Senior Counsel appearing for the petitioners, by placing reliance upon the said judgment as well as inviting the attention of this Court to ***Jagjit Singh's case, Ravi S.Naik's case*** and the Constitution Bench judgment in ***Nabam Rebia's case***, would submit that the act of dissent cannot be considered as defection and as such, Paragraph 2(1)(a) of the Tenth Schedule has no application to the case on hand and in ***Yeddyurappa's case***, there is no express statement that they continue to remain with the ruling party, but in the case on hand, in more than one place, the petitioners had reiterated that they continue to remain as members of the political party they belong, namely AIADMK and the said vital fact has been deliberately overlooked by the first respondent.

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293 Alternatively, it is the submission of the learned Senior Counsel appearing for the petitioners that immediately on submission of representation on 22.08.2017 for instituting the Constitutional process to replace the third respondent, they were informed by the Governor of Tamil Nadu that he cannot do anything as it is purely an intra party affair and in the absence of any impending Floor Test, it cannot be said that

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they are opposing the ideology of the party. It is also the submission of Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners that assuming there was likelihood of Floor Test, the petitioners would not have voted against the ruling party in the event of Whip being issued for the reason that they would have suffered disqualification under paragraph 2(1)(b) and also invited the attention of this Court to paragraph 14(x) of the Hon'ble Mr.Justice M.Sundar's Order, wherein Dr.Singhvi, learned Senior Counsel appearing for them before the Division Bench, made a submission that the writ petitioners would not have voted against the Whip, if Floor Test has been called and on that ground also, order of disqualification passed by the first respondent under paragraph 2(1)(a) warrants interference.

294 It is the further submission of the learned Senior Counsel appearing for the petitioners that expressing dissent as to the continuance of the third respondent would not amount to defection and the interpretation given by the learned Senior Counsel appearing for the respondents as to paragraphs 44 to 49 of ***Kihoto Hollohan's case*** is not correct and in any event, expressing dissent against a particular individual, namely the third respondent would not amount to leaving the

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ideology of the party and would not amount to voluntarily giving up the membership of the political party.

295 *Per contra*, Mr.C.A.Sundaram, learned Senior Counsel appearing for the respondents 1 and 4 as well as Mr.C.S.Vaidhyanathan, learned Senior Counsel appearing for the third respondent would submit that admittedly, on the Floor Test held on 18.02.2017, the petitioners and Thiru S.T.K.Jakkaiyan had voted in favour of the third respondent and on account of the direction given by Thiru T.T.V.Dinakaran, Deputy General Secretary of "AIADMK (Amma)" Party, vide letter dated 21.08.2017, they met the Governor and submitted representations dated 22.08.2017. It is the submission of the learned Senior Counsel appearing for the respondents that the petitioners, with regard to their claim as to the availment of "Internal Dispute Redressal Mechanism", did not produce any proof or material to substantiate the same. It is also contended by the learned Senior Counsel appearing for the respondents that if particular section of a political party, namely elected representative are biased against the leader of the legislative party, who is also a Chief Minister of Tamil Nadu, it would definitely bring down the goodwill and image of the political party in the eye of public and would result in catastrophic

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consequences.

296 It is also the submission of the learned Senior Counsel appearing for the respondents that the Freedom of Speech was not also totally curtailed for the reason that it was open to the petitioners to participate in the General Council Meeting or Legislative Party Meeting to voice their grievances and they did not do so and instead, the petitioner in W.P.No.25260 of 2017, namely Thiru P.Vetrivel/ninth respondent in the disqualification petition, has approached this Court by filing a Civil Suit and also prayed for interim orders of restraint to hold the meeting and pending disposal of the same, took out an Interlocutory Application and it was dismissed with exemplary cost and the said act would clearly reveal that the petitioners have not exhibited any interest and rather wanted to avoid the "Internal Dispute Redressal Mechanism" and their sole aim is to bring down the Government. Therefore, it is also open to the political party, namely "AIADMK" to avoid any trouble or future trouble/problem and a competent person, namely the second respondent has invoked the jurisdiction of the first respondent under Tenth Schedule and the first respondent, after affording fair, reasonable and sufficient opportunities to the petitioners and on elaborate

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consideration of factual aspects and the decisions rendered by the Apex Court, had adjudicated the issues dispassionately and rightly reached the conclusion to disqualify the petitioners and as such, it cannot be said that the impugned order of the Speaker suffers on account of bias, mala fides, perversity, breach of constitutional mandate and non-compliance of the principles of natural justice.

297 In paragraph 24 of ***Kihoto Hollohan's case***, the Hon'ble Supreme Court formulated the questions for consideration and question No.(A) is *"The Constitution (Fifty-Second Amendment) Act, 1985, insofar as it seeks to introduce the Tenth Schedule is destructive of the basic structure of the Constitution as it is violative of the fundamental principles of Parliamentary democracy, a basic feature of the Indian constitutionalism and is destructive of the freedom of speech, right to dissent and freedom of conscience as the provisions of the Tenth Schedule seek to penalise and disqualify elected representatives for the exercise of these rights and freedoms which are essential to the sustenance of the system of Parliamentary democracy."*

298 In paragraph 39 of the said judgment, contention put

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forward on behalf of the petitioner that rights and immunities under Article 105(2) of the Constitution, which according to him, are placed by judicial decisions even higher than the fundamental right in Article 19(1)(a) and therefore, it violated Tenth Schedule and in paragraph 40 it is observed that "*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 Article 105(2) is a source of immunity from the consequences of unprincipled floor-crossing.*"

299 It is the submission of Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners is that Paragraph 40 and 44 of ***Kihoto Hollohan's case*** deal with paragraph 2(1)(b) of the Tenth Schedule and in the light of the same, in paragraph 49 it was observed that ".... Unprincipled defection is a political and social evil.." and as such, it applies only to defection and not to dissent and admittedly, in the case on hand, the petitioners have expressed their act of dissent only against the continuance of the third respondent as the Chief Minister and it was suggested by them that senior-most leader of the party, namely

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Mr.Sengottaiyan may also put on the mantle, the office the Chief Minister.

300 *Per contra*, it is the submission of Mr.C.A.Sundaram, learned Senior Counsel appearing for the first respondent that paragraph 44 equally applies to Paragraph 2(1)(a) also and invited the attention of this Court to the few lines in placitum (f) of paragraph 44 of ***Kihoto Hollohan's case,*** wherein it was observed that "***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***".

301 The learned Senior Counsel appearing for the first respondent further invited the attention of this Court to placitum (d) to (g) at page no.684 of ***Kihoto Hollohan's case***, wherein the following observation was made:

> "So far as his own personal views on freedom of conscience are concerned, there may be exceptional occasions when the elected representative finds himself compelled to consider more closely how he should act. Referring to these dilemmas the authors say: [*Ibid. at* 69, 70]
>
> "... The first is that he may feel that the policy of his party whether it is in office or in opposition, on a particular matter is not one of which he approves. He may think this because of his personal opinions or because of its special

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consequences for his constituents or outside interests or because it reflects a general position within the party with he cannot agree. On many occasions, he may support the party despite his disapproval. But occasionally the strength of his feeling will be such that he is obliged to express his opposition either by speaking or by abstaining on a vote or even by voting with the other side. Such opposition will not pass unnoticed and, unless the matter is clearly one of conscience, he will not be popular with the party whips."

In paragraph 49, it was observed as follows:

"49. 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-crossings 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 bane of the times — above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end …." are constitutional. [*Katzenbach* v. *Morgan*, 384 US 641 : 16 L Ed 2d 828 (1966)]"

In paragraph 53, with regard to the issue of Freedom of Speech, it was held as follows:

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"53. Accordingly we hold:

"[T]hat the Paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected Members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

The contention that the provisions of the Tenth Schedule, even with the exclusion of Paragraph 7, violate the basic structure of the Constitution in that they affect the democratic rights of elected Members and, therefore, of the principles of Parliamentary democracy is unsound and is rejected." (emphasis supplied)

302 In paragraph 69 of ***Yeddyurappa's case***, arguments were advanced on behalf of the respondents after referring to ***Kihoto Hollohan's case*** that "the order of disqualification passed against the appellants by merely expressing their disagreement with the manner of functioning of the first respondent as the Chief Minister, had not only impinged upon the appellants rights of free speech guaranteed under Article 19(1)(a) of the Constitution..."

303 The Speaker, in Paragraph 58 of the impugned order,

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recorded a finding that "The party has not chosen to replace their leader and hence, there is no necessity for the respondents to make a representation to the Hon'ble Governor of Tamil Nadu and in this regard, there is no necessity for setting in motion the Constitutional process".

304 It is also the stand of the second respondent that having claimed to have withdrawn the support of the third respondent, who is an elected Legislative Party leader, the petitioners have given up their membership on whose name and symbol, got contested and elected. In paragraph 68 of the reply to the writ petition, the second respondent took a stand that it cannot be disputed that democracy includes the right of the people to get elected as representatives of the Legislative bodies expressing of the views by such persons is also an unquestionable right guaranteed in a democracy. However, when having been elected under one party, the views are being sought to express solidarity to the views of another party, elected representative can no longer claim to be a member of the party on whose name he was elected.

305 The political party, namely "AIADMK" appears to have been embarrassed and aggrieved by the utterance of the petitioners in

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expressing no confidence on the third respondent on the alleged acts of corruption, nepotism etc., and the second respondent took a stand that though they would state about the availment of "Internal Dispute Redressal Mechanism", it was not so. The ninth respondent in the petition for disqualification/petitioner in W.P.No.25260 of 2017, in his rejoinder to the common counter affidavit of the third respondent in paragraph 7 also took a stand that it is his specific case that he met the third respondent several times between 14.06.2017 and 19.07.2017 and also in the presence of the first respondent, but the fact remains that despite such approach, now proper and effective response was forthcoming and the petitioners had kept quiet and for the purpose of institution of Constitutional process, had approached the Governor in the form of representations dated 22.08.2017 and the Governor, immediately responded by saying that he cannot do anything and rather interfering with the intra party dispute.

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306 This Court on a careful analysis of rival submissions is of the considered view that paragraph 53 of ***Kihoto Hollohan's case*** would apply both to Paragraphs 2(1)(a) and 2(1)(b) of the Tenth Schedule. Admittedly, the petitioners voiced their dissent through their

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representations to the Governor, followed by an interview to visual and print medias by one of the writ petitioners. The Fundamental Right of Freedom of Speech and Expression can be subject to reasonable restrictions and it is not as if the act of dissent on the part of the respondents sought to be nibbled in the bud and even according to the petitioners, there exist an "Internal Dispute Redressal Mechanism" and though the petitioners claimed to have availed the same, had failed to substantiate or probablise it.

307 As regards initiation of Constitutional process, it is the vehement and forceful submission of Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners that as per paragraph 122 of ***Yeddyurappa's case***, the Hon'ble Supreme Court held that Constitutional process of did not necessarily mean the constitutional process of proclamation of President's rule, but could also mean the process of removal of the Chief Minister through constitutional means and as such, merely opposing the continuance of the third respondent as the Chief Minister would not lead to the presumption that the petitioners want to disrupt the political party as the ruling party.

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308 *Per contra*, it was argued on behalf of the respondents that in the Constitution Bench judgment in ***Nabam Rebia's case*** in paragraph 209, the Hon'ble Supreme Court has observed that "*The Governor must remain aloof from any disagreement, discord, disharmony, discontent or dissension, within individual political parties. The activities within a political party, confirming turbulence, or unrest within its ranks, are beyond the concern of the Governor. The Governor must keep clear of any political horse-trading, and even unsavoury political manipulations, irrespective of the degree of their ethical repulsiveness. Who should or should not be a leader of a political party, is a political question, to be dealt with and resolved privately by the political party itself. The Governor cannot, make such issues, a matter of his concern. The provisions of the Constitution do not enjoin upon the Governor, the authority to resolve disputes within a political party, or between rival political parties. The action of the Governor, in bringing the aforesaid factual position to the notice of the President, in his monthly communications, may well have been justified for drawing the President's attention to the political scenario of the State. But, it is clearly beyond the scope of the Governor's authority, to engage through his constitutional position, and exercise his constitutional authority, to*

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resolve the same" and as such, the decision rendered in ***Yeddyurappa's case*** has been impliedly overruled.

309 Attention of this Court was also invited to the orders of the Hon'ble Chief Justice and the Hon'ble Mr.Justice M.Sundar. The Hon'ble Chief Justice, in paragraph 107 of the order observed that ***Yeddyurappa's case*** has neither been considered nor overruled by the judgment in ***Nabam Rebia's case***, impliedly or otherwise. The Hon'ble Mr.Justice M.Sundar, in paragraph 14(m) of the order, has observed that *"the question whether Yeddyurappa case is impliedly overruled and whether it is per incuriam are left open"* and further observed that it is not open to the High Court to go into the question whether the judgment of the Supreme Court is impliedly overruled or *per incuriam*.

310 It is also to be pointed out at this juncture that ***Yeddyurappa's case*** has not even referred in ***Nabam Rebia's case*** and though ***Kihoto Hollohan's case*** has been referred. It was observed in paragraph 187 of ***Nabam Rebia's case*** that under the Tenth Schedule, no role whatsoever has been assigned to the Governor and even the Chief Minister and Council of Ministers is not concerned with the

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disqualification proceedings. The Hon'ble Mr.Justice Dipak Misra, the Hon'ble Judge then was, in the concurring judgment, in paragraph 232 observed that "***... The power conferred on the Speaker under the Tenth Schedule is enormous.....Therefore, it is necessary to sustain the elevated position the Speaker constitutionally enjoys and also have room for constitutional propriety***." The Hon'ble Mr.Justice Madan B.Lokur, in the concurring verdict/judgment, had concurred with the view expressed by Justice Sarkaria Commission coupled with the decision rendered by the Apex Court in few decisions as well as Punchhi Commission Report. In paragraph 337, the discretionary role of the Governor, broadly speaking, culled out from Justice Punchhi Commission Report has been extracted and it is relevant to extract the same:

> "To give assent or withhold or refer a Bill [except a Money Bill] for Presidential assent under Article 200;
>
> The appointment of the Chief Minister under Article 164;
>
> Dismissal of a Government that has lost the confidence of the Legislative Assembly but refuses to quit since the Chief Minister holds office during the pleasure of the Governor;
>
> If the Chief Minister neglects or refuses to summon the Assembly for holding a "Floor Test", the Governor should summon the Assembly for the purpose.
>
> Dissolution and prorogation of the House under Article

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174;

Governor's report under Article 356;

Governor's responsibility for certain regions of the country under Articles 371-A, 371-C and 371-H of the Constitution.

Where the bias is inherent and/or manifest in the advice of the Council of Ministers [as in *M.P. Special Police Establishment v. State of M.P., (2004) 8 SCC 788*]."

311 In ***Yeddyurappa's case***, in paragraph 122, it was observed that ***"Constitutional process did not necessarily mean the constitutional process of proclamation of President's rule, but could also mean the process of removal of the Chief Minister through constitutional means and on account thereof, the Bharatiya Janata Party was not necessarily deprived of a further opportunity of forming a Government after a change in the leadership of the legislature party"***. Relying upon the same, it is the submission of Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners that since they have named Mr.Sengottaiyan as the legislative party leader to replace the third respondent, it cannot be said that they have voluntarily giving the membership of the political party to which they belong. However, this Court cannot anticipate what the Governor will (or) would have done, as it is for the said Constitutional functionary to take a call on the prevailing

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circumstances and that apart, the order of disqualification in ***Yeddyurappa's case*** was also set aside for the reason that as against 7 days time 3 days alone was granted and that the Speaker had relied upon the contents of the retraction petition to disqualify the concerned MLAs.

312 In the case on hand, the impugned order was passed by a high ranking Constitutional functionary, namely the first respondent and though allegations are made as to *mala fide* act, bias and partisan attitude, in the considered opinion of the Court, those allegations/averments have not been substantiated in the form of proof or tenable materials. A perusal and consideration of materials would also indicate that the first respondent has taken into consideration the statement of Thiru.S.T.K.Jakkaiyan only for the limited purpose i.e., Whether the petitioners were available at Chennai on the date of submission of their reply and after considering that the petitioners had suffered disqualification under Paragraph 2(1)(a) of the Tenth Schedule, proceeded further and dealt with the retraction of the said MLA separately. It is also open to the first respondent to take into consideration the materials, till he reaches his conclusion.

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313 It is also the submission of Mr.C.S.Vaidayanathan, learned Senior Counsel appearing for the third respondent that ***Yeddyurappa's case*** came to be rendered on facts and it can neither be cited as precedent nor as ratio and in support of his submissions placed reliance upon the following decisions:

(i) Willie (William) Slaney v. The State of Madhya Pradesh [AIR 1956 SC 116]

(ii) Jayant Verma and Others v. Union of India [(2018) 4 SCC 743]

(iii) State of Gujarat and Others v. Utility User's Welfare Association and Others [(2018) 6 SCC 21].

314 One of celebrated Judges of the Apex Court, namely ***Hon'ble Mr.Justice Vivian Bose***, in paragraph 44 of the ***Willie Slaney case*** (cited supra), has considered the question of prejudice in the absence of charge and observed that ***"these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases "however" alike they may seem. There***

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is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were."

(emphasis supplied)

315 In ***Jayant Verma and Others v. Union of India and Others [(2018) 4 SCC 743]***, the meaning of "ratio decidendi", "per incuriam" was discussed and it is relevant to extract paragraph 55 of the said judgment:

> "55. In *Dalbir Singh* v. *State of Punjab* [*Dalbir Singh* v. *State of Punjab*, (1979) 3 SCC 745 : 1979 SCC (Cri) 848 : (1979) 3 SCR 1059] , a dissenting judgment of A.P. Sen, J. sets out what is the ratio decidendi of a judgment: (SCC p. 755, para 22 : SCR pp. 1073-74)
>
> "22. … According to the well-settled theory of precedents every decision contains three basic ingredients:
>
> > '(*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;
> >
> > (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and
> >
> > (*iii*) judgment based on the combined effect of (*i*) and (*ii*) above.'
>
> For the purposes of the parties themselves and their privies, ingredient (*iii*) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (*ii*) is

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the vital element in the decision. This indeed is the ratio decidendi. [R.J. Walker & M.G. Walker: *The English Legal System*. Butterworths, 1972, 3rd Edn., pp. 123-24.] It is not everything said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of *Qualcast (Wolverhampton) Ltd.* v. *Haynes* [*Qualcast (Wolverhampton) Ltd.* v. *Haynes*, 1959 AC 743 : (1959) 2 WLR 510 : (1959) 2 All ER 38 (HL)] it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the Judge is not bound to draw the same inference as drawn in the earlier case."

316 In ***State of Gujarat and Others v. Utility Users' Welfare Association and Others [(2018) 6 SCC 21]***, "Inversion Test" was explained and it is relevant to extract paragraphs 113 and 114 of the said judgment:

"113. In order to determine this aspect, one of the well-established tests is "the Inversion Test" propounded inter alia by Eugene Wambaugh, a Professor at The Harvard Law School, who published a classic text book called *The Study of Cases* [Eugene Wambaugh, *The Study of Cases* (Boston: Little, Brown & Co., 1892).] in the year 1892. This textbook propounded inter alia what is known as the "Wambaugh Test" or "the Inversion Test" as the means of judicial interpretation. "the Inversion Test" is used to identify the *ratio decidendi* in any judgment. The central

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idea, in the words of Professor Wambaugh, is as under:

> "In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be negative the case is a precedent for the original proposition and possibly for other propositions also. [Eugene Wambaugh, *The Study of Cases* (Boston: Little, Brown & Co., 1892) at p. 17.] "
>
> 114. In order to test whether a particular proposition of law is to be treated as the *ratio decidendi* of the case, the proposition is to be inversed i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the *ratio decidendi* of the case. This test has been followed to imply that the *ratio decidendi* is what is absolutely necessary for the decision of the case. "In order that an opinion may have the weight of a precedent", according to John Chipman Grey [Another distinguished jurist who served as a Professor of Law at Harvard Law School.] , "it must be an opinion, the formation of which, is necessary for the decision of a particular case".

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317 It is also a well settled position of law that each case has to be decided on it's own facts and circumstances and on the issue of law and the Court has to take into consideration the ratio and follow the precedents. In the considered opinion of the Court, though initially it appears that ***Yeddyurappa's case*** would apply to the facts of this case,

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however turned out to be distinguishable in the light of the above reasons.

318 Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners has also invited the attention of this Court to paragraph 40 to 53 of ***Yeddyurappa's case*** and would submit that the conclusion reached by Hon'ble Mr.Justice N.Kumar that the act of no confidence in the leader of the legislative party does not amount to voluntarily giving up of membership of the political party and the said view has also been accepted by the Hon'ble Supreme Court and would further add that this Court can also take note of the said findings/reasons recorded by the learned Judge.

319 Mr.C.A.Sundaram, learned Senior Counsel appearing for the first respondent/Speaker would submit that admittedly Special Leave Petitions preferred against the order of the Karnataka High Court were entertained and were converted as Civil Appeals and the Hon'ble Supreme Court has decided the appeals and reiterated in ***Yeddyurappa's case*** and the reasons given by Hon'ble Mr.Justice N.Kumar of the Karnataka High Court cannot be taken into consideration and he would

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further add that in the light of entertainment and disposal of the Civil Appeals by the Hon'ble Supreme Court in the above cited decision, Doctrine of Merger would have application and would contend that statements made in that regard by the learned Senior Counsel appearing for the petitioners is liable to be rejected in *limine*. The learned Senior Counsel appearing for the first respondent, in support of the said submission, placed reliance upon the decision in ***S.Shanmugavel Nadar v. State of T.N. And another [(2002) 8 SCC 361]***.

320 It is not in dispute that in ***Yeddyurappa's case***, the concerned MLAs were disqualified under Paragraph 2(1)(a) of the Tenth Schedule and the said order was put to challenge before the Division Bench of Karnataka High Court and the Hon'ble Chief Justice has upheld the order of the Speaker in disqualifying the MLAs and the other learned Judge, namely Hon'ble Mr.Justice N.Kumar has dissented on certain issues and held that the order of the Speaker warrants interference and in the light of conflicting verdicts, the matter was referred to a third Judge, namely Hon'ble Mr.Justice V.G.Sabhahit, who concurred with the views of the Hon'ble Chief Justice of Karnataka High Court and therefore, SLPs were preferred and were entertained and thereafter converted as

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Civil Appeals, which came to be decided in ***Yeddyurappa's case***.

321 In ***S.Shanmugavel Nadar v. State of T.N. and Another [(2002) 8 SCC 361]***, the Hon'ble Apex Court, in the light of Articles 136 and 141 of the Constitution of India, has considered the issue relating to summary dismissal of SLP and after referring to its earlier decisions, in paragraph 10, observed as follows:

> "10. Firstly, the doctrine of merger. Though loosely an expression merger of judgment, order or decision of a court or forum into the judgment, order or decision of a superior forum is often employed, as a general rule the judgment or order having been dealt with by a superior forum and having resulted in confirmation, reversal or modification, what merges is the operative part i.e. the mandate or decree issued by the court which may have been expressed in a positive or negative form. For example, take a case where the subordinate forum passes an order and the same, having been dealt with by a superior forum, is confirmed for reasons different from the one assigned by the subordinate forum, what would merge in the order of the superior forum is the operative part of the order and not the reasoning of the subordinate forum; otherwise there would be an apparent contradiction. However, in certain cases, the reasons for decision can also be said to have merged in the order of the superior court if the superior court has, while formulating its own judgment or order, either adopted or reiterated the reasoning, or recorded an express approval of the reasoning, incorporated in the judgment or order of the subordinate forum."

322 In ***Kunhayammed v. State of Kerala [(2000) 6 SCC 359]***,

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which has also been referred to in the above said decision that it has been held that once SLP under Article 136 of the Constitution of India is admitted, the impugned order before the High Court, becomes an order appealed against and any order passed therefrom even though a dismissal by a non-speaking order would be an appellate order and would attract the Doctrine of Merger.

323 In ***Chandi Prasad and Others v. Jagdish Prasad and Others [(2004) 8 SCC 724],*** it was held that "The doctrine of merger is based on the principles of propriety in the hierarchy of the justice-delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time". Thus, this Court is of the view that once the Apex Court had dealt with the case by way of appeal, the order of the superior forum whether it is confirmed/reversed/modified, operative portion emerges and not the reasoning of the subordinate forum.

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324 It is also to be noted that the Hon'ble Supreme Court in paragraph 157 of ***Yeddyurappa's case***, while allowing the appeals, has set aside the portion of the judgment delivered by Hon'ble Mr.Justice N.Kumar, concurred with the views of the Hon'ble Chief Justice and therefore, observations of Hon'ble Mr.Justice N.Kumar in W.P.No.32660-70 of 2010 are no help to the case of the petitioners.

325 The Hon'ble Supreme Court in paragraph 122 of ***Yeddyurappa's case*** observed that "***constitutional process did not necessarily mean the constitutional process of proclamation of President's rule, but could also mean the process of removal of the Chief Minister through constitutional means. On account thereof, the Bharatiya Janata Party was not necessarily deprived of a further opportunity of forming a Government after a change in the leadership of the legislature party***".

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326 In ***Nabam Rebia's case*** (cited supra), the Hon'ble Mr.Justice Madan B.Lokur, in the concurring opinion, in paragraph 337, dealt with the discretionary role of the Governor and also extracted the situations culled out from Justice Punchhi Commission Report and in paragraph

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340 also taking into consideration Article 356 of the Constitution and it was also observed that discretion has been vested with the Governor for recommending the dismissal of a Government which has lost confidence in the Legislative Assembly, if the Chief Minister neglects or refuses to summon the Assembly for holding of a "Floor Test", the Governor should summon the Assembly for the purpose and to submit a report under Article 256 and therefore, it cannot anticipate the action or reaction of the Governor in such eventualities. However, in the case on hand, even at the threshold, the Governor has expressed that he cannot do anything on the representations dated 22.08.2017 submitted by the petitioners and another. It is also to be noted at this juncture that the petitioners appear to have anticipated the Floor Test and it is relevant to extract paragraph 6 of the first interim reply of Thiru P.Vetrivel – petitioner in W.P.No.25260 of 2017:

> "6. I submit that the bias of the Hon'ble Speaker is further revealed by the fact that a short while ago Thiru O.Panneerselvam was openly accusing the Government of corrupt practices but was rewarded with post of Deputy CM whereas I am now facing charges of defection under Rule. The covert intention behind the present proceedings is to increase the majority in the legislative assembly by reducing the number of members through disqualification. I therefore state that this entire proceedings is vitiated by malafides, bias, procedural irregularities and want of jurisdiction."

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327 In ***Yeddyurappa's case***, on the given facts and circumstances, the Hon'ble Supreme Court held that expressing no confidence on the Chief Minister would not lead to the situation that the ruling party, namely BJP loses it power. The facts of the case would also disclose that on submission of the representation, the Governor of Karnataka has also called for Floor Test and it was not the situation prevailing at/or immediately on the submission of representations dated 22.08.2017 by the petitioners and another.

328 In ***Willie (William) Slaney v. The State of Madhya Pradesh [AIR 1956 SC 116]***, it was held that "matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases "however" alike they may seem.."

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329 In ***Jayant Verma and Others v. Union of India and Others [(2018) 4 SCC 743]***, the Hon'ble Apex Court in paragraph 55, after referring to the decision in ***Dalbir Singh v. State of Punjab [(1979) 3 SCC 745] and R.J.Walker & M.G.Walker: The English Legal System:***

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Butterworths, 1972, 3rd Edn., Qualcast (Wolverhampton) Ltd. v. Haynes [1959 AC 743] observed that ".. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the Court, the Judge is not bound to draw the same inference as drawn in the earlier case..".

330 In the considered opinion of the Court, Yeddyurappa's case relied on by the petitioners is distinguishable on the facts of this case. (*)

331 In ***Nabam Rebia's case***, Hon'ble Mr.Justice Dipak Misra, as the Hon'ble Judge then was, in the concurring opinion, in paragraph 231 has considered the scope of the Tenth Schedule and the Disqualification Rules and it is relevant to extract paragraph 232 of the said decision:

> "**232.** Para 8 enables the Chairman or the Speaker of a House to make rules for giving effect to the provisions of the Tenth Schedule. The power conferred on the Speaker under the Tenth Schedule is enormous. It is not to be forgotten that the Constitution of India is a controlled Constitution. It provides for checks and balances. Some are fundamentally inherent. Founding Fathers had desired, as the debate would reflect, the Speaker can be removed by the resolution passed by majority of all the then members and not by the majority of the members present and voting.

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It is to be borne in mind that at the time of framing of the Constitution, the Tenth Schedule was not in existence in the Constitution. Certain grounds were mentioned in the Constitution itself and it has also been provided that if a person is disqualified by or under any law made by Parliament. Therefore, it is necessary to sustain the elevated position the Speaker constitutionally enjoys and also have room for constitutional propriety."

In paragraph 236, the Hon'ble Judge has taken into consideration the majority opinion in ***Kihoto Hollohan's case*** and in paragraphs 237 and 238, observed as follows:

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

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not only a political philosophy but also an embodiment of constitutional philosophy.

238. Thus, regard being had to the language employed in Article 179(*c*) of the Constitution and the role ascribed to the Speaker under the Tenth Schedule, it is necessary that the Speaker as a tribunal has to have complete detachment and perceivable impartiality. When there is an expression of intention to move the resolution to remove him, it is requisite that he should stand the test and then proceed. That is the intendment of Article 179(*c*) and the said interpretation serves the litmus test of sustained democracy founded on Rule of Law; and the Founding Fathers had so intended and the constitutional value, trust and morality unequivocally so suggest. It would be an anathema to the concept of constitutional adjudication, if the Speaker is allowed to initiate proceeding under the Tenth Schedule of the Constitution after intention to remove him from his Office is moved. The fourteen days' period being mandatory, the words "all the then Members" gain more significance. The Constitution has confidence in the Speaker. I would like to call it "repose of constitutional confidence". Simultaneously, the command is to have the confidence of the majority of the "actual or real figure". This understanding is gatherable from the express provisions of the Constitution and it clearly brings in harmony between "constitutional confidence" or trust and the "constitutional control". Be it stated, the position has to remain the same even after introduction of the Tenth Schedule to sustain the robust vitality of our growing Constitution. And it embraces the seminal spirit of the "Rule of Law" that controls all the powers, even the prerogative powers. "

332 Thus, the high Constitutional office of the Speaker is always considered as the respectable position in tune with the said office and the Speaker is expected to be not only impartial but should perceptible. In

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the impugned order, the first respondent/Speaker had dealt with the preliminary issues and the main issues and reached the conclusion on thorough consideration and appreciation of the materials placed before him.

333 In ***Chief Constable of North Wales Police v. Evans [(1982) 3 All ER 14]***, it was held that "judicial review, as the words imply is not an appeal from a decision, but a review of the matter in which the decision was made".

334 It is also a settled position of law that an order is not invalid merely because by a process of interference and if the decision of the first respondent/Speaker is a possible and plausible view, this Court cannot substitute it's own evaluation of the conclusion of law and facts, to arrive/reach an altogether different conclusion.

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335 This Court, on an independent application of mind to the materials placed and on careful scrutiny and appreciation of the entire materials placed and after giving thorough consideration to the submissions made on behalf of the parties, is of the considered view

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that there is no error apparent on the face of the record and the reasons assigned by the first respondent/Speaker did not suffer on the grounds of Breach of Constitutional Mandate, Malafides, Non-Compliance of the Rules of Natural Justice and no Perversity is attached to the reasons assigned by the first respondent/Speaker to disqualify the petitioners. (*)

336 Though attempts have been made by drawing the attention of this Court to the subsequent events/developments, this Court is not inclined to take cognizance of the same, as this Court is called upon to test the impugned order with the materials that were available before the first respondent. Hence, it cannot test the order on materials which came into being later/subsequent to the impugned order.

337 In the result, **all the Writ Petitions are dismissed**, confirming the order of the first respondent/Speaker dated 18.9.2017 published vide, Tamil Nadu Government Gazette (Extraordinary) Notification No.294. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions for interim stay shall stand dismissed and the interim orders are

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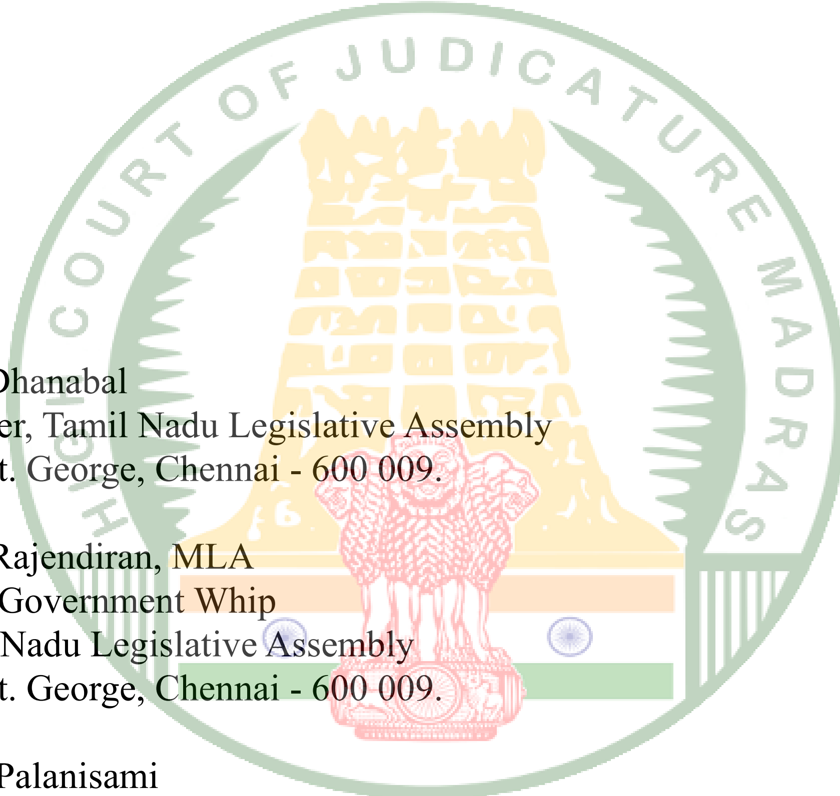
vacated.

25.10.2018

Internet : Yes
Index : Yes
AP/Jvm



To
1. Mr.P.Dhanabal
   Speaker, Tamil Nadu Legislative Assembly
   Fort St. George, Chennai - 600 009.

2. Mr.S.Rajendiran, MLA
   Chief Government Whip
   Tamil Nadu Legislative Assembly
   Fort St. George, Chennai - 600 009.

3. Mr.K.Palanisami
   Chief Minister, Government of Tamil Nadu
   Fort St. George, Chennai - 600 009.

4. The Secretary
   Legislative Assembly Secretariat,
   Secretariat, Chennai # 600 009.

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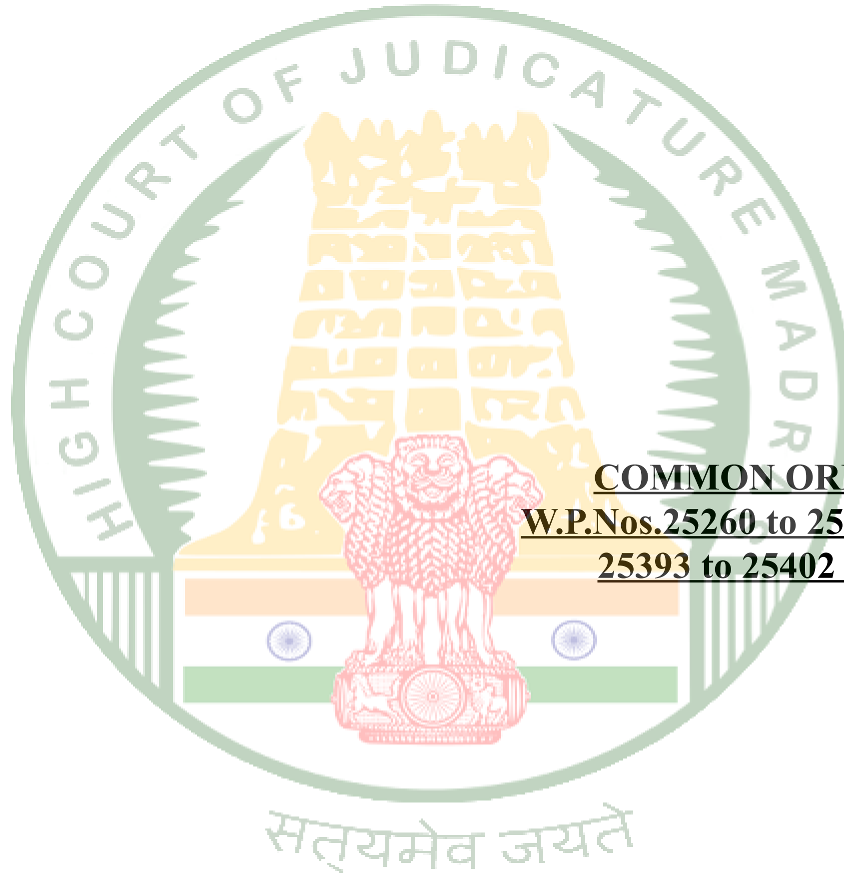
M.SATHYANARAYANAN, J.

Ap/Jvm



COMMON ORDER IN W.P.Nos.25260 to 25267 and 25393 to 25402 of 2017

25.10.2018

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