IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2018
DELIVERED ON : 14.06.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.25260 to 25267 and
25393 to 25402 of 2017

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.Palanisamy
   Chief Minister
   Government of Tamil Nadu
   Fort St. George, Chennai – 600 009.

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 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 intefering with the petitioner's right as an elected representative.

and batch cases.

For Petitioners in W.P.Nos.25260 to 25266 of 2017 and 25393 to 25397 of 2017 :	Mr.(Dr.) Abhishek Singhvi Senior Counsel for Mr.N.Raja Senthoor Pandian Mr.Vivek Singh Mr.Mohit Paul Mr.Amit Bhandari
For Petitioners in W.P.Nos.25267, 25398 to 25402 of 2017 :	Mr.P.S.Raman Senior Counsel for Mr.C.Seethapathy Mr.Vivek Singh Mr.Mohit Paul Mr.Amit Bhandari
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 Mr.Imthiaz Ahmed
For Respondent No.2 in all writ petitions :	Mr.Mukul Rohatgi Senior Counsel for Mr.C.Thirumaran Mr.Muthu Thangathmai Mr.Sameer Rohatgi

For Respondent No.3 in all writ petitions : Mr.C.S.Vaidhyanathan
Senior Counsel
for Mr.S.R.Rajagopal
Mr.S.R.Raghunathan
Mr.Harish V.Shankar

COMMON ORDER

Ms.INDIRA BANERJEE, CHIEF JUSTICE

All these writ petitions, are directed against an order dated 18.9.2017 of the Speaker of the Tamil Nadu Legislative Assembly declaring the writ petitioners, eighteen in number, as disqualified from the membership of the Tamil Nadu Legislative Assembly on the ground that they had voluntarily given up the membership of the All India Anna Dravida Munnetra Kazhagam (AIADMK) party.

2. The issues involved in all these writ petitions being identical, the writ petitions were heard together and are now being disposed of by this common judgment and order. The facts giving rise to the impugned order of the Speaker are set out briefly hereinafter.

3. After the death of Selvi J.Jayalalithaa, Chief Minister of Tamil Nadu and leader of the AIADMK on 5.12.2016, Mr.O.Panneerselvam was elected as the leader of AIADMK in the Tamil Nadu Legislative

Assembly. Mr.O.Panneerselvam was sworn in as the Chief Minister of Tamil Nadu on 6.12.2016.

4. Mr.O.Panneerselvam resigned from the office of the Chief Minister of Tamil Nadu on 6.2.2017, after which Mr.E.Palaniswami was elected as the leader of the Tamil Nadu Legislative Assembly on 14.2.2017. Mr.E.Palaniswami was sworn in as Chief Minister on 16.2.2017.

5. In the writ petitions, it is stated that on 18.2.2017, the Chief Minister faced a floor test, wherein 122 MLAs of the AIADMK Party, including the 18 writ petitioners, voted in favour of Mr.E.Palaniswami in line with the direction issued by the Chief Government Whip. However, Mr.O.Panneerselvam and 10 other MLAs voted against Mr.E.Palaniswami, while one MLA supporting Mr.O.Panneerselvam abstained. However, the majority votes went in favour of Mr.E.Palaniswami. According to the writ petitioners, the party, that is, AIADMK, did not condone the action of Mr.O.Panneerselvam and 11 other MLAs of voting against the direction of the Chief Government Whip, within 15 days or at all.

6. On 16.3.2017, the O.Panneerselvam faction raised a dispute

before the Election Commission of India under Paragraph 15 of the Symbols Order claiming themselves to be the true AIADMK Party against the majority group headed by Mr.T.T.V.Dhinakaran with Mr.E.Palaniswami as the Chief Minister.

7. On 22.3.2017, the Chief Election Commission passed an order freezing the "Two Leaves" Symbol and directing that neither the AIADMK (Purachi Thalaivi) nor the T.T.V.Dhinakaran – E.Palaniswami AIADMK (Amma) could use the party symbol.

8. In the meanwhile, on 20.3.2017, some of the writ petitioners filed petitions before the Speaker of the Tamil Nadu Legislative Assembly for disqualification of Mr.O.Panneerselvam and ten others from the membership of the Tamil Nadu Legislative Assembly, under Paragraph 2(1)(b) of the Tenth Schedule for having voted against the party directive to support its Chief Minister. No notice has yet been issued on the said petition. According to the writ petitioners, they moved the application after waiting for thirty days, which was beyond the period of fifteen days, within which voting against whip and/or directive of the party could be condoned.

9. Later in August, 2017, Mr.O.Panneerselvam and

Mr.E.Palaniswami buried their differences and the two factions re-united. Mr.O.Panneerselvam and one Mr.K.Pandiarajan, one of the 12 MLAs who had voted against Mr.E.Palaniswami on 18.2.2017, were sworn in as Deputy Chief Minister and Minister respectively on 21.8.2017. Of course, under the Constitution there is no post of "Deputy Chief Minister" and the Deputy Chief Minister is actually a Minister, as has been held by this Court by its order dated 8.9.2017 in W.P.No.23540 of 2017 *[V.Elangovan v. The Chief Secretary and others]*.

10. Thereafter, Mr.T.T.V.Dhinakaran requested all MLAs of AIADMK (Amma) to protest to the Governor against the Chief Minister and his governance. On 22.8.2017, the writ petitioners along with Mr.Jakkaiyan wrote to the Governor, expressing their lack of confidence in the governance of Mr.E.Palaniswami as Chief Minister. They also expressed their dissatisfaction with the Chief Minister for having condoned the behaviour of Mr.O.Panneerselvam and his faction and having made him Deputy Chief Minister, even though he had publicly criticized the Government even a few days back.

11. On the same day, that is, 22.8.2017, 19 MLAs, including the writ petitioners, met the Governor of Tamil Nadu and submitted

identical individual representations in writing stating that they had lost confidence in the Chief Minister of the State and were withdrawing their support to the Chief Minister. The Governor was requested to intervene and institute the constitutional process, as Constitutional head of the State.

12. One of the letters/representations dated 22.8.2017 addressed to the Governor by P.Vetrivel, the writ petitioner in W.P.No.25260 of 2017, is extracted herein below for convenience:

> *"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. Palanisamy to form the government. Thereby I had supported Mr. Edapadi K.Palanisamy 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. Palanisamy 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.Palanisamy is leveled from various sectors vehemently.*

.....

Mr.Edapadi K.Palanisamy 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. Palanisamy. 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."

13. On 24.8.2017, MLA and Chief Government Whip of the AIADMK, Mr.S.Rajendiran, MLA, being the second respondent, moved a petition 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, hereinafter referred to as "*the Disqualification Rules*", for disqualification of 19 MLAs, including the 18 writ petitioners, from the Membership of the Tamil Nadu State Legislative Assembly, annexing the representations dated 22.8.2017 made by the writ petitioners.

14. On the same day, i.e., 24.8.2017, the Speaker of the Tamil Nadu Legislative Assembly issued notice to all the 19 MLAs, including the writ petitioners, calling upon them to give their comments/reply to

the petition of the Chief Government Whip within seven days from the date of receipt of the said letter. The Speaker also forwarded the petition filed by the Chief Government Whip to the Chief Minister, Mr.E.Palaniswami, for his comments.

15. On 30.8.2017, each of the writ petitioners filed an interim reply to the common petition for disqualification, which is hereinafter referred to as "*the first reply*" and requested the Speaker of the Tamil Nadu Legislative Assembly to permit examination of the Chief Government Whip and other witnesses. The writ petitioners also sought leave of the Speaker to be represented by an Advocate.

16. In the first reply, the writ petitioners in a nutshell contended:

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

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.

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 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.Palanisamy 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 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 simpliciter 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.

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.

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.

17. By a letter dated 31.8.2017, the Secretary of Legislative

Assembly informed the writ petitioners that the Speaker had granted extension of time for final comments till 5.00 P.M. on 05.9.2017 and fixed the hearing between 3.00 P.M. And 4.00 P.M. on 07.9.2017. The notice categorically stated *"I am further to informed that if you fail to respond to this notice, i.e., submitting final comments and appearing before the Hon'ble Speaker on the above said date, time and place, it would be presumed that you have nothing further to offer and decision will be taken based on available records."*

18. On 3.9.2017, the Speaker of the Tamil Nadu Legislative Assembly forwarded the comments dated 30.8.2017 of the Chief Minister, Mr.E.Palaniswami to the writ petitioners. Mr.Abhishek Manu Singhvi, Senior Advocate, appearing on behalf of some of the writ petitioners submitted that the letter of the Chief Minister was antedated. This, according to Mr.Singhvi, was evident from the fact that the letter of the Chief Minister dealt with contents of the interim reply of the writ petitioners filed on 30.8.2017, which could not have been perused on or before 30.8.2017.

19. On 5.9.2017, the writ petitioners filed a second interim reply with request for documents and for further 15 days' time to submit final reply on receipt of the documents. A petition was also filed for

deferment of the personal hearing scheduled on 7.9.2017.

20. In the second reply, the writ petitioners contended that the Speaker was constitutionally disqualified to adjudicate this dispute, in the light of the allegation of malice and bias made against him. A request was made to refer the dispute to a Committee under Rule 7(4) for making a preliminary enquiry to see whether there were any merits in the allegation by the Chief Government Whip referring to a judgment of a Division Bench of Bombay High Court in the case of *Dr.Wilfred D' Souza and others v. Shri Tomazinho Cardozo Hon'ble Speaker of the Legislative Assembly and others, reported in 1999 (I) Bom CR 594.*

21. By a notice dated 7.9.2017, the date for filing of further comments and personal hearing was fixed on 14.9.2017. The contents of the said notice are extracted herein below for convenience:

> *"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."

22. On 14.9.2017, at the time fixed for hearing, one of the writ petitioners, Mr.P.Vetrivel, appeared along with his advocate, Mr.N.Raja Senthoor Pandian, and filed a further interim reply on his own behalf and the other 17 MLAs, being the other writ petitioners, pointing out that the letter dated 22.8.2017 to the Hon'ble Governor was written pursuant to the directions of the Deputy General Secretary of the party, Mr.T.T.V.Dhinakaran. By way of the said interim reply, the said writ petitioner, Mr.P.Vetrivel, requested the Speaker of the Tamil Nadu Legislative Assembly to: (i) furnish the documents cited in the interim reply; (ii) to permit the writ petitioners to cross-examine the Chief Minister of Tamil Nadu, Mr.E.Palaniswami and other witnesses; and (iii) to pass order for police protection to the writ petitioners to enable them to attend personal enquiry from Kudagu.

23. According to the writ petitioners, on 18.9.2017, in the

morning, a media report was released stating that 18 out of 19 MLAs, i.e., the writ petitioners, had been disqualified. No copy of the order was furnished to the writ petitioners, but the order was uploaded on the website at around 8.30 PM.

24. By the impugned order, the Speaker of the Tamil Nadu Legislative Assembly dismissed the disqualification petition against Mr.S.T.K.Jakkaiyan, relying on letters dated 7.9.2017 written by him to the Hon'ble Governor and a letter dated 14.9.2017 written by him to the Speaker retracting his allegations against the Chief Minister as contained in the letter dated 22.8.2017.

25. On the very next day, i.e., on 19.9.2017, these writ petitions were filed challenging the impugned order. On 20.9.2017, this Court directed that notices be issued to the respondents and further passed an interim order that election not be notified for any of the 18 Legislative Assembly Constituencies pursuant to the impugned order dated 18.9.2017.

26. Some of the writ petitioners herein filed writ petitions, being W.P.Nos.27853 to 27856 of 2017, in this Court seeking orders for disqualification of Mr.O.Pannerselvam and 10 other MLAs under the

Tenth Schedule. The writ petitions have been disposed of by a common judgment and order dated 27.4.2018.

27. Relying on the judgment of the Supreme Court in *Balachandra L.Jarikholi and others v. B.S.Yeddyurappa and others*, reported in *(2011) 7 SCC 1*, the writ petitioners contend that the proceedings initiated against the writ petitioners for disqualification are illegal and without jurisdiction.

28. On behalf of different sets of writ petitioners, arguments were advanced by Mr.Abhishek Manu Singhvi, Senior Advocate and Mr.P.S.Raman. Senior Advocate. The Speaker, Tamil Nadu Legislative Assembly and the Secretary, Legislative Assembly Secretariat were represented by Mr.C.Aryama Sundaram, Senior Advocate. The Chief Government Whip, Tamil Nadu Legislative Assembly was represented by Mr.Mukul Rohatgi, Senior Advocate and the Chief Minister, Government of Tamil Nadu was represented by Mr.C.S.Vaidhyanathan, Senior Advocate.

29. Mr.Singhvi appearing on behalf of the writ petitioners in W.P.Nos.25260 to 25266 of 2017 and 25393 to 25397 of 2017 submitted that the order dated 18.9.2017 passed by the learned

Speaker disqualifying 18 MLAs was perverse, mala fide, biased, partisan, in abuse of power and in violation of the principles of natural justice, inasmuch as the writ petitioners had been deprived of opportunity to explain and effectively reply to the charges against them.

30. Mr.Singhvi argued that the learned Speaker had acted in gross violation of the principles of natural justice by:

(i) giving the writ petitioners only five days time to reply to the disqualification application;

(ii) denying the writ petitioners the documents and in particular, the original of the letter dated 22.8.2017 addressed by the writ petitioners to the Governor and also the response of the Respondent No.3, being the Chief Minister, to the disqualification application;

(iii) not giving the writ petitioners opportunity to examine witnesses and/or to cross-examine the Chief Minister, the Chief Government Whip and others; and

(iv) refusing adjournment of 15 days, as sought by the writ petitioners.

31. Elaborating on the aforesaid submissions, Mr.Singhvi submitted that the time of five days given to the writ petitioners to reply to the disqualification application was too short. Furthermore, the writ petitioners had not been given the opportunity to examine documents to give an effective reply. In any case, the learned Speaker should have granted adjournment of 15 days as prayed for by the writ petitioners.

32. Mr.Singhvi argued that it was the case of the writ petitioners that the copy of the letter dated 22.8.2017 annexed to the disqualification application had been interpolated. The learned Speaker patently erred in law by relying on the copy of the letter dated 22.8.2017 annexed to the disqualification application without calling for the original of the letter and comparing the copy with the original. Mr.Singhvi argued that the letter of 22.8.2017 could not have constituted a ground for initiation of disqualification proceedings.

33. Mr.Singhvi argued that it has all along been the case of the writ petitioners that they had first met the Chief Minister and ventilated their grievances. However, the grievances of the writ petitioners were not heard and as such, they had little option but to

request the Governor to invoke the constitutional process.

34. Mr.Singhvi argued that the Chief Minister had, in his reply to the disqualification application, denied that he had been approached by the writ petitioners. The writ petitioners ought to have, thus, been given the opportunity to examine and/or cross-examine the Chief Minister as also officers and staff of the Chief Minister's Secretariat.

35. Mr.Singhvi also argued that the learned Speaker had passed the impugned order, relying on materials not on record such as the statement of S.T.K.Jakkaiyan, without giving the writ petitioners opportunity of rebuttal, which amounted to denial of principles of natural justice.

36. The writ petitioners have also argued that the learned Speaker held against the writ petitioners, inter alia, observing that the Leader of the Opposition had also paid a visit to the Hon'ble Governor and sought a floor test after the representation dated 22.8.2017. Mr.Singhvi argued that the Leader of the Opposition had met the Governor, for the first time, in September, 2017 and not immediately after the representation of the writ petitioners. In any case, the writ petitioners had no control over the conduct of the Leader of the

Opposition.

37. Mr.Singhvi submitted that the petitioner had not said anything anti-party in his suit seeking injunction against the General Council Meeting. The alleged General Council Meeting had been called on the letterhead of an unknown entity – AIADMK (AMMA & Puruthchi Thaialva).

38. The learned Speaker erred in holding that the writ petitioners embraced totally different ideology and were acting in concert with the Leader of the Opposition, when this was not even the complaint of the Chief Government Whip.

39. Mr.Singhvi argued that the Speaker had acted with utmost bias and his action was motivated. Mr.Singhvi argued that bias of the learned Speaker was apparent from the fact that the Speaker did not think it necessary to issue any notice on the petition filed by the petitioner in W.P.No.25260 of 2017 and three other MLAs seeking disqualification of Mr.O.Pannerselvam and 11 other MLAs for voting against the Whip of the Party, but, in this case, notice was issued against the writ petitioners on the same day, with extreme alacrity, and decided in hot haste within 25 days.

40. Mr.Singhvi cited the judgment of the Supreme Court in *Rajendra Singh Rana v. Swami Prasad Maurya, reported in (2007) 4 SCC 270*, where the Supreme Court had held that failure of the Speaker to decide on an application seeking disqualification went against the constitutional scheme of the Tenth Schedule.

41. Mr.Singhvi also argued that the learned Speaker passed the impugned order without even adverting to or dealing with the allegations of specific bias made against him. Mr.Singhvi argued that the manner in which the Speaker had proceeded to conduct the hearing showed apparent bias.

42. Mr.Singhvi also argued that there being allegations of malice and bias against the Speaker, the Speaker ought not to have heard the disqualification application filed by the Chief Government Whip, but should have referred the same to a Committee under Rule 7(4) of the Disqualification Rules. In support of the aforesaid submission, Mr.Singhvi cited the judgment in *Dr.Wilfred D'Souza v. Sh Tomazinho Cardozo, 1991 (1) Bom CR 594*.

43. Mr.Singhvi also argued that the letter of the Chief Minister was ante-dated 30.8.2017. This, according to Mr.Singhvi, would be

evident from the fact that the Chief Minister had replied to the comments in the interim reply of the petitioner filed on 30.8.2017.

44. Mr.Singhvi suggested that there was clear collusion between the Speaker and the Chief Minister and their cross-examination was, therefore, absolutely essential, but deliberately denied.

45. Mr.Singhvi submitted that statements of the petitioners, in their reply, had been considered incorrect, without rebuttal of the Chief Government Whip or the Chief Minister.

46. Mr.Singhvi also argued that the media reported that the disqualification order had been passed at 11.30 AM. However, the writ petitioners had not been served with the impugned order, which was only uploaded at 8.30 PM at night.

47. Mr.Singhvi argued that the hot haste in issuance of the impugned order dated 18.9.2017 within 25 days of filing of petition indicates the oblique attempt to give a decision before any trust vote, which had become imminent in view of Writ petition No.24708 of 2017 (*M.K.Stalin v. State of Tamil Nadu and Others*).

48. Mr.P.S.Raman appearing for the writ petitioners in W.P.Nos.25267, 25398 to 25402 of 2017 adopted the submissions of Mr.Singhvi and further argued that the Speaker acting under the Tenth Schedule functioned as a Tribunal and his orders were as amenable to judicial review as any other inferior Tribunal and in this regard, there is no legal immunity.

49. Both Mr.Singhvi and Mr.P.S.Raman argued that the entire proceedings which commenced with disqualification petition on 24.8.2017 and culminated in the impugned order dated 18.9.2017 were vitiated by gross violation of principles of natural justice, inasmuch as proceedings were commenced and concluded in hot haste, in anticipation of a floor test.

50. Mr.Raman argued that the request for adjournment of only 15 days for furnishing further documents as also for examining or cross-examining witnesses was denied without a speaking order to proceed with the case.

51. Mr.Raman emphatically argued that the entire proceedings which commenced on 24.8.2017 and culminated in the impugned order dated 18.9.2017 were vitiated by reason of the following

infirmities:

(i) The proceedings were commenced and concluded in great haste in anticipation of floor test, denying sufficient opportunity to the petitioners;

(ii) The writ petitioners were denied the right of cross-examination of individuals, including the Chief Government Whip, who had filed the disqualification petition;

(iii) Materials not on record were relied upon without opportunity to the writ petitioners to rebut the same;

(iv) The disqualification petition was devoid of particulars and based on a proforma unsigned representation and unsubstantiated press reports as also extracts of electronic media;

(v) The Rules of evidence were not followed.

52. Mr.P.S.Raman emphatically argued that the impugned order was unsustainable on merits since the representation to the Governor dated 22.8.2017 was only a bona fide voice of dissent and not a defection as contemplated in paragraph 2(1)(a) of the Tenth Schedule.

53. Mr.Raman emphatically reiterated that the said representation was identical to the representation of the 13 MLAs in *Yeddyurappa*, supra, and the factual matrix of that case was identical to that of the present case in all respects and all the other decided cases in respect of the Tenth Schedule were on completely different facts.

54. Mr.Raman argued that the findings in *Yeddyurappa*, supra, are in no manner affected by the subsequent Constitution Bench judgment of the Supreme Court in *Nabam Rebia and Bamang Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly, reported in (2016) 8 SCC 1*.

55. Relying on the judgment of the Supreme Court in *Yeddyurappa,* supra, Mr.Raman argued that the representation was identical to that of the 13 MLAs in the case of *Yeddyurappa*, supra. The factual matrix of that case was identical to the factual matrix of this case in all respects.

56. Mr.Raman emphatically argued that the proceedings before

the Speaker were vitiated by malice in law and malice in fact. The Speaker failed to appreciate the implication of the proceedings before the Election Commission under Paragraph 15 of the Symbols Order.

57. Mr.Raman emphatically supported the submission of Mr.Singhvi that an order under the Tenth Schedule is amenable to the power of the High Court and the Supreme Court of judicial review in exercise of its extraordinary writ jurisdiction. Such an order might be interfered with on grounds of breach of constitutional mandate, mala fides, non compliance with rules of natural justice as also perversity. The scope of interference with such an order is the same as the scope of interference with orders of any other statutory Tribunal. The order of the Speaker is only immune against mere breach of procedure in the absence of specific proof of prejudice, as held in *Ravi S. Naik v. Union of India, reported in (1994) 2 Supp SCC 641*.

58. Mr.Raman submitted that the arguments advanced on behalf of the respondents with regard to separation of powers and need for judicial restraint were not sustainable since the Speaker was acting in a judicial capacity as a constitutional functionary and not as Speaker of the House, which function enjoyed certain privileges and constitutional immunities.

59. Mr.Raman argued that, on 14.9.2017, Mr.P.Vetrivel, one of the writ petitioners was accompanied by his counsel, who was also on vakalat for all the 18 MLAs, in the Chamber of the Speaker, but neither the Petitioning Whip nor his witnesses were available, and when hearing did not take place on 14.9.2017, the writ petitioners reasonably believed that another date might be given, which was not done.

60. Mr.Raman argued that the writ petitioners had sought cross-examination of the Jaya TV reporter on whose reports reliance had been placed; the Thanthi TV reporters, who had recorded and telecast the press meet; the Chief Government Whip, being the petitioner before the Speaker; and the Chief Minister, since he had denied meeting with the writ petitioners.

61. Mr.Raman argued that the Disqualification Rules lay down the procedure to be followed by the Speaker, which is the same as that of the Committee of the Privileges of the Assembly. The rules relating to procedure to be followed by the Committee of Privileges are the rules of procedure followed by the Select Committee of the House, which contemplates the issue of summons and/or processes to

witnesses, examination on oath, etc. The submission that the Rules of Procedure contemplate the issuance of processes and summons is not correct.

62. Mr.Raman submitted that the Tenth Schedule clearly contemplates examination of witnesses and cross-examination when demanded. In support of his submission that right of cross-examination was crucial, Mr.Raman referred to the observation of the Supreme Court in *Ravi S. Naik*, supra, in paragraph (26) that the disqualified MLAs ought to have sought to cross-examine Dr.Jhalmi to confront him with the allegation that the MLAs had voluntarily given up their membership in order to refute the same. The fact that the MLAs had not exercised this right was put against them. Mr.Raman argued that the observation clearly implies that if the MLAs had asked the Speaker to permit them to exercise their right of cross-examination, the Speaker would be obliged to do so.

63. Mr.Raman argued that the Speaker rejected the right of cross-examination with the observation that "*the available material itself would show whether or not the respondents have voluntarily given up their membership of their party.*" Neither the Chief Government Whip nor any counsel represented him before the

Speaker. This alone constituted violation of principles of natural justice.

64. Mr.Raman argued that the Speaker, having chosen to issue notice to the Chief Minister in terms of the Disqualification Rules and having received the reply from him, could not have denied the writ petitioners a right to cross-examine him. Mr.Raman argued that the cross-examination would have exposed the incorrectness of the reply given by the Chief Minister.

65. Mr.Raman argued that the statement of the Chief Minister that the writ petitioners had not attended the Legislative Party meeting was incorrect, inasmuch as they had never been given notice of such meeting. The writ petitioners were, however, denied proof of service of notice of the meeting.

66. Mr.Raman argued that the only case for disqualification made out in the petition of Mr.S.Rajendiran was the representation to the Governor and press coverage given to the same. Nothing was put against the writ petitioners except the letter to the Governor. However, the Speaker by his impugned order came to the conclusion that the representation to the Governor seeking a floor test was

sufficient to conclude that the writ petitioners had joined the opposition. This case was never put to the petitioners.

67. Mr.Raman submitted that the filing of an application by one of the writ petitioners, Mr.P.Vetrivel, to implead himself in the writ petition filed by the Leader of the Opposition for directions to conduct a floor test had also been relied upon, though the same was not even a matter of record in the proceedings. If the Speaker wished to rely upon the petition for impleadment as proof of attracting Paragraph 2(1)(a) of the Tenth Schedule, the same should have been put to the parties. Similarly, reliance on the suit filed by Mr.P.Vetrivel seeking to prevent the General Council Meeting has also been relied upon in the impugned order. In doing so, the Speaker has relied on extraneous materials without putting the same to the writ petitioners.

68. Mr.Raman argued that the Speaker relied on statements made by one of the 19 MLAs, Mr.Jakkaiyan, who had written to the Governor, but later withdrawn his representation. He had stated that during his stay at Puducherry along with other writ petitioners, he had witnessed a situation where some members of the AIADMK party were trying to topple the AIADMK Government to facilitate the main opposition party, i.e., the DMK, to capture power. However, this

statement alleged to have been made by Mr.Jakkaiyan was never put to the parties.

69. Mr.Raman submitted that the petition filed by Mr.Rajendiran for disqualification of the writ petitioners was devoid of particulars with reliance on a proforma unsigned representation and unsubstantiated press reports as also extracts of electronic media, without following the rules of evidence.

70. Mr.Raman argued that an annexure annexed to the disqualification petition is blank and unsigned and that the Speaker ought not to have taken cognizance of the same without having the original or a photocopy.

71. Mr.Raman argued that reliance was placed on the electronic media, through a CD, without following Section 65B of the Evidence Act, which is mandatory. In the impugned order, this has been negatived at paragraph 23 at Page 107 by simply holding that the Speaker is not bound by Section 65B of the Evidence Act as long as rules of natural justice and fair play are followed.

72. Mr.Raman argued that reliance on electronic evidence had

the inherent possibility of tampering. Section 65B of the Evidence Act ensured principles of fair play and natural justice and ignoring the said Section might amount to accepting false evidence.

73. In support of this submission that the impugned order was in violation of principles of natural justice, Mr.Raman cited *(i) Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati, reported in (2015) 8 SCC 519; (ii) Yeddyurappa, supra; (iii) Ravi S. Naik, supra, (Para 20); and (iv) Union of India v. T.R.Varma, reported in AIR 1957 SC 882 (Para 10).*

74. Mr.Raman emphasized that the impugned proceedings before the Speaker were vitiated by malice in law and in fact. At the very threshold, the writ petitioners had questioned the impartiality of the Speaker, who was himself vitally interested in protecting the Chief Minister and his government and he was requested to recuse himself following Rule 7(4) of the Disqualification Rules and refer the matter to the Committee.

75. Mr.Raman argued that it was imperative that the Speaker recused himself, since the writ petitioners had contended that many of the meetings held with the Chief Minister were in the Chambers of the

Speaker and in his presence.

76. Mr.Raman argued that the main allegation of malice stemmed from the undisputed fact that four of the writ petitioners had initiated proceedings against Mr.O.Paneerselvam and others for disqualification under Paragraph 2(1)(b) of the Tenth Schedule. Even though the disqualification application was received on 20.3.2017, the Speaker sat on it to enable the Chief Minister to keep the dissident group in threat, only to finally effect a reconciliation of convenience to save his government. Such an inaction clearly amounted to malice and not just procedural impropriety. In support of this submission, Mr.Raman cited the judgment of the Supreme Court in *Rajendra Singh Rana,* supra.

77. Mr.Raman submitted that on 18.2.2017, when Mr.O.Paneerselvam and other MLAs defied the whip to vote in favour of the confidence motion proposed by the Chief Minister, there was only one AIADMK party. The said AIADMK party had not condoned this action within 15 days as contemplated by the Tenth Schedule and consequently, it was a straight forward case of ex-facie disqualification.

78. Mr.Raman argued that there is no finding in the impugned order on the plea of malice raised against the Speaker by reason of inaction in an earlier disqualification petition and hot haste to decide the subsequent disqualification application.

79. Mr.Raman argued that denial of opportunity to adduce evidence, cross-examination of persons, police protection to enable the writ petitioners to effectively participate in the proceedings and denial of adjournment on 14.9.2017 lead to the conclusion of malice in fact and malice in law.

80. Mr.Raman argued that the urgency with which the Speaker proceeded was by reason of the apprehension that if a floor test was actually ordered by the Governor, the writ petitioners would vote against the government headed by Mr.E.Palaniswami. Yet, the Speaker did not avail the opportunity to disqualify actual dissidents, who had voted against the Government.

81. Mr.Raman argued that the Speaker had misconducted himself in not taking action against Mr.O.Paneerselvam and 10 others, for if he had, the present situation itself would not have arisen, because apart from the allegation of corruption against the Chief

Minister, the main objection in the letter to the Governor was that Mr.E.Palaniswami made an unholy alliance with Mr.O.Paneerselvam, who along with his MLAs and supporters had betrayed the AIADMK party.

82. Mr.Raman submitted that the politically motivated stand of the Speaker could be gauged by the fact that in this case, the retraction of the representation by Mr.Jakkiyan has been accepted by the Speaker. However, under Paragraph 2(1)(a), disqualification is attracted the moment the action amounting to voluntary resignation takes place. Unlike Paragraph 2(1)(b), where the political party may condone the voting within 15 days, there is no similar power under Paragraph 2(1)(a).

83. Mr.Raman argued that even if the representation dated 22.8.2017 did amount to voluntary resignation, the Speaker has by the impugned order condoned the acts of Mr.Jakkaiyan, which even the Chief Government Whip or the Party could not have done once Tenth Schedule proceedings were initiated.

84. Mr.Raman argued that the order of the Election Commission dated 22.3.2017 and its legal implications in the case at hand had

completely been ignored by the Speaker.

85. Mr.Raman argued that by the aforesaid order of the Election Commission of India, the existence of two rival groups claiming to be real AIADMK political party came to be recognized. One group led by Mr.Madhusudhanan, which supported Mr.O.Paneerselvam and the other group led by Mrs.Sasikala and Mr.T.T.V.Dhinakaran, which supported Mr.E.Palaniswami and his government. Both the groups were restrained from using Two Leaves Symbol as well as the name of the party, as a consequence whereof, the OPS Group became AIADMK (Puraichi Thalaivi), while the EPS Group became AIADMK (Amma). The Chief Minister filed sworn affidavit before the Election Commission of India claiming allegiance to the Group led by Mrs.Sasikala and Mr.T.T.V.Dhinakaran.

86. Mr.Raman submitted that in their first interim reply, the writ petitioners raised a specific objection relying upon the order of the Election Commission of India and submitted that in the disqualification application reference had been made to the original AIADMK party in violation of the freeze order. The letter of the Chief Minister referred to AIADMK (Amma, Puratchi Thalaivi).

87. Mr.Raman argued that there were several implications of the order, as it was not clear which of the two groups the Chief Government Whip represented. The Chief Government Whip could not have used the name of the original political party. In any case, the foundation of the Tenth Schedule is that a candidate of the original political party winning on its symbol had voluntarily given up membership of that political party. However, from the date of the petition, i.e., 24.8.2017, till 23.11.2017, when the Election Commission of India closed the symbol dispute, neither group could claim to be the original political party nor rely on the symbol.

88. Mr.Raman argued that the objection was overruled by the Speaker in one sentence holding that the disqualification proceedings had nothing to do with the symbol dispute. However, ironically, the same Speaker had relied on the order of the Election Commission of India to explain why he never took action on the petition against Mr.O.Paneerselvam.

89. Citing the judgment of the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner, reported in (1978) 1 SCC 405*, Mr.Raman argued that a party could not by way of an affidavit add to or expand the scope of an original order. An impugned order could not

be explained by an affidavit.

90. Mr.Raman argued that the Speaker has not been impartial and has clearly taken sides. He ought not to have acted at least till the symbol dispute was decided.

91. Mr.Raman argued that on the date of the impugned order, the question of which party was the original political party, as defined in Paragraph 1(c) of the Tenth Schedule, and who belonged to it and who could claim the Two Leaves symbol were open.

92. It was doubtful whether the writ petitioners had voluntarily resigned from the original political party. The 18 MLAs were admittedly supporters of AIADMK (Amma) faction and Mr.T.T.V.Dhinakaran was the Acting Deputy General Secretary with whom the Chief Minister had aligned.

93. Mr.Raman argued that even otherwise the impugned order was unsustainable, since the representation to the Governor dated 22.8.2017 was only a bonafide dissent and not a defection as contemplated in Paragraph 2(1)(a) of the Tenth Schedule. The representation is identical to the representation made by the 13 MLAs

in *Yeddyurappa*, supra. The other decided cases on the Tenth Schedule were on different factual premises.

94. Mr.Raman argued that the present case is under Paragraph 2(1)(a) of the Tenth Schedule which contemplates voluntary resignation from party and is not a case of split or merger which requires one-third strength under the erstwhile Paragraph 3 of the Tenth Schedule which stood deleted with effect from 1.1.2004, nor is this a case of merger requiring two-third strength as contemplated under Paragraph 4(2) of the Tenth Schedule.

95. Mr.Raman argued that the arguments made by the respondents in an attempt to stamp the writ petitioners as dissident or minority group are not relevant.

96. Relying on *Yeddyurappa*, supra, Mr.Raman emphatically argued that criticism of party leadership or voicing of concerns over governance is protected by Article 19(1)(a) of the Constitution of India and can be considered to be legitimate dissent and not voluntary relinquishment of membership of the party to attract Paragraph 2(1)(a) of the Tenth Schedule.

97. Mr.Raman argued that the representation in this case is admittedly identical to the representation of the 13 BJP MLAs in *Yeddyurappa*, supra, and is covered by the said judgment.

98. Relying on *Rajendra Singh Rana*, supra, Mr.Raman submitted that collective dissent is not intended to be stifled by the Tenth Schedule.

99. Mr.Raman argued that the Speaker fell in error in holding that the judgment in *Yeddyurappa*, supra, was only based on violation of principles of natural justice and did not deal with merits of whether the representation amounted to resignation from the party.

100. Mr.Raman argued that *Yeddyurappa*, supra, had been distinguished with reference to the subsequent letter of the Leader of the Opposition to the Governor seeking floor test and thereby coming to the conclusion that the writ petitioners had joined the DMK party. Times of India report dated 23.8.2017 revealed that the writ petitioners wanted to oust Mr.E.Palaniswami as Chief Minister and were backing the candidature of Mr.Sengottayan for the office of Chief Minister. If this were true, the 18 MLAs had not resigned from the party at all.

101. Mr.Raman argued that even assuming that the Speaker could have taken note of the letter of the Leader of the Opposition, the conclusion drawn therefrom that the 18 MLAs had joined the DMK party was perverse. When there was internal turmoil within a ruling party, it is not uncommon for the main opposition party to try to fish in troubled waters. There is no material to show that any of the 18 MLAs had even indirectly, let alone directly, aligned with the DMK opposition party.

102. Referring to *Ravi Naik*, supra, Mr.Raman argued that this was the first case where the Supreme Court recognized that a person need not voluntarily resign from a party, but resignation could be inferred from a voluntary act. In that case MLAs of MGP party, who had been disqualified had openly accompanied the Goa State Congress Leader to meet the Governor and seek for change of Government.

103. In *G.Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly, (1996) 2 SCC 353*, the expelled MLA, who became an unattached member, had voluntarily joined the MDMK political party attracting Paragraph 2(1)(a) of the Tenth Schedule.

104. In *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council, (2004) 8 SCC 747*, a Member of the Legislative Council of Bihar from the Indian National Congress, after being denied a party ticket, contested for Parliament against the Indian National Congress as an independent candidate and thereby incurred disqualification.

105. In *Rajendra Singh Rana,* supra, 13 MLAs of the Bahujan Samaj Party in Uttar Pradesh openly joined hands with the Samajwadi Party and openly requested the Governor to make the Samajwadi Party form a fresh Government. Thus, in all cases, disqualified MLAs openly aligned themselves with the opposition party. The only similar case that of *Yeddyurappa,* supra, which has erroneously been distinguished in the impugned order.

106. Mr.Raman argued that the later case of *Nabam Rebia, supra,* does not dilute the findings in *Yeddyurappa,* supra, nor does it impliedly overrule *Yeddyurappa*. Mr.Raman has emphasized on differences in arguments advanced by the counsel.

107. Mr.Raman submitted that the Court should apply the concept of implied overruling with caution and care citing the judgment

of the Supreme Court in *Prakash Amichand Shah v. State of Gujarat and others, reported in (1986) 1 SCC 581.* There can be no dispute with this proposition. Mr.Raman argued and rightly that the concept of implied overruling should be applied with caution and care. This Court agrees that *Yeddyurappa*, supra, has neither been considered nor overruled by the judgment in *Nabam Rebia*, supra, impliedly or otherwise.

108. Mr.Raman finally argued that it is well settled proposition that a precedent is only an authority for what it actually decides and not for what may remotely or even logically follow from it. There can be no quarrel with the aforesaid proposition of law as reiterated in *Goodyear India Limited v. State of Haryana and others, reported in (1990) 2 SCC 71,* cited by Mr.Raman.

109. Mr.Raman concluded his submissions emphatically arguing that the impugned order has to be tested against the materials on record on the date of the impugned order, that is, 18.9.2017. Reliance ought not to be been placed on alleged subsequent events. This Court accepts this submission.

110. The writ petition has been opposed by the respondents i.e.,

the Speaker, the Chief Minister, the Chief Government Whip and the Secretary of the Tamil Nadu Legislative Assembly. Arguments have been advanced by Mr.Aryama Sundaram appearing on behalf of the Speaker (respondent No.1) and the Secretary of the Tamil Nadu Legislative Assembly (respondent No.4); Mr.Rohatgi appearing on behalf of the Chief Government Whip (respondent No.2) and Mr.C.S.Vaidhyanathan appearing on behalf of Mr.E.Palaniswami (respondent No.3). The arguments of the three counsel have been recorded in the order of their appearance.

111. There being some overlapping in substance of arguments advanced by Mr.Rohatgi, Mr.Sundaram and Mr.Vaidhyanathan, those arguments are dealt with together. Mr.Sundaram; Mr.Rohatgi and Mr.Vaidhyanathan all argued that the scope of review of an order passed by the Speaker under Tenth schedule was narrow. All the three counsel argued that the Speaker is the Master of the Legislative Assembly. The decision making process of the Speaker could not be scrutinized minutely in the same manner as a decision of other Tribunals. The Court can examine the order passed by the Speaker on certain broad parameters, that is, whether sufficient opportunity had been given; whether there exist factors which could lead to the Speaker's plausible conclusion and whether the conclusion of the

Speaker was malafide. Counsel rightly argued that this Court was not deciding an appeal from the decision of the Speaker. The question is whether the conclusion arrived at by the Speaker was a plausible conclusion. According to counsel appearing on behalf of the respondents, the answer to the aforesaid question would necessarily have to be in the affirmative.

112. Mr.Mukul Rohatgi appearing on behalf of the Chief Government Whip, respondent No.2, submitted that the Speaker was the Master of the House and his powers *vis-a-vis* the affairs of the House/Assembly were well settled and could not be interfered with.

113. Mr.Rohatgi argued that the Tenth Schedule to the Constitution expressly confers powers on the Speaker to decide a petition for disqualification.

114. Mr.Rohatgi argued that though the Speaker is a Tribunal, when the Speaker decides a question of disqualification under the Tenth Schedule, it is not like an usual Tribunal and such orders are subject to judicial review only on limited grounds. In support of his submission that there were limitations to the power of judicial review of an order passed by the Speaker, declaring disqualification of

members, Mr.Rohatgi cited *Kihoto Hollohan v. Zachillhu, reported in 1992 Supp (2) SCC 65.*

115. Mr.Rohatgi argued that the judgment in *Kihoto Hollohan, s*upra, has been followed by the Supreme Court in *Ravi S.Naik*, supra, and in *Mahachandra Prasad Singh, supra*.

116. Mr.Rohatgi submitted that the Court should exercise its power of judicial review over an order passed by the Speaker under the Tenth schedule with extreme caution and not in the manner as orders of other Tribunals, such as Industrial Tribunals, are reviewed. The High Court does not sit in appeal over the order of the Speaker.

117. Mr.Rohatgi argued that the two questions that arise for consideration of this Court are (i) whether the writ petitioners have voluntarily given up membership of the party, and (ii) whether the Speaker has given sufficient opportunity to the writ petitioners while arriving at his conclusion.

118. Mr.Rohatgi submitted that the writ petitioners had by making their representation to the Hon'ble Governor, withdrawn their support to the Chief Minister and in doing so, the writ petitioners

publicly expressed that they had no confidence in the Chief Minister.

119. Mr.Rohatgi argued that the writ petitioners had withdrawn support to the Chief Minister for the reason that two warring factions within the party had united and they were not happy with such unification.

120. Mr.Rohatgi further argued that by withdrawing their support to the Chief Minister and making a representation to the Hon'ble Governor in this regard, the writ petitioners had moved away from the folds of the party and had aligned themselves with a completely different ideology.

121. Mr.Rohatgi submitted that the Chief Government Whip complained to the Speaker, immediately after the representation was given to the Hon'ble Governor. Based on materials available in the public domain, the complaint of the Whip enclosed the representation of the writ petitioners to the Hon'ble Governor as circulated in the media and some newspaper articles published in two daily newspapers. DVD media clippings of the interview given by some of the writ petitioners were also filed.

122. Mr.Rohatgi argued that these documents and the action depicted would attract disqualification under Tenth schedule to the Constitution. The Chief Government Whip had therefore filed a petition based on these documents calling upon the Speaker to disqualify the petitioners.

123. Mr.Rohatgi emphatically argued that the action of the writ petitioners in making the representation itself amounted to disqualification. To add to this, on the very same day, the Leader of Opposition gave a representation seeking a floor test.

124. Mr.Rohatgi argued that the sequence of events was important. On 21.8.2017, Mr.T.T.V.Dhinakaran instigated MLAs to withdraw support and on 22.8.2017, the writ petitioners wrote to the Hon'ble Governor stating that they had lost confidence in the Chief Minister and seeking his intervention. Allegations were made against the Chief Minister of dishonesty and corrupt practices. On the very same day, the Leader of the Opposition Mr.M.K.Stalin wrote a letter to the Hon'ble Governor asking for a floor test.

125. Mr.Rohatgi submitted that the letter of Mr.T.T.V.Dhinakaran was not received by MLAs other than the writ petitioners and the letter

was filed for the first time along with the reply dated 14.9.2017. Anyhow, in the said letter, Mr.T.T.V.Dinakaran alleged that the Chief Minister had joined hands with Mr.O.Panneerselvam and his group and that the majority of AIADMK Amma MLAs had also expressed displeasure against the Chief Minister. It is the case of the writ petitioners themselves that they had approached the Hon'ble Governor by reason of the letter of Mr.T.T.V.Dhinakaran.

126. Mr.Rohatgi argued that the writ petitioners had rushed to the Hon'ble Governor without taking the issue for discussion within the party. If Mr.T.T.V.Dhinakaran was in fact the Deputy General Secretary of the party and the writ petitioners were acting at his behest, they could have easily called for an intra party meeting.

127. Mr.Rohatgi pointed out that the Leader of the Opposition, Mr.M.K.Stalin, has in his affidavit filed in support of W.P.No.24708 of 2017 before this Court stated that DMK and its allies have 98 members in the Assembly, now 21 MLAs of AIADMK belonging to T.T.V.Dhinakaran faction had expressed their complete lack of confidence in the Ministry headed by the Chief Minister. Thus, 119 MLAs of the House had absolutely lost confidence in the Ministry. The Chief Minister had support of only 113 members, excluding the

Speaker, which fell short of the required number of 117. Mr.Rohatgi argued that the said averment in the affidavit of the Leader of the Opposition shows that the writ petitioners have, in fact, moved away from the party on whose ticket they were elected and are in fact being identified with the opposition parties.

128. Mr.Rohatgi submitted that the judgment of the Supreme Court in *Yeddyurappa*, supra, is completely distinguishable on facts. The decision in *Yeddyurappa*, supra, was based on the lack of opportunity accorded to the MLAs who faced disqualification. Violation of principles of natural justice was the sole reasoning for the Court to interfere with the decision of the Speaker.

129. Mr.Rohatgi argued that in this case, the Leader of Opposition had sought floor test on the very same day as that of the writ petitioners. The tenor of the letter of the Leader of Opposition indicated that the writ petitioners were acting in concert with the opposition.

130. Citing the judgment of the Supreme Court in *Nabam Rebia, supra,* Mr.Rohatgi argued that a vote of no confidence against the Chief Minister is in effect a vote of no confidence against the party in

power itself and not the person alone. Who should be or should not be the leader is for the political party to decide.

131. Dealing with the allegations of the writ petitioners of violation of natural justice, all the three counsel argued that it had been alleged (i) enough time had not been given to the writ petitioners; (ii) writ petitioners were not given an opportunity of examination of witnesses and/or cross-examination; (iii) all documents were not provided to the writ petitioners; (iv) in passing the impugned order, the Speaker had relied on facts which he had not put to the writ petitioners and (v) the order was not communicated to the writ petitioners by the Speaker.

132. The three counsel argued that the claim of the writ petitioners that the time frame given to them was very short, and that the proceedings were held on day-to-day basis with a rocket like urgency to meet the deadlines of the floor test which would be conducted under the orders of this Court, was patently incorrect as would be evident from the sequence of event

133. The counsel emphatically argued that on 24.8.2017 the writ petitioners were given seven days as mandated in the Disqualification

Rules for filing their reply. The writ petitioners filed an interim reply on 30.8.2017 (first reply) elaborately answering each of the allegations made in the petition filed by the Chief Government Whip. Further, time sought by the writ petitioners vide the said first reply was granted by the Speaker. The writ petitioners were given time till 5.9.2017 to file further reply and documents, if any, and the time for personal hearing of the writ petitioners was fixed on 7.9.2017. The writ petitioners filed their reply/comments on 5.9.2017 (second reply), but sought for time to file further reply and further time for appearing before the Speaker, which was also granted. It was only after the writ petitioners were given opportunity to file third reply, which they did, and the hearing was finally fixed on 14.9.2017 that further adjournment of 15 days was refused.

134. Mr.Rohatgi emphatically argued that the fact that the writ petitioners had been given sufficient opportunity is evident from the fact that they could file three reply statements.

135. Mr.Rohatgi argued that there was no violation of natural justice. The very fact that the writ petitioners had the opportunity to file an interim reply on 30.8.2017 and further reply on 5.9.2017 and the reply of Mr.P.Vetrivel on his own behalf and the other writ

petitioners on 14.9.2017 shows that the Speaker proceeded fairly. The allegation that the Speaker proceeded with haste is incorrect.

136. Mr.Rohatgi argued that the complaint of violation of principles of natural justice is based on the allegation of non-supply of some documents and denial of opportunity to examine and/or cross-examine witnesses.

137. Mr.Rohatgi forcefully argued that the writ petitioners were seeking documents of their choice for proving their own case. Secondly, the plea of violation of natural justice on ground of denial of opportunity of cross-examination is also misconceived.

138. Mr.Rohatgi argued that the question of cross-examination could only arise when witnesses were examined by the other party. In the instant case, the Chief Government Whip had not adduced any oral evidence.

139. Mr.Rohatgi argued that to complain of violation of natural justice, the writ petitioners would have to substantiate the prejudice caused by reason of non-supply of documents and/or failure to allow cross-examination of witnesses. The representation of the writ

petitioners to the Hon'ble Governor dated 22.8.2017 was reason enough for disqualification of the petitioners. This could not have been disproved either by cross-examination or by any documents. The writ petitioners have clearly and categorically admitted that they had given the representation to the Hon'ble Governor. They were only trying to justify their act of making such representation.

140. Citing the judgments of the Supreme Court in *K.L.Tripathi v. State Bank of India and others, reported in 1984 (1) SCC 43*; *Union of India and another v. Jesus Sales Corporation, reported in (1996) 4 SCC 69*; *Chandrama Tewari v. Union of India, reported in 1987 Suppl SCC 518*; *B.R.Kapur v. State of Tamil Nadu, reported in (2001) 7 SCC 231*, and *Union of India v. Alok Kumar, reported in (2010) 5 SCC 349*, Mr.Rohatgi argued that the real prejudice and hardship would alone determine whether there was violation of principles of natural justice. There was no technical requirement for allowing a plea for cross-examination and the same could not be allowed as mere empty formality. Even otherwise, cross-examination is not an essential ingredient of natural justice.

141. Mr.Rohatgi argued that scrutiny of violation of principles of natural justice is far less in cases of disqualification by the Speaker

under the Tenth Schedule, as observed in *Ravi S.Naik,* supra.

142. Mr.Rohatgi argued that *Yeddyurappa*, supra, was clearly distinguishable on facts. In *Mahachandra Prasad Singh,* supra, where the Chairman of the Legislative Council had given 14 days time to the appellant to submit his reply, the Supreme Court found that the appellant had been given sufficient opportunity.

143. Mr.Rohatgi argued that there was no infirmity in the action of the Speaker in relying on newspaper article. The Court approved reliance on newspaper reports in the case of *Ravi S.Naik*, supra. A Division Bench of the Bombay High Court in its judgment in *Narsingrao Gurunath Patil & others v. Arun Gujarathi, Speaker & others, reported in (2003) 105 (3) Bom LR 354*, has also approved reliance by the Speaker on newspaper report in considering matters arising out of the Tenth Schedule.

144. Mr.Rohatgi also cited *AIADMK v. State Election Commission, reported in 2007 (1) CTC 705*, where this Court held that authorities had to look into the ground realities by relying on newspaper reports.

145. Mr.Rohatgi argued that the allegation of mala fides of the learned Speaker was based on his inaction to take action on the petition filed by some of the writ petitioners against Mr.O.Panneerselvam and others for alleged violation of directions issued for the voting held on 18.2.2017.

146. Mr.Rohatgi argued that the question of whether the direction issued to MLAs to attend the meeting of the legislature on 15.2.2017 would also apply to Mr.O.Panneerselvam and others would have to be decided in separate proceedings. Any matter which is not connected to the present one, cannot be the basis for an allegation of mala fides against the petitioner.

147. Mr.Rohatgi argued that the writ petitioners had approached this Court with unclean hands. They were guilty of making false statements before the Hon'ble Speaker as well as this Court. All the pleadings filed by the writ petitioners are claimed to have been executed at Chennai. The pleadings have been verified at Chennai. But, there is a signature by an advocate stating that it was signed at Coorg before him. Mr.Rohatgi submitted that the writ petitioners were, in fact, at Kudagu (Coorg), Karnataka. Therefore, the action of the writ petitioners claiming on the one hand that they had signed and

verified the pleadings at Chennai and claiming on the other hand that they were not in Chennai, dis-entitles the writ petitioners from relief.

148. Finally, Mr.Rohatgi argued that it was significant that the petitioner in W.P.No.25260 of 2017, who had appeared before the Speaker and sought pass over on behalf of all the petitioners, had filed an application for being impleaded as party in a writ petition filed by the Leader of the Opposition, Mr.M.K.Stalin, seeking a floor test. After filing the petition, he had alone appeared and filed a petition for police protection for the other respondents before the learned Speaker. Mr.Rohatgi submitted that the intention of the writ petitioners was only to delay proceedings before the learned Speaker.

149. Mr.Aryama Sundaram appearing on behalf of respondents 1 and 4, being the Speaker of the Tamil Nadu Legislative Assembly and the Secretary, Legislative Assembly Secretariat, argued that the writ petitioners had not denied having written the letters dated 22.8.2017 to the Governor. The letters were sufficient to establish defection in effect from the party.

150. Mr.Sundaram argued that had it been a question of simple change of leader within the party, it would be an intra-party matter

and the Defection Laws would not be attracted. However, if the intention was to bring about fall of the party itself by stepping out of the realms of the party, then it would definitely have to be construed as defection.

151. Mr.Sundaram cited *Rajendra Singh Rana,* supra, where the Constitutional Bench of the Supreme Court, after discussing the object behind introduction of Tenth schedule has held that the intention was to prevent defection and that the disqualification took place the moment the membership of the party was voluntarily relinquished.

152. Contradicting the allegations levelled by the writ petitioners of violation by the Speaker of principles of natural justice, Mr.Sundaram argued that the petition of the Chief Government Whip was admittedly served on the petitioner and on 24.8.2017, the writ petitioners were granted seven days time to file reply thereto. On 30.8.2017, they filed an interim reply, hereinafter referred to as "the first reply", elaborately answering each of the allegations made in the petition filed by the Chief Government Whip.

153. Mr.Sundaram submitted that even after dealing with the allegations in the petition filed by the Chief Government Whip, the writ

petitioners had sought more time for further reply, which was duly granted till 5.9.2017. The writ petitioners, admittedly, had time to file reply and documents till 5.9.2017.

154. Mr.Sundaram further argued that even after obtaining time till 5.9.2017 and filing a second reply, the writ petitioners again sought time for further reply, which was granted on 7.9.2017 as last opportunity. The writ petitioners were directed to be present before him on 14.9.2017.

155. By notice dated 7.9.2017, the Speaker had warned the writ petitioners that if they failed to appear before the Speaker on the next date (that is 14.9.2017), time and place mentioned in the notice, it would be presumed that the writ petitioners had nothing further to offer on the issue and decision would be taken on the basis of the available records. When the writ petitioners did not appear in person even on 14.9.2017, but sought further time after filing another set of reply, the Speaker rejected the prayer for further time.

156. Mr.Sundaram argued that the case made by the writ petitioners that the Speaker had not given them reasonable time to put forth their defence was patently incorrect and contradicted by

records.

157. Mr.Sundaram submitted that this was a case where the writ petitioners were not cooperating in adjudicating the matter and yet alleging before this Court that enough time was not granted. The writ petitioners were never denied opportunity to file any reply nor were they prevented by the Speaker from filing any documents.

158. Mr.Sundaram submitted that the Speaker called for comments from the Chief Minister in compliance of Rule 7(3)(b) of the Disqualification Rules, since the Chief Minister was the Leader of the Legislative Party.

159. Mr.Sundaram submitted that the writ petitioners have alleged collusion between the Speaker and the Chief Minister for the reason that the Speaker has forwarded a copy of the petition of the Chief Government Whip to the Chief Minister for his comments, even though the Chief Minister was not impleaded respondent in the petition. This is pleaded in the grounds made out in the writ petitions as also the reply submitted by the writ petitioners to the Speaker on 5.9.2017. Mr.Sundaram argued that compliance of the Disqualification Rules could not be an act of collusion.

160. Mr.Sundaram submitted that the argument of the writ petitioners that the Speaker had proceeded in hot haste to meet the deadline of the floor test was based on conjectures and motivated. There was no floor test.

161. Mr.Sundaram submitted that the writ petitioners had sought cross-examination of the Chief Minister; the Chief Government Whip; Reporter of Thanthi TV and Cameraman & Reporter of Jaya TV for ulterior reasons. The writ petitioners had sought cross-examination of the Chief Minister to substantiate their contention that they had met him from 14.6.2017 to 19.6.2017 to voice their grievances. Cross-examination of the Chief Government Whip was sought to verify the submission made by him as the disqualification application had been filed by him. Cross-examination of the Reporter of Thanthi TV had been sought as Thanthi TV had recorded the interview of the Chief Government Whip on 28.7.2017 and cross-examination of the Cameraman & Reporter of Jaya TV was sought to show that the DVD containing the interview of Mr.P.Vetrivel did not support the version of the Chief Government Whip in the complaint.

162. The question of cross examination arises when witnesses

are examined by the other party. The writ petitioners cannot insist on cross examination of persons not examined on behalf of the Chief Government, to establish their own defence.

163. Mr.Sundaram argued that the writ petitioners were trying to use cross-examination as a fishing expedition. It is for the Speaker to decide the procedure that is to be followed by the Privileges Committee.

164. Mr.Sundaram argued that the writ petitioners had in the course of their arguments claimed that the procedure established under the Privileges Committee adopts the procedure of the Select Committee, which provides for examination of witnesses. The writ petitioners were thus implying that the Speaker had power to examine the witnesses.

165. Mr.Sundaram submitted that the letter from the writ petitioners to the Hon'ble Governor does not anywhere state that the writ petitioners had invoked the internal mechanism within the party. There is no averment that the writ petitioners had approached the office of the Hon'ble Governor as a last attempt. On the other hand, the letter unequivocally stated that they were withdrawing their

support to the Chief Minister through that letter.

166. Mr.Sundaram argued that it is the case of the writ petitioners that they had written the letter to the Hon'ble Governor on the directions from Mr.T.T.V.Dhinakaran. This only shows that the writ petitioners had acted at the behest of an individual and not for the party. The claim that the writ petitioners wanted a different leader from the party to be the Chief Minister is incorrect. They owe their allegiance only to Mr.T.T.V.Dhinakaran. The facts of this case are completely different from *Yedyurappa's* case.

167. Mr.Sundaram argued that the fact that the Leader of the Opposition sent a representation to the Hon'ble Governor on the very same day that the writ petitioners wrote the letter referred to above, showed that there is tacit understanding between the writ petitioners and the opposition party. This fact in itself distinguishes this case from *Yedyurappa's* case.

168. Mr.Sundaram argued that the judgment of the Supreme Court in *Yedyurappa's* case has no application whatsoever to the facts of the present case. In any event, in *Yedyurappa's* case (supra), the Court found that there had been violation of natural justice and fair

play.

169. Mr.Sundaram argued that the judgment of the Supreme Court in *Nabam Rebia,* supra, also clearly states that the constitutional process which the Governor can act upon is either call for a floor test or proclaim emergency.

170. Mr.Sundaram argued that the power of the Privileges Committee or the Select Committee to examine witnesses was only for purposes provided, i.e., examination of expert witness, and not to enable the writ petitioners to prove their case. In the facts of this case, the Speaker had held that cross-examination was not warranted.

171. Mr.Sundaram argued that writ petitioners had sought to cross-examine the Chief Minister to establish that the writ petitioners had tried meeting him between 14.6.2017 and 19.7.2017. However, the writ petitioners had not submitted any document to substantiate their claim. During the aforesaid period the Tamil Nadu Assembly was in session. In the Assembly, before the Speaker, the writ petitioners had themselves sung praises of the Chief Minister.

172. Mr.Sundaram submitted that the writ petitioners did not

disclose any reason for cross-examination of the Chief Government Whip, who had only made a complaint based on available information and/or records, on the basis of which the Speaker was to conduct an enquiry. Moreover, the writ petitioners have admitted to having written a letter to the Hon'ble Governor, based on which the Chief Government Whip had filed the petition before the Speaker.

173. Mr.Sundaram argued that the Speaker had never prevented the writ petitioners from adducing evidence to substantiate their claims and the writ petitioners could not ask the Speaker to fetch evidence for them. The reasons for which the writ petitioners sought cross-examination of news channels and reporters was also not clear.

174. Mr.Sundaram argued that it was well settled that a person who made an assertion had to prove the assertion. The writ petitioners had made assertion of meeting the Chief Minister between 14.6.2017 and 19.7.2017. It was, therefore, for the writ petitioners to prove the aforesaid fact by leading evidence.

175. Mr.Sundaram submitted that the settled principle of law is that a person setting up a case has to prove his case and cannot seek to prove the same by cross-examining the other side. Equally, as

regards reporters, cameramen, etc., it was for the writ petitioners to adduce evidence through them, by bringing them as witnesses to depose on their behalf, and it is not for the Speaker to produce witnesses. The role of the Speaker cannot be relegated to cast on him the duty to find and fetch evidence for the MLAs facing disqualification proceedings.

176. Mr.Sundaram submitted that the writ petitioners had not appeared before the Speaker. It is not the case of the writ petitioners that they had adduced evidence which had not been considered by the Speaker. On the other hand, the allegation by the writ petitioners is that the Speaker ought to have called for evidence. It is further submitted that the writ petitioners, who were not even present for the personal hearing, cannot make such frivolous and false claims and make allegations against the Speaker.

177. Mr.Sundaram argued that the allegation that all documents were not provided to the writ petitioners is per se false. The Speaker has provided to the writ petitioners all the documents that were in his custody. The comments from the Leader of the party under Rule 7(3)(b) were also provided to the petitioners, even though the same was not required to be provided under the Rules. As regards the

notice issued by the Secretariat to the Chief Minister calling for its comments under Rule 7(3)(b), the same is an official notice issued by the Assembly Secretariat and the same is of no relevance. In any case, in the present petition, a copy of the same has been filed before this Court.

178. Mr.Sundaram argued that the documents submitted by Mr.S.T.K.Jakkaiyan independently were never relied upon by the petitioner in adjudicating the issue of disqualification of the writ petitioners. They were only relied upon to decide the case against Mr.S.T.K.Jakkaiyan.

179. Mr.Sundaram argued that the writ petitioners had claimed that two important facts which were deduced by the Speaker were not put to them. The first was the fact that the Leader of the Opposition had sought a floor test on the very same day that the writ petitioners made their representation to the Governor, and the second was the statement made by Mr.S.T.K.Jakkaiyan before the Speaker. Mr.Sundaram submitted that the said allegations were incorrect.

180. Mr.Sundaram further submitted that the complaint filed by the Chief Government Whip before the Speaker contained the news

item published in Times of India newspaper dated 23.8.2017 as an annexure. The writ petitioners nowhere in their submissions before the Speaker had made any claim regarding the annexure filed by the Chief Government Whip. Even while making repeated allegations against the DVD filed by the Chief Government Whip, no reply whatsoever had been given to the newspaper article filed along with it. This coupled with the fact that the petitioner sought to implead himself on the very same day the Leader of Opposition moved a writ petition seeking a floor test would show that the writ petitioners have, in fact, moved away from their political party and have publicly represented as having the same interest as that of the Opposition and these are factors in the public domain and thus, it was open to the Speaker to rely on them.

181. Dealing with the allegation that the Speaker had taken into consideration the newspaper reports and the statements made by Mr.S.T.K.Jakkaiyan to decide the petition before him, Mr.Sundaram also argued that newspaper reports in matters such as this can be relied on as evidence when they are supported by other facts. Mr.Sundaram argued that in political matters, in the absence of denial of a well publicized fact by the media, it could be reasonably inferred that the person concerned did not doubt the veracity of what had been

reported. Mr.Sundaram further submitted that throughout the country, disqualification proceedings are based on information that is available from the newspapers. When a newspaper item is supported by other admitted facts, it is the duty of the Speaker to consider the same. He submitted that, the fact that the writ petitioners had submitted a representation on 22.8.2017 to the Governor is admitted by the writ petitioners themselves. Further, the fact that the Leader of the Opposition demanded a floor test on the very same day is also admitted. The Speaker has not relied on any untrue fact.

182. With regard to the allegation that the speaker had placed reliance on the statements of Mr.S.T.K.Jakkaiyan, Mr.Sundaram submitted that the Speaker had decided the case of Mr.S.T.K.Jakkaiyan separately. After deciding the case of the writ petitioners that the representation of the nature given by the writ petitioners to the Governor would amount to disqualification, the Speaker dismissed the disqualification petition against Mr.S.T.K.Jakkaiyan, on the ground that the letter which was deemed to attract the provisions of disqualification had itself been withdrawn by Mr.S.T.K.Jakkaiyan. Mr.Sundaram submitted that none of the claims of Mr.S.T.K.Jakkaiyan were required to be put to the petitioners, since their case was decided independently.

183. Dealing with references by the Speaker to the submissions of Mr.S.T.K.Jakkaiyan in the case concerning the writ petitioners, Mr.Sundaram argued that the fact that the representation filed by the Chief Government Whip before the Speaker was based on letter given by the writ petitioners to the Hon'ble Governor and that the writ petitioners were in Kudagu at the time of filing their replies were, in fact, admitted by the writ petitioners and, therefore, the claim of the writ petitioners that extraneous materials were considered by the Speaker in arriving at the decision is incorrect.

184. Mr.Sundaram submitted that in cases under the Tenth Schedule, reliance on newspaper reports and media reports is valid and in support of the the said argument, he placed reliance on the decisions in *Ravi S. Naik*, supra, and *Jagjit Singh v. State of Haryana, reported in (2006) 11 SCC 1*.

185. In response to the plea of the writ petitioners that the order was not duly communicated to them by the Speaker, Mr.Sundaram submitted that the order was duly communicated as provided under Rule 8(1)(b) of the Disqualification Rules. He added that the orders were pronounced on 18.9.2017 and copies of the same were

forwarded to the writ petitioners by registered post, as per the Assembly Rules and in fact, the press note was also required to be issued by the Assembly Secretary as per the usual procedure of the Tamil Nadu Legislative Assembly.

186. To fortify his submission that the principles of natural justice have been satisfied, Mr.Sundaram relied on the decisions of the Supreme Court in *Chairman, Board of Mining Examination v. Ramjee, reported in (1977) 2 SCC 257; Kanungo and Company v. Collector of Customs and others, reported in (1973) 2 SCC 438; and Managing Director, ECIL, Hyderabad and others v. B.Karunakar and others, reported in (1993) 4 SCC 727.*

187. Mr.Sundaram also placed reliance on a decision of the Supreme Court in *Haryana Financial Corporation and another v. Kailash Chandra Ahuja, reported in (2008) 9 SCC 31*, wherein all relevant judgments on principles of natural justice and its applicability have been discussed and it has been held that mere violation of natural justice without any prejudice cannot be held to be a case where an order has to be automatically set aside. Prejudice is sine qua non for interference of an order for violation of natural justice.

188. Mr.Sundaram relying on *Ravi S.Naik*, supra, submitted that concerning proceedings under the Tenth Schedule, the principles of natural justice cannot be put in a legal strait-jacket.

189. On the allegations of malafides against the Speaker, Mr.Sundaram argued that the test of malafides against a Speaker is extremely limited. The Court would only look into whether there was any reason for the Speaker to do what he had done and the Court cannot sit in judgment over the validity of that decision. If the Speaker has given a reason for his action, the test is whether the reason is so perverse that no normal person could have arrived at such a decision. It is in this extreme circumstance alone that the allegation of malafides have to be tested.

190. Mr.Sundaram also argued that the case of disqualification against Mr.O.Paneerselvam and that of the writ petitioners are in different circumstances. The case against Mr.O.Paneerselvam and others was under Paragraph 2(1)(b) and therefore the yardstick to be followed in that case was different from that of the present case before the Speaker which is under paragraph 2(1)(a). Moreover, the Speaker had specifically stated that he wanted to wait in the matter against Mr.O.Paneerselvam and others, since there was a claim by them

before the Election Commission. The Election Commission had found that a prima facie case had been made out by Mr.O.Paneerselvam and others and had passed an interim order on 22.3.2017. Inasmuch as the writ petitioners are concerned, it was their case in the representation made by them to the Hon'ble Governor, that they had voted in favour of the Chief Minister at the floor test held on 18.2.2017, but had now withdrawn their support to the Chief Minister.

191. Mr.Sundaram submitted that if the conclusion is based on conduct and some material is shown from which the deduction is made, then there is no perversity.

192. Mr.Sundaram argued that the writ petitioners have in effect moved away from the party. The sole stimulus for them to approach the Governor even as per their admission is that they received a direction to do so by Mr.T.T.V.Dhinakaran and the writ petitioners have not produced any documents or evidence to show that prior to the said direction, they had any issue whatsoever on the questions raised in their representation.

193. Mr.Sundaram further argued that the very fact that the writ petitioners sought initiation of the constitutional process by the

Constitutional Head and the Leader of the Opposition demanded for a floor test only goes to show that the writ petitioners and the Leader of the Opposition wanted the same thing.

194. Mr.Sundaram submitted that once the majority elects the leader, it is expected that the member of such legislative party would act in accordance with the will of the majority and if they are not willing to accept the view of the majority and approach the Governor seeking initiation of constitutional process, it would ipso facto amount to acting against the will of the party and not being willing to abide by the will of the majority of the party.

195. Mr.Sundaram contended that the letter of the writ petitioners to the Governor to initiate constitutional process, despite being aware that the Governor could not in any manner interfere with the choice of the Chief Minister, would only show that the writ petitioners had left the party.

196. Mr.Sundaram argued that the Speaker had dealt with every reply put forth by the writ petitioners and had arrived at the conclusion based on the available records that the writ petitioners had in fact moved away from the party and as such, the order passed by the

Speaker following the principles of natural justice and giving reasons for his decision, could not be questioned under the parameters available to challenge the order of a Speaker passed under the Tenth Schedule.

197. Mr.Sundaram submitted that the observation in *Yeddyurappa's* case has to be read in the light of the judgment in *Nabam Rebia*, supra. In fact, *Nabam Rebia* judgment was delivered on 13.7.2016 and after the said date the writ petitioners ought to have been well aware of the limited role of the Hon'ble Governor and could in no case extend to removal of the Chief Minister. When this is the law laid down by the Constitution Bench, to now innocently claim that they only wanted to change the Chief Minister by approaching the Governor is ex facie unexplainable and unbelievable.

198. Mr.Sundaram argued that in context of the law laid down by the Larger Bench of the Supreme Court in *Nabam Rebia*, supra, the benefit of which the Supreme Court deciding *Yeddyurappa's* case did not have, the only defence of the writ petitioners that they approached the Hon'ble Governor only to change the Chief Minister is *ex facie* unbelievable and unacceptable and there can be no perversity read into the Speaker's order in arriving at the conclusion that the writ

petitioners were disqualified under the relevant provisions of the Tenth Schedule.

199. Mr.Sundaram argued that by requesting the removal of the Chief Minister, the writ petitioners were seeking to bring about the fall of the Government. The party which was in power would lose its power. Such an act clearly showed that the writ petitioners had moved away from the ideology of the party.

200. Mr.C.S.Vaidyanathan appearing on behalf of the Chief Minister, Mr.E.Palaniswami, argued that the submission of a report to the Governor for invoking the constitutional remedy for change of Chief Minister was nothing but articulation in public of lack of faith in the leadership of a person duly elected by the legislature party of which the writ petitioners were members.

201. Citing the judgment of the Supreme Court in Nabam Rebia and others, supra, Mr.C.S.Vaidyanathan argued that it was a settled constitutional position that the Governor of the State does not have any role in making changes in the ruling party on account of internal strife, dissension and such matters are to be sorted out by the members of the legislature party within the party fora.

202. Mr.C.S.Vaidyanathan forcefully argued that the action of the writ petitioners in publicly denouncing the Chief Minister and submitting a representation to the Governor amounted in effect to voluntarily giving up membership of the political party from which the writ petitioners were elected. No other facts were necessary for drawing the inference. Thus, allegations of the Speaker not following fair procedure or not giving proper opportunity or not complying with principles of natural justice or of not giving opportunity to cross-examine were completely untenable.

203. Mr.C.S.Vaidyanathan also reiterated that the Speaker had given the writ petitioners more than adequate opportunity. There was no need for summoning the Chief Minister or the Chief Government Whip. Similarly, it was unnecessary to summon the reporter of the Thanthi Television.

204. Mr.Vaidyanathan submitted that the allegation of malafides and bias was premised on the basis of the Speaker's failure to act against Mr.O.Paneerselvam and 11 other MLAs. Mr.Vaidyanathan submitted that there could be perfectly justifiable reasons as to why the Speaker did not proceed straight away to issue notice to

Mr.O.Paneerselvam and others and in any case, even assuming that it was wrong, that does not lead to the conclusion that the Speaker was acting malafide in these cases. Whether the Speaker's action in this case was right or wrong would have to be decided on the facts of this case.

205. Mr.Vaidyanathan argued that the the power of disqualification for defection under the Tenth Schedule was solely vested with the Speaker. He submitted that disqualification under Tenth Schedule is a different procedure, which is in addition to the other grounds for disqualification in Articles 102 and 191.

206. Mr.Vaidyanathan submitted that the political party referred to in Paragraph 2(1)(a) is the political party on whose ticket a member was elected to the Parliament or Assembly and in the present case, the political party inside the Tamil Nadu Legislative Assembly is AIADMK. He added that the circumstances under which a member can voluntarily give up his Membership of the political party to which he belongs to can be either an overt action or a conduct which would imply voluntarily giving up of Membership. The implied acts of voluntary giving up membership of the political party would include the member conducting himself in a manner prejudicial to the interest of

the political party, committing such acts whereby he projects to the public that he has left his political party and when a member commits such acts, the same are against the constitutional provisions and attracts disqualification as discussed in the judgments of the Supreme Court in *Kihoto Hollahan*, supra, and *Nabam Rebia*, supra.

207. Mr.Vaidyanathan submitted the Supreme Court in *Kihoto Hollahan*, supra, while upholding the constitutionality of the provisions of the Tenth Schedule has discussed the rationale of the decision of the Speaker under the Tenth Schedule. Based on the law enunciated in the said decision, the question which the Speaker decides is political propriety and morality. In effect, the Supreme Court has laid down the parameters which the Speaker would analyse to arrive at a conclusion as to whether the member had voluntarily given up his membership from his political party. A display in a non-party public forum of disparate stands within the party is not desirable and against political tradition and would clearly show the desire of the member to leave the party and the same constitutes a voluntary act attracting disqualification under Paragraph 2(1)(a) of the Schedule. The acts of the writ petitioners clearly show that the writ petitioners have voluntarily given up their membership of the AIADMK political party.

208. Mr.Vaidyanathan argued that in *Nabam Rebia*, supra, the Constitutional Bench of the Supreme Court reiterated the previous view of the Supreme Court in *Kihoto Hollohan*, supra. In the said decision, the Supreme Court discussed the role of the Governor vis-a-vis the office of the Chief Minister and the Ministry. The Supreme Court held that the power of the Governor to take any action under the Constitution on a representation, such as the one in the present case, was (i) to proclaim emergency; or (ii) to call for a floor test for the Chief Minister to prove his majority. The question as to who should be the Leader of a political party in the Assembly is not to be decided by the Governor. It is for the members of the political party to decide the same. The Governor can act upon representation by a group of MLAs only if they qualify to be a breakaway group under the Tenth Schedule, i.e., they total to 2/3rd of the total members of the political party in the house. In other words, the only exception to attract the provisions of paragraph 2(1)(a) of the Tenth Schedule would be:

> (a) the total number of members who had sought for a change and done an act of voluntarily leaving the party was more than 2/3rd of the total number of members of that political party.
>
> (b) any public display of disaffection with or dis-owning the party by members less than said 2/3rd would attract

the provisions of paragraph 2(1)(a) of the Tenth Schedule.

209. Mr.Vaidyanathan submitted that applying the principles laid down in *Kihoto Hollohan* and *Nabam Rebia*, supra, the public display by the writ petitioners is an act which has been rightly inferred as an act of voluntarily giving up the membership of the political party. If the order of the Hon'ble Speaker is read in the context of *Nabam Rebia*, supra, it would lead to the inevitable conclusion that the writ petitioners had voluntarily given up their membership of the AIADMK.

210. Mr.Vaidyanathan submitted that when the writ petitioners themselves are aware that there was no recognizable split in the party, their action of giving the representation to the Hon'ble Governor is clearly an act by which they have disassociated with the party that attracts disqualification under Tenth Schedule to the Constitution.

211. Mr.Vaidyanathan argued that the decision of the Supreme Court in Yeddyurappa, supra, heavily relied upon by the writ petitioners does not hold that the order of the Speaker inferring that the representation given by some of the MLAs to the Governor against the Chief Minister is bad because such a letter would not amount to

voluntarily giving up of membership. On the other hand, the entire judgment was completely on the question of violation of natural justice in the facts of the said case.

212. Mr.Vaidyanathan argued that the judgment of the Supreme Court in *Yeddyurappa*, supra, was rendered in the particular facts of the case. Even assuming that *Yeddyurappa,* supra, is to be read in the manner interpreted by the writ petitioners, the fact that on the very same day, the Leader of the Opposition claimed on affidavit before this Court that 119 MLAs have no confidence in the present Ministry goes to show that the writ petitioners had aligned their interest with that of the opposition which was not the fact in *Yeddyurappa*, supra.

213. Mr.Vaidyanathan argued with some force that the observation in paragraph (122) of the judgment in *Yeddyurappa*, supra, that "*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*", is directly against the judgment of the Constitutional Bench in *Kihoto Hollohan*, supra, and Nabam Rebia, supra, where the Supreme Court has clearly held that the Governor does not have the constitutional right to remove the

Chief Minister.

214. Mr.Vaidyanathan submitted that *Yeddyurappa*, supra, had not considered the Constitutional Bench judgment in *Kihoto Hollohan*, surpa, and was thus per incurium.

215. It is true as argued by the writ petitioners that *Nabam Rebia*, supra, has not overruled *Yeddyurappa*, supra. However, *Nabam Rebia*, supra, is a later judgment and in any case, the judgment of a Larger Bench.

216. Mr.Vaidyanathan argued that the Speaker had found that the real intention of the writ petitioners in giving the representation to the Hon'ble Governor was to destabilize the government. The writ petitioners have not been able to give any explanation as to what they wanted to do by giving a representation to the Hon'ble Governor. On the other hand, several press releases and statements have been made stating that they want the government to fall. It is their own case that the Hon'ble Speaker hurried the proceedings because the floor test was imminent because of their representation and pursuant to the writ petition filed by the Leader of the Opposition, Mr.M.K.Stalin.

217. Mr.Vaidyanathan submitted that the writ petitioners gave their representation to the Governor immediately after E.Palaniswami group buried its differences with O.Panneerselvam group. The writ petitioners have stated that through their representations they had expressed their lack of confidence in the Chief Minister and they withdrew the earlier support given to him.

218. Mr.Vaidyanathan emphatically argued that though the writ petitioners had repeatedly stated that they wanted only a change in Chief Minister, there is not a whisper of how a representation to the Governor could have secured change of Chief Minister. The writ petitioners should have approached the party.

219. Mr.Vaidyanathan also reiterated the submissions made by Mr.Rohatgi and Mr.Sundaram that the making of representation to the Governor publicly denouncing the Chief Minister in effect amounted to giving up membership of the party from which the writ petitioners had been elected. The writ petitioners have only tried to justify the contents of the letter, the contents of the letter are not disputed.

220. Citing *Ravi S.Naik*, supra, Mr.Vaidyanathan argued that conduct against the party even while claiming to be in party would

itself be enough to infer that the member had moved away from the party and does not want to be identified by the party, on whose ticket he was elected to the assembly.

221. Similarly, in *Rajendra Singh Rana and others,* supra, the Supreme Court considered acts which would amount to leaving the party by conduct.

222. The question raised in this writ petition is 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 18.2.2017 is mala fide and whether the proceedings before the Election Commission have any effect in the present proceedings.

223. Mr.Vaidynathan argued that the Speaker has given reasons to this Court as to why he did not initiate further proceedings in the disqualification petition filed against Mr.O.Panneerselvam and 11 others. Mr.Vaidyanathan argued that even assuming that the inaction of the Speaker was wrong, the writ petitioners could not take benefit of such inaction. Two wrongs would not make a right. This principle has repeatedly been reiterated by the Supreme Court in its judgments

in *Union of India v. International Trading Co. and another, reported in (2003) 5 SCC 437*, and *National Aluminium Company Limited and others v. Bharat Chandra Behera and another, reported in (2013) 16 SCC 622*.

224. The problem of floor crossing amongst legislators led to the amendment of the Constitution by incorporation of the Tenth Schedule. Before dealing with the contentions of the respective parties, it would be pertinent to examine the scope and ambit of the Tenth Schedule and the historical background in which it was added to the Constitution.

225. On 8.12.1967, the Lok Sabha passed a unanimous resolution constituting a committee to consider in all its aspects the problem of floor crossing of legislators by changing their allegiance from one party to another and to make recommendations in this regard.

226. The Committee, which was known as "Committee on Defections", submitted a report dated 7.1.1969 noting the alarming rise in the changing of party allegiance by legislators. Compared to roughly 545 cases in the entire period between first and fourth general

elections, at least 438 defections had occurred in a short period between March, 1967 and February, 1968. Among independents, 157 out of 376 elected joined various parties. Out of 210 defecting legislators of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were included in the Council of Ministers which they helped to bring into being by defections. The Committee took note of defections by the same person or set of persons and the prevalent belief, as reflected from press reports, that corruption and bribery were behind some of these defections.

227. Keeping in view the recommendations of the Committee on Defections, several Bills were introduced for amending the Constitution, but they lapsed. Finally, the Constitution (Fifty-second Amendment) Act, 1985 was passed by which the Tenth Schedule was added with effect from 1.3.1985.

228. The Statement of Objects and Reasons appended to the aforesaid Bill are as follows:

> *"1. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an*

assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.

2. The Bill seeks to amend the Constitution to provide that an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also makes suitable provisions with respect to splits in, and mergers of, political parties. A special provision has been included

in the Bill to enable a person who has been elected as the presiding officer of a House to sever his connections with his political party. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House; where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

3. The Bill seeks to achieve the above objects."

229. The provisions of the Tenth Schedule to the Constitution which are relevant to the issues raised in these writ petitions are set out herein below for convenience:

"1. Interpretation.—In this Schedule, unless the context otherwise requires,—

(a) 'House' .....

(b) 'legislature party', 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 consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(c) 'original political party', in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(d) 'paragraph' means a paragraph of this Schedule.

2. Disqualification on ground of defection.—(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 authorised 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 condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation.—For the purposes of this sub-paragraph,-

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

*(b) *** (omitted as not relevant)*

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

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

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such members;

.....

6. Decision on questions as to disqualification on ground of defection.—

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

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

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

7. Bar of jurisdiction of courts.—Notwithstanding anything in this Constitution, no court shall have any

jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. Rules. - (1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule ....."

230. In exercise of powers conferred by Paragraph 8 of the Tenth Schedule of the Constitution of India, the Speaker, Tamil Nadu Legislative Assembly has framed The Members of the Tamil Nadu Legislative Assembly (Disqualification on ground of Defection) Rules, 1986. Rules 6, 7 and 8 of the Disqualification Rules are set out hereinafter for convenience:

*"**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.

(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.

(7) Every annexure to the petition shall also be 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 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 subrule), 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 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 Official Gazette and copies of such decision forwarded by the Secretary to the Election Commission of India and the State Government."

231. The objects and purposes of the Tenth Schedule have been explained by the Supreme Court in *Kihoto Hollohan v. Zachillhu, reported in 1992 Supp (2) SCC 651*. The Supreme Court observed:

"13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a

political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and 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."

232. Under Paragraph 2(1)(a) of the Tenth Schedule, a member of a House belonging to any political party is to be disqualified from being a member of the House: (i) 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 authorised 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 condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

233. The disqualification is subject to Paragraphs (4) and (5) of the Tenth Schedule. A Member of a House is not to be disqualified under sub-paragraph (1) of Paragraph 2 of the Tenth Schedule, where his original political party merges with another political party and he claims that he and any other members of his original political party have become members of the other political party or new political party formed by such merger; or have not accepted the merger and opted to function as a separate group in conditions stipulated in Paragraph 4(1)(b) of the Tenth Schedule. Paragraph 4(2) mandates that merger of the original political party of a Member of a House shall be deemed to have taken place if, ***and only if***, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

234. Disqualification under Paragraph 2(1) of the Tenth Schedule is also subject to the provision of Paragraph (5) of the Tenth Schedule, which relates to the Speaker or the Deputy Speaker of the House of the people or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State. Paragraphs (4) and (5) of the Tenth Schedule are not applicable in this case.

235. Paragraph 6 provides that where any question arises as to whether a member of the House has become subject to disqualification under the Schedule, the same shall be referred for the decision of the Chairman or, as the case may be, the Speaker of the House and his decision is to be final.

236. Rule 7(4) of the Disqualification Rules is an enabling provision, which enables the Speaker to refer a disqualification petition, to the Committee of Privileges of the Tamil Nadu Legislative Assembly to make preliminary enquiry and submit a report to the Speaker, if, having regard to the facts and circumstances of the case, the Speaker is satisfied that it is necessary and/or expedient to do so. However, the final decision has to be taken by the Speaker as envisaged in Rule 7(6) of the Disqualification Rules.

237. The question of reference to the Committee for preliminary enquiry can only arise in case of necessity to collect information to ascertain disputed factual questions, if the Speaker is satisfied of the necessity to make such preliminary enquiry.

238. The judgment of the Bombay High Court in *Dr.Wilfred*

D'Souza, supra, is clearly distinguishable. In the aforesaid case, the MLAs facing disqualification had taken the plea of split in the original party. The case, therefore, involved factual determination of the question of whether one-third of the members of the political party had defected attracting exception from disqualification in terms of Paragraph 3 of the Tenth Schedule prior to its deletion with effect from 1.1.2004 by the Constitution 91st Amendment Act, 2003.

239. In *Narsingrao Gurunath Patil,* supra, a Division Bench of Bombay High Court of A.P.Shah and Ranjana Desai,JJ., held that Paragraph 6 of the Tenth Schedule requires the Speaker himself to decide the issue of disqualification and it further gives finality to such decision. The Rules framed by the Speaker and particularly Rule 7 of the Disqualification Rules, make it amply clear that decision has to be made by the Speaker. Even though the Speaker may at his discretion refer any issue to the Committee for the purpose of making a preliminary enquiry under Rule 7(4) of the Disqualification Rules and submit a report to the Speaker, it is the Speaker who has to take a final decision.

240. In *Kihoto Hollohan v. Zachillhu,* supra, the Supreme Court held:

"97. ..... The very deeming provision implies that the proceedings of disqualification are, in fact, not before the House; but only before the Speaker as a specially designated authority. The decision under Paragraph 6(1) is not the decision of the House, nor is it subject to the approval by the House. The decision operates independently of the House. A deeming provision cannot by its creation transcend its own power. There is, therefore, no immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power under Paragraph 6(1) of the Tenth Schedule."

(Emphasis supplied)

241. In *Nabam Rebia, supra,* the Supreme Court held that exclusive jurisdiction on the issue of disqualification of MLAs under the Tenth Schedule to the Constitution rested with the Speaker of the Assembly under Paragraph 10.

242. In *Election Commission of India* v. *Dr. Subramaniam Swami, reported in (1996) 4 SCC 104* (paragraph 16), the Supreme Court explained the concept of the doctrine of necessity and held that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touch stone of judicial propriety. The doctrine of necessity is invoked where there is no other authority or judge to decide the issue and it is imperative for

that authority alone to decide. In such case, the usual norms of judicial propriety and consequential recusal have to give way, as otherwise it would impede the course of justice and the defaulting party would benefit from it.

243. In *J.Mohapatra and Company* v. *State of Orissa*, *reported in (1984) 4 SCC 103* (paragraph 12), the Supreme Court held that there is an exception to the rule that no man should be a judge in his own cause, namely, the doctrine of necessity. An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter, which he has to decide, may be required to adjudicate, if there is no other person, who is competent or authorized to adjudicate. In such cases, the principle of natural justice would have to give way to necessity, for otherwise there would be no means to decide the matter and the machinery or administration of justice would break down.

244. Further, in *State of Uttar Pradesh* v. *Sheo Shanker Lal Srivastava*, *reported in (2006) 3 SCC 276* (paragraph 15), the Supreme Court held that although it is true that the principle of natural justice is based on two pillars, that is, nobody shall be condemned without hearing and nobody shall be a judge in his own cause, but in a case where the doctrine of necessity is applicable, compliance with the

principle of natural justice would be excluded. The Supreme Court quoted with approval the following passage from Wade's Administrative Law:

> *"But there are many cases where no substitution is possible, since no one else is empowered to act. Natural justice then has to give way to necessity; for otherwise there is no means of deciding and the machinery of justice or administration will break down.*
>
> *.....*
>
> *In administrative cases the same exigency may arise. Where the stature empowers a particular minister or official to act, he will usually be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested. Transfer of responsibility is, indeed, a recognized type of ultra vires. In one case it was unsuccessfully argued that the only minister competent to confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply for a local Act of Parliament."*

245. In the instant case, as already indicated, under the scheme of the Tenth Schedule and the rules framed thereunder, the Speaker is the only authority to decide a disqualification petition.

246. The status and the position of the Speaker in the constitutional scheme had also been discussed by the Supreme Court in *Kihoto Hollohan, s*upra. In paragraph (116) of the majority view of the Constitution Bench, an extract from G.V.Mavalankar's "*Office of Speaker*" had been quoted, wherein it is stated as follows:

> *"In parliamentary democracy, the office of the Speaker is held in very high esteem and respect. There are many reasons for this. Some of them are purely historical and some are inherent in the concept of Parliamentary democracy and the powers and duties of the Speaker. Once a person is elected Speaker, he is expected to be above parties, above politics. In other words, he belongs to all the members or belongs to none. He holds the scales of justice evenly irrespective of party or person, though no one expects that he will do absolute justice in all matters; because, as a human being he has his human drawbacks and shortcomings. However, everybody knows that he will intentionally do no injustice or show partiality. Such a person is naturally held in respect by all."*

247. It is thus abundantly clear that the final authority to take a decision on the question of disqualification of a member of the House vests with the Chairman or the Speaker of the House. The said paragraph, i.e., paragraph 6, attaches finality to the decision of the Chairman or the Speaker of the House on a question as to whether a

member of a House has become subject to disqualification under the Schedule.

248. There can be no doubt that the Speaker is expected to be absolutely impartial, above party politics and free from bias. Mr.Singhvi's submission that the Speaker did not at all deal with the allegation of bias is, however, apparently not factually correct. The Speaker denied allegations of bias levelled against him and also took recourse to the Doctrine of Necessity having regard to the mandate of the Tenth Schedule whereunder none other than the Speaker could decide a disqualification application.

249. Both Mr.Singhvi and Mr.Raman have emphatically argued that the Speaker was biased and as such, the entire proceedings before the Speaker were vitiated. The Speaker has been alleged of bias on the ground that he had not even issued any notice on the petition of some of these writ petitioners for disqualification of Mr.O.Panneerselvam and 10 other MLAs, but had proceeded against the writ petitioners with alacrity on the petition of the Chief Government Whip. The Speaker had, thus, revealed bias in favour of the faction supporting the Government led by Mr.E.Palaniswami to which he belonged.

250. Significantly, the documents on record, in particular, the first reply of the writ petitioners, make it amply clear that the differences between the writ petitioners and Mr.E.Palaniswami arose only after the induction of Mr.O.Panneerselvam as Deputy Chief Minister and Mr.K.Pandiarajan as Minister. In February, 2017, there was no difference between the writ petitioners and Mr.E.Palaniswami, who belonged to the same faction, and the writ petitioners voted in favour of the confidence motion proposed by Mr.E.Palaniswami. When the writ petitioners filed petitions for disqualification of Mr.Panneerselvam and 10 others, they belonged to the same faction as Mr.E.Palanisami and Mr.Rajendiran.

251. Since the split between the writ petitioners and the faction of Mr.E.Palaniswami took place long after the writ petitioners filed the disqualification petition against Mr.O.Pannerselvam and 10 others, it cannot be presumed and certainly not be concluded that the Speaker deliberately withheld notice in the disqualification applications filed by some of the writ petitioners with a view to discriminate against the writ petitioners and favour his own faction. It is a matter of record that the writ petitioners supported Mr.E.Palaniswami and his government, whereas Mr.O.Pannerselvam and others voted against

Mr.E.Palaniswami.

252. It would perhaps also not be out of context to mention that the petition for disqualification of Mr.O.Pannerselvam and 10 other MLAs was under Paragraph 2(1)(b) of the Tenth Schedule, whereas the writ petitioners have been disqualified under Paragraph 2(1)(a) of the Tenth Schedule. As held in *Mahachandra Prasad Singh, supra*, the nature and degree of enquiry required to be conducted for various contingencies contemplated by Paragraph 2 of the Tenth Schedule might be different.

253. In *Mahachandra Prasad Singh, supra, the Supreme Court held:*

> *"15. .....So far as clause (a) of Paragraph 2 (1) is concerned, the inquiry would be 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."

254. Under Paragraph 2(1)(a) of the Tenth Schedule, findings might have to be recorded on several aspects – Whether any direction was issued by the political party to the concerned MLA to vote or not to vote in any manner; Whether the concerned Member voted or abstained from voting contrary to such direction; Whether he obtained prior permission of the political party or authority; and whether voting or abstention had not been condoned by such political party.

255. The question of whether any whip or direction had been issued to an MLA facing disqualification could be a complicated factual issue requiring evidence, including oral evidence. Questions could

arise as to whether at all any directions had been issued, if so the mode of issuance of such direction; whether the direction had actually been communicated to the concerned MLA; whether the concerned MLA had deliberately voted against the direction or abstained from voting against the direction; whether the voting or abstention had been condoned; whether such condonation could be by conduct; and whether the time limit of 15 days was directory or mandatory.

256. May be, as argued on behalf of the writ petitioners, notice should at least have been issued as soon as the disqualification petition was filed or shortly thereafter. However, inference of bias cannot be drawn from the omission to do so.

257. The objection to the Speaker taking up the disqualification petition on the ground of bias had been elaborately dealt with in the impugned order upon reference to the Doctrine of Necessity. In view of the express provisions of the Tenth Schedule, particularly Paragraph 6(1) thereof, read with the Disqualification Rules, and in particular Rule 7 thereof, it was the Speaker who had to decide a disqualification petition. The Doctrine of Necessity was attracted as held by the Speaker.

258. Mala fide action is use of power for a purpose other than the one for which the power is conferred or made for a purpose other than that stated, as held by the Supreme Court in *Puranlal Lakhanpal v. Union of India, reported in AIR 1958 SC 163*. The ulterior or alien purposes clearly speaks of misuse of power and it was held as early as 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown, reported in 1904 Appeal Cases 515* "*... that there is a condition implied in this and other instruments which create powers, namely, that the powers shall be used bonafide for the purpose for which they are conferred*".

259. In *Short v. Poole Corporation, reported in 1926 (1) Ch 66*, Warraington, C.J. observed that "*no public body can be regarded as having statutory authority to act in bad faith or from corrupt motives. Any action in bad faith or from corrupt motive would certainly be inoperative*". This view was approved by the Supreme Court in *Pratap Singh v. State of Punjab, reported in AIR 1964 SC 72*.

260. If a functionary is actuated by mala fide, the action would be vitiated, being a colourable exercise of power, and would therefore, be struck down by the Courts. However, misuse in bad faith arises when the power is exercised for a improper motive, say, to satisfy a

private or personal grudge or for wrecking vengeance. The former can be regarded as mala fide or malice in law and the latter malice in fact. Power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an alien purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The proposition finds support in *Express Newspapers Pvt. Ltd. v. Union of India, reported in (1986) 1 SCC 133*.

261. In *Badrinath v. Government of Tamil Nadu, reported in (2000) 8 SCC 395*, the Supreme Court held that no bias can be imputed on the mere fact that the Chief Secretary of a State, who had earlier made certain remarks against an officer, was the Chairman of the Screening Committee which found the officer not fit for promotion.

262. In *State of Andhra Pradesh v. Goverdhanlal Pitti, reported in (2003) 4 SCC 739*, the Supreme Court examined the legal meaning of the expression "malice" in the context of its attribution of the State and explained as under:

"The legal meaning of malice is 'ill-will or spite towards a party and any indirect or improper motive in taking an action'. This is sometimes described as 'malice in fact'. 'Legal malice' or 'malice in law' means 'something done without lawful excuse'. In other words, '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 disregard of the rights of others'. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in its authoritative work on Administrative Law [Eighth Edition at pg. 414] based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seek to 'acquire land' 'for a purpose not authorised by the Act'. The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other'. The legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings."

263. In the instant case, where the Speaker, being the repository of 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. Be it noted that, in the writ petitions, there is no allegation against the

Speaker of harbouring any personal enmity against the writ petitioners.

264. In *Prathap Singh v. State of Punjab, reported in AIR 1964 SC 72*, the Supreme Court held 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"*. The onus is on writ petitioners in a writ petition to establish mala fides and/or malice in law and/or malice in fact by cogent materials which, in my view, the writ petitioners have failed to do.

265. Paragraph 7 excludes the jurisdiction of the court in respect of any matter connected with disqualification of a member of a House under the Schedule. Paragraph 7 reads:

> *"7. Bar of jurisdiction of courts.—Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule."*

266. In *Kihoto Hollohan* supra, where the vires of the Tenth

Schedule was under challenge, the Supreme Court held that paragraph 6(1) of the Tenth Schedule which sought to impart finality to the decision of the Speaker and/or Chairman was valid. However, 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 on the ground of infirmities like violation of constitutional mandates, mala fides, non-compliance with rules of natural justice and perversity.

267. In *Kihoto Hollohan* supra, the Supreme Court, by majority, held:

> *"109. In the light of the decisions referred to above and 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.*
>
> *110. In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the*

constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence.

111. In the result, we hold on contentions (E) and (F): That the Tenth Schedule does not, in providing for an additional grant (sic ground) for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

.....

That 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 case, (1965) 1 SCR 413 : AIR 1965 SC 745 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 Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review. ....."

268. Disqualification proceedings before the Speaker under the Tenth Schedule are deemed to be proceedings under Article 212 of the Constitution, validity of which cannot be called in question on the ground of irregularity of procedure.

269. The immunity against interference of Courts into legislative proceedings conferred by Article 212 is restricted only to challenges on the ground of alleged irregularity of procedure as opined by Seven Judge Constitution Bench of the Supreme Court in *Special Reference No.1 of 1964, Re: Powers, Privileges and Immunities of State Legislatures, reported in AIR 1965 SC 745.*

270. Even Article 212(1) of the Constitution makes it possible for a citizen to call in question in the appropriate Court of law, the validity of any proceedings inside the Legislative Chamber if his case is that

the proceedings suffer not from mere irregularity of procedure, but from an illegality.

271. To quote, the Supreme Court (in *Special Reference No.1 of 1964, supra), "If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a Court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than than this that the procedure was irregular."*

272. There can be no doubt that orders of the Speaker under the Tenth Schedule are amenable to judicial review as argued by Mr.P.S.Raman and by Mr.Singhvi. However, the scope of judicial review of an order of the Speaker under the Tenth Schedule is limited. ***As held by the Supreme Court in Mahachandra Prasad Singh, supra, (Para 8.1), the authoritative pronouncement in Kihoto Hollohan, supra, clearly lays down that the decision of the Chairman or Speaker of the House can be challenged on very limited grounds, namely violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity and a mere irregularity in procedure can have no bearing on the decision.***

273. It is now well settled that voluntary giving up of membership of a political party need not necessarily mean tendering resignation from the party. This may also be deduced from the conduct of the concerned member of the House, as held by the Supreme Court in *G.Viswanathan*, supra and *Ravi S.Naik,* supra.

274. In *Ravi S.Naik,* supra, the Supreme Court explained the scope and amplitude of paragraph 2(1)(a) of the Tenth Schedule. The Supreme Court held:

> *"11. … The said paragraph provides for disqualification of a member of a House belonging to a political party 'if he has voluntarily given up his membership of such political party'. The words 'voluntarily given up his membership' are not synonymous with 'resignation' and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. 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."*

275. In *G.Viswanathan*, supra, the appellants had been elected as Members of the Legislative Assembly, as candidates of AIADMK

Party in 1991, but were expelled from the said party in 1994. The Speaker declared them as unattached members of the Assembly on 16-3-1994. Thereafter, an MLA informed the Speaker that the appellants had joined MDMK Party and, therefore, they should be disqualified from the membership of the Assembly.

276. After calling for explanation from the MLAs concerned, the Speaker held that they had incurred disqualification under Paragraph 2(1)(*a*) of the Tenth Schedule and had ceased to be members of the Assembly.

277. The main contention raised on behalf of the concerned MLAs was that Paragraph 2(1)(*a*) of the Tenth Schedule comes into play only to disqualify a member who voluntarily gives up his membership of the political party that had set him up as a candidate, and not when he is expelled from the party and declared "unattached" i.e. not belonging to any political party. It was further argued that when any member thrown out, who as a consequence ceased to be a member of the party that had set him up as a candidate, joined another party thereafter, it would not be a case of "voluntary giving up his membership of the political party" that had set him up as a candidate for the election. Rejecting such submission, the Supreme

Court held as follows:

> *"11. It appears that since the explanation to Paragraph 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person 'voluntarily give up' his membership of such political party, as provided in Para 2(1)(a)? The act of voluntarily giving up the membership of the political party may be either express or implied.* ***When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member****."*
>
> *(emphasis supplied)*

278. In *Mahachandra Prasad Singh*, supra, the Supreme Court

found:

> *"In the present case, the Chairman of the Legislative Council has held that the petitioner had been elected to the Legislative Council on the ticket of Indian National Congress but he contested the parliamentary election as an independent candidate. On these facts a conclusion has been drawn that he has given up his membership of Indian National Congress. This being a matter of record, the petitioner could not possibly dispute them, and that is why he has admitted these facts in the writ petition as well. In such a situation there can be no escape from the conclusion that the petitioner has incurred the disqualification under Paragraph 2(1)(a) of the Schedule and the decision of the Chairman is perfectly correct."*

279. In *Rajendra Singh Rana*, supra, the Supreme Court held that the act of 13 BSP MLAs of writing a letter requesting the Governor to call upon the leader of the opposition to form a Government would, in itself, amount to an act of voluntary giving up of the membership of the party on whose ticket the said MLAs had got elected and that such disqualification would take the effect on and from date on which they voluntarily relinquished the membership of the party on whose ticket they had got elected, that is, the date on which they wrote the letter to the Governor.

280. In this case, of course, the writ petitioners have not called upon the Governor to invite the leader of the opposition party to form a Government. 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 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.

281. As argued by Mr.Singhvi, the writ petitioners may not have had control over the action of the leader of the Opposition party. Mr.Raman rightly submitted that when there was internal turmoil within the ruling party, it was not uncommon for the opposition parties to try and fish in troubled waters.

282. However, the writ petitioners have called upon the Governor to initiate the constitutional process. The question is, what does this mean? What is it that the Governor could do? As argued by Mr.Sundaram and Mr.Vaidyanathan, the Governor could either have recommended imposition of President's Rule, in which case the Government formed by the party on whose ticket the 18 MLAs had

been elected would have been ousted or alternatively, called for a floor test, in which case also the party on whose ticket the writ petitioners were elected, led by the Chief Minister, Mr.E.Palaniswami, which had a very thin majority, would have collapsed, since the writ petitioners would obviously vote against the Chief Minister, as other opposition parties would do.

283. As argued by learned counsel appearing on behalf of the respondents, relying on *Nabam Rebia*, supra, intra-party differences with regard to leadership had necessarily to be sorted out within the party. The writ petitioners have not produced any documents to show that they had requisitioned a meeting of the party for selection of some other leader. The writ petitioners have also not suggested the name of any alternative leader who would enjoy the support of all the MLAs, either to the Speaker, or before this Court.

284. It appears that, in passing the impugned order disqualifying the writ petitioners, the Speaker apparently proceeded on the basis of the following admitted facts as deduced from the pleadings:

- *that all the respondents, that is the writ petitioners, got elected to the Tamil Nadu Legislative Assembly as candidate of a political*

party AIADMK and they claim to belong to that political party.

- *that the petitioner before the Speaker, Mr.Rajendiran, was also elected as Member of the Legislative Assembly as a candidate of AIADMK and was appointed as Chief Government Whip on 25th May, 2016 in S.O. (Ms) No.69 as per Annexure I, Ex.R1, to the first interim reply filed by the respondents.*
- *Mr.Edappadi K. Palaniswami was sworn in as Chief Minister by unanimous resolution passed on 14-2-2017 by AIADMK Legislature Party Members.*
- *that on 22/08/2017 the respondents before the Speaker, being the writ petitioners, had met the Hon'ble Governor of Tamil Nadu and submitted individual letters withdrawing support to the Chief Minister and requesting his intervention to institute Constitutional process as Constitutional Head of the State.*
- *that in the representation given by the respondents, being the writ petitioners herein, to*

the Hon'ble Governor, they had expressed lack of confidence against the current Chief Minister.

285. After noting the aforesaid admitted acts, the Speaker addressed to himself the question of whether the respondents had committed acts that would necessitate the Speaker to declare their disqualification as Members of the Legislative Assembly, for having voluntarily given up the membership of their party.

286. The Speaker also framed preliminary questions which would necessarily have to be addressed in order to answer the main question as aforesaid framed by the Speaker. Some of the preliminary questions are:

(1) Whether the Speaker would have jurisdiction to determine the petition for disqualification on the ground of defection, as conferred upon him as Speaker of the Tamilnadu Legislative Assembly, under Tenth Schedule to the Constitution?

(2) Whether the Speaker had acted with malice or bias and therefore disqualified to try the petition?

(3) Whether the petitioner, that is, Rajendiran was entitled to prefer the petition in this regard?

(4) Whether sufficient time had been given to the writ petitioners, being the respondents before the Speaker, to put forward their case?

(5) Whether any opportunity to cross-examine Rajendiran was to be given to the writ petitioners and whether any further documents were required to be given to them?

287. Regarding his jurisdiction, the Speaker found "*I derive the same (sic jurisdiction) from the Tenth Schedule itself. Further the said Rules (sic Disqualification Rules) framed under powers conferred under Paragraph 8 of the Tenth Schedule to the Constitution of India for the Legislative Assembly also provides the specific powers.*" The Speaker held:

"25. Therefore, a Member of the Legislative Assembly could be disqualified under Tenth Schedule if he has voluntarily given up the membership of the Political Party. An enquiry for disqualification on the ground of defection as envisaged under the Tenth Schedule of the Constitution of India and as per the Members of the Tamilnadu Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 on a petition in relation to a member could be made in writing to the Speaker by any other member.

26. In the decision of a Full Bench of the Punjab & Haryana High Court in Prakash Singh Badal Vs. Union of India &Ors. [A.I.R. 1987 Punjab & Haryana 263] it has been held that the Speaker gets jurisdiction to

render a decision in terms of the Tenth Schedule to the Constitution of India on the question of disqualification upon a petition made by a person interested or a member. ...

27. It is further contended by the respondents that the act of giving representation / letter to His Excellency, the Governor of Tamil Nadu was not within the jurisdiction of the Assembly as the same had taken place outside the Legislative Assembly premises (House). Nowhere in the Tenth Schedule to the Constitution or the Defection Rules, it has been mentioned that the cause of action for instituting the proceedings before me under Tenth Schedule should have occurred or commenced within the jurisdiction of the Assembly or the House. As can be seen in Tenth Schedule there are two instances for invocation of the proceedings one being after the vote and another being voluntarily giving up the membership-which can happen due to any incident outside the House as well. So, I hold that I have jurisdiction to entertain the petition on the facts and to adjudicate the same.

— Under the Tenth Schedule to the Constitution of India it is only the Hon. Speaker who has the power and jurisdiction to hear a complaint.

— In such circumstances the doctrine of necessity would apply.

Whether I have acted with malice or bias and therefore disqualified to try the petition?

28. In the pleadings of the Respondents, they seek to contend that I have acted with bias and my intentions were malafide. Further, they contend that I am not competent to hear the present matter. The Rules do not permit or require that the present issue is to be sent to the Committee. The mere allegation of bias, which is unsubstantiated, is to discredit me and preventing me from hearing the petition. The allegations are unsubstantiated."

288. The Speaker held and rightly that a petition for disqualification of an MLA could be filed by any MLA and not necessarily the Chief Government Whip. It was not in dispute that Mr.Rajendiran was an MLA. It is true that the Speaker also held that the petitioner, Mr.Rajendiran, was the Chief Government Whip of the Party. This was on the basis of an annexure contained in one of the replies filed by the writ petitioners which was a letter of the then Hon'ble Governor dated 25th May, 2016 appointing Mr.Rajendiran as the Chief Government Whip. Be that as it may, in view of the admission that Mr.S.Rajendiran was an MLA, the finding with regard to whether Mr.S.Rajendiran was, in fact, the Chief Government Whip or

not was inconsequential. The Speaker rightly held, in effect, that Mr.S.Rajendiran was competent to file the disqualification petition.

289. The question of whether the time given to the writ petitioners to forward their case was sufficient, has also been dealt by the Speaker at length. The Speaker found:

> *"32. The respondents have filed their interim reply along with Vakalath and documents on 30th August 2017. In order that the Respondents be afforded a reasonable opportunity, further time upto 5th September 2017 to file final comments was given and I had called for the personal appearance of the respondents on 7.9.2017. However after the receipt of the said comments and petition on 5th September 2017, I had adjourned the personal hearing fixed for 7th September 2017 to 14th September 2017, at request and had accordingly directed notices to be issued to the Respondents. In the said notice, I had also made it clear that further comments if any in writing can also be furnished at the time of personal hearing. I had also indicated that in the event if they failed to appear in person, it would be presumed that they have nothing further to offer on the issue and that a decision would be taken based on the available records. Therefore I have given the respondents enough time to put forth their case. However the*

respondents have been raising one irrelevant technical plea after another which cannot go on forever.

33. In conduct of the proceedings before me, I am guided by the principle of natural justice, reasonableness and fair play. By way of affording them a reasonable opportunity and giving them sufficient opportunity to explain I had also permitted the respondents 7 days time to file further comments if they choose to do so. I have also permitted them assistance of a Lawyer as sought for by them.

34. In this case the disqualification has been sought under Section 2 (1) (a) of the Tenth Schedule to the Constitution of India. Elaborate recording of evidence is not required more particularly when the uncontroverted fact is that the Respondents had submitted a letter to the Hon'ble Governor of Tamilnadu mentioning that they lack confidence in the Chief Minister and seeking intervention and institution of Constitutional process."

290. The Speaker addressed the issue of compliance with principles of natural justice at length citing *Mahachandra Prasad Singh,* supra, and *Jagjit Singh,* supra. Relying on the aforesaid judgments and observing that the writ petitioners had been given sufficient time as also reasonable opportunity of hearing, the Speaker

in his impugned order asserted that there had been no violation of the principles of natural justice.

291. In *Ram Krishna Verma v. State of U.P., reported in (1992) 2 SCC 620*, the Supreme Court held that if a party chooses to remain absent in spite of notice to him, he cannot be heard to say that enquiry was made in his absence and was, therefore, bad. Even in the ordinary course of law, if a party chooses to be absent inspite of notice, evidence is recorded ex parte and party who chooses to remain absent cannot be heard to say that he had no opportunity to represent.

292. Natural justice only requires that a party should be given reasonable opportunity of representation. Adjournment could not have been claimed as a matter of right, more so when two adjournments had earlier been granted.

293. An order of the Speaker disqualifying a Member in violation of principles of natural justice is vitiated by jurisdictional error and is liable to be set aside, as held by the Supreme Court in *Ravi S.Naik,* supra.

294. However, Disqualification Rules framed in exercise of power conferred by Paragraph 8 of the Tenth Schedule to regulate the proceedings under Sub-paragraph (1) of Paragraph 6 of the Tenth Schedule to the Constitution of India being procedural in nature, non compliance and/or 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 of the Tenth Schedule, as held in *Ravi S.Naik*, supra. It is, however, reiterated, at the risk of repetition, that in this case, there was no violation of Disqualification Rules.

295. Violation of the Disqualification Rules cannot amount to violation of any constitutional mandate. As held by the Supreme Court in *Mahachandra Prasad Singh*, supra, subordinate legislation cannot curtail the content and scope of the substantive provision under which it has been made. No rule can be framed which has the effect of either enlarging or restricting the content and amplitude of a constitutional provision. Being in the domain of procedure, Rules cannot curtail the content and scope of any substantive provision. In this case of course, there has been substantial compliance with the Disqualification Rules. The Speaker furnished to the concerned writ petitioners copies of the disqualification petitions along with the

annexures thereto, as also a DVD of visual media release.

296. There cannot be said to be any infirmity in the proceedings by reason of supply of an unsigned copy Annexure-I, in the absence of any provision in the Tenth Schedule requiring that all copies of correspondence appended to disqualification petition should be copies containing the signatures of the authors thereof. The Disqualification Rules and in particular, Rule 6(7) only requires that every annexure to the disqualification petition shall be signed by the petitioner. In this case, the typed set of papers indicate that the copy representations have been signed by Mr.Rajendiran.

297. In *Mahachandra Prasad Singh,* supra, the Supreme Court held:

> *"16. ..... There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in the CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the jurisdiction to give a decision as to whether a member of the House has become subject to disqualification under the Schedule. Paragraph 6 of the Schedule does not contemplate moving of a formal petition by any person for assumption of jurisdiction by the Chairman or the*

Speaker of the House. The purpose of Rules 6 and 7 is only this much that the necessary facts on account of which a member of the House becomes disqualified for being a member of the House under paragraph 2, may be brought to the notice of the Chairman. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. ***Even if he withdraws the petition it will make no difference as the duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision, viz. the Tenth Schedule.*** *The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature*

as otherwise, on strict interpretation, they would be rendered ultra vires." *(Emphasis supplied)*

298. There can be no doubt that irrespective of whether statute provides for compliance of natural justice, principles of natural justice have to be complied with, as held by the Supreme Court in *C.B.Gautam v. Union of India, reported in (1993) 1 SCC 78.* In this case, it is not in dispute that notice had been issued to the petitioners. The writ petitioners were given the opportunity to deal with the application and they filed three interim replies. After the second interim reply was accepted, the writ petitioners were given the opportunity to file a third, but warned that no further accommodation would be given and that if the writ petitioners did not appear, the matter would be taken up in their absence and it would be presumed that they had nothing further to say. The Speaker was not obliged to grant further adjournment.

299. In *Ravi S.Naik,* supra, the allegation of non-compliance with Rule 7(3)(b) of the Goa Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986 regarding forwarding of comments of the Speaker within seven days was not sustained because though the appellant member had been given only two days time, he had

submitted his detailed reply within that period and, therefore, denial of adequate opportunity could not be alleged on ground of grant of insufficient time.

300. In the instant case, the Speaker had given the writ petitioners seven days time, as required under the Disqualification Rules. Mr.Singhvi's submission that the Speaker had given the writ petitioners only five days to submit their reply is not factually correct. However, the writ petitioners submitted their first reply within five days and sought further time to file final reply, which was granted till 5.9.2017, after which further time was again granted till 14.9.2017. At the time of the extension, the Speaker had made it clear that no further time would be granted and if the writ petitioners did not appear it would be presumed that they had nothing further to say in their defence. The impugned order disqualifying the writ petitioners was passed on 18.9.2017. It cannot be said there was contravention of Rule 7(7) of the Disqualification Rules.

301. In view of the law laid down by the Supreme Court in *Mahachandra Prasad Singh, supra*, that even if the Speaker withdraws the petition, it would make no difference as a duty is cast upon the Speaker to carry out the mandate of the constitutional provision i.e.,

the Tenth Schedule. The decision of the Speaker cannot, therefore, be questioned on the ground of non-appearance of Chief Government Whip Mr.S.Rajendiran or his counsel on 14.09.2017 or any other date.

302. Principles of natural justice are not immutable, but flexible and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of the particular case.

303. To quote Sikri,J. in *Dharampal Satyapal Ltd.,* supra, "*the principles of natural justice are grounded in procedural fairness, which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes.*"

304. It is well settled that the fundamental principles of natural justice, include audi alteram partem. No prejudicial action is to be taken without giving the affected person an opportunity of hearing. Compliance with principles of natural justice is an implied mandatory requirement before any prejudicial action is taken. There can, therefore, be no doubt that a Member of Legislature would have to be

given a reasonable opportunity of hearing before he can be disqualified on account of any of the grounds contemplated under the Tenth Schedule.

305. In *Jagjit Singh, supra*, the Supreme Court held:

> *"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 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."

306. However, as held by the Supreme Court in *Board of Mining Examination v. Ramjee, supra, "natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all.* ***If fairness is shown by the decision-maker to the man proceeded against****, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of 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."*

307. In *Kanungo and Company,* supra, the Supreme Court held as follows:

"12. We may first deal with the question of breach of

natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant."

308. In *ECIL v. B.Karunakar, reported in (1993) 4 SCC 727*, the Supreme Court held that it was settled law that proceedings must be fair and reasonable and negation thereof would offend Articles 14 and 21 of the Constitution of India. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The Supreme Court held:

"20. The origins of the law can also be traced to the principles of natural justice, as developed in the

following cases: In A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice."

309. In *Kailash Chandra Ahuja,* supra, the Supreme Court held that from the ratio laid down in *Karunakar*, supra, it is explicitly clear that the doctrine of natural justice requires supply of a copy of the Inquiry Officer's report to the delinquent if such Inquiry Officer is other than the Disciplinary Authority. It is also clear that non-supply of report of Inquiry Officer is in the breach of natural justice. But it is equally clear that failure to supply a report of Inquiry Officer to the delinquent employee would not *ipso facto* result in proceedings being declared null and void and order of punishment non est and ineffective. It is for the delinquent-employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the Court on that point, the order of punishment cannot automatically be set aside.

310. The principle of *audi alteram partem* is applicable to decisions of quasi-judicial authorities and other Tribunals and even in case of administrative actions with civil consequences, to prevent miscarriage of justice. While it is settled that opportunity of hearing must be given before any action with civil consequences is taken, there is no strait-jacket formula for natural justice.

311. A mere breach of procedure cannot give rise to remedy in courts, unless there is something of substance which has been lost by the failure. The Court does not act in vain. No one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing. In such situations, fair procedures appear to serve no purpose, since 'right' result can be secured without according such treatment to the individual. This proposition finds support from *Malloch v. Aberdeen Corpn., reported in (1971) 2 All ER 1278 (HL), and Cinnamond v. British Airports Authority, reported in (1980) 2 All ER 368 (CA)*, approved and relied upon by the Supreme Court in *Dharampal Satyapal Ltd.*, supra. In this case, of course, notice was given to the writ petitioners.

312. However, in *Dharampal Satyapal Ltd.*, supra, the Court held that while Courts were empowered to consider whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken, the Administrative Authority or Tribunal could not dispense with the requirement of issuing notice by itself deciding that no prejudice would be caused to the person against whom action was in contemplation.

313. In *Escorts Farms Ltd. v. Commissioner, reported in (2004)*

4 SCC 281, the Supreme Court held:

> *"47 ..... while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms:*
>
> > *'64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our*

discretionary powers under Article 136 of the Constitution of India.'"

314. The argument of Mr.Singhvi and Mr.Raman that the Speaker proceeded in hot haste cannot be sustained for reasons already discussed above and in particular, the reason that the petitioners were granted seven days time to file reply as contemplated in the Disqualification Rules. They had opportunity to file three replies and were twice granted adjournments of proceedings. The writ petitioners having chosen not to appear in spite of notice that the matter would be decided *ex parte,* they cannot complain of violation of natural justice. A party who does not appear in spite of notice cannot complain of breach of rule of *audi alteram partem.*

315. In *Jesus Sales Corporation*, supra, cited by Mr.Rohatgi, the Supreme Court held that when principles of natural justice require an opportunity to he heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean personal hearing. The requirement is complied with by affording an opportunity the person concerned to present his case before such authority, who is expected to apply its mind to the issues involved.

316. In *Alok Kumar*, supra, cited by Mr.Rohatgi, the Supreme Court deviated from its earlier view taken in some cases that breach of natural justice in itself was a prejudice and no other de facto prejudice needs to be proved. The Supreme Court held that the Doctrine of de facto prejudice has been applied both in English as well as in Indian Law. To frustrate the departmental inquiries on a hyper technical approach, has not found favour with the Courts in the recent times. Well established canons controlling the field of bias in service jurisprudence can reasonably extended to the element of prejudice as well in such matters. Prejudice de facto should not be based on a mere apprehension or even on a reasonable suspicion. Element of prejudice should exist as a matter of fact or there should be such definite inference of likelihood of prejudice flowing from such default, which relates statutory violations. It will not be permissible to set aside the departmental inquiries in any of these classes merely on the basis of apprehended prejudice. De facto prejudice is one of the essential ingredients to be shown by the delinquent officer before an order of punishment can be set aside, depending upon the facts and circumstances of a given case. *Judicia posteriora sunt in lege fortiori*. Prejudice normally would be a matter of fact and a fact must be pleaded and shown by cogent documentation to be true. Once this basic feature is found lacking, the appellant may not be able to

persuade the Court to interfere with the departmental inquiry or set aside the orders of punishment.

317. In the writ petition, the writ petitioners have not been able to demonstrate what is the prejudice that has been caused to the writ petitioners by reason of procedural violations as alleged.

318. The Speaker also dealt with the question of whether opportunity to cross-examine the Chief Government Whip or whether any further documents should be given to the writ petitioners as follows:

> *"38. The Respondents have also claimed that they would want to cross examine the Petitioner and the Chief Minister. As mentioned above, this is not a strict proceeding under Code of Civil Procedure or Criminal Procedure Code for cross examination to be permitted. This is a proceeding under Tenth Schedule of the Constitution and the Rules made thereof. In these proceedings, it is for the Petitioner to prove his claim regarding disqualification and for the Respondents to state their submissions in defence. This does not require any cross examination in my considered opinion. The proceedings can be based on the documents on record, none of which are restricted to the personal knowledge of the Petitioner or the Chief*

Minister. The Petitioner has filed two annexures – one being the letter given by the Respondent to the Hon'ble Governor as available with the Petitioner from the media and second being the newspaper items. The only other annexure is a DVD containing interviews by some of the Respondents regarding the meeting with the Hon. Governor and handing over representation. The comments from the Chief Minister do not contain any annexure. In such circumstances, I do not think there is a need for any cross examination of either of them. ***The Respondents have also sought in their reply for examining witness on their side. However, neither the name nor the identity of the witnesses had been revealed****. In these proceedings the examination of witnesses would not be necessary. All that is required is consideration as to whether the available material itself would show whether or not the Respondents have voluntarily given up their membership of their Party. For the reasons mentioned and the explanations provided for all the above preliminary submissions, I am of the opinion that the prayers sought for by the Respondents seeking for documents and cross examination have to be dismissed."*

(emphasis supplied)

319. Admittedly, the Speaker had furnished to the writ petitioners, the petition filed by Mr.Rajendiran along with the

annexures thereto, as also a DVD forwarded by him to the Speaker. The Speaker had not withheld any documents from the writ petitioners. The Tenth Schedule of the Constitution read with the Disqualification Rules does not confer on the Speaker powers similar to those of law courts to summon witnesses or even documents. The proceedings before the Speaker are in-house proceedings in the nature of domestic enquiries for disciplinary action.

320. It is not the case of the writ petitioners that any evidence adduced by them had been disallowed by the Speaker. The writ petitioners did not produce their witnesses before the Speaker for examination. It was not for the Speaker to collect evidence on behalf of the writ petitioners by producing witnesses. If the writ petitioners wanted to examine the concerned TV reporters, it was for the writ petitioners to produce them before the Speaker.

321. It is a matter of record that Mr.S.Rajendiran did not adduce any oral evidence before the Speaker. Cross-examination tests the evidence adduced in Court.

322. In *Chandrama Tewari*, supra, the Supreme Court held:

"It is now well settled that if copies of relevant and

material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges proved against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer, as that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges. ***If a document has no bearing on the charges or if it is not relied by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the***

absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case."

(emphasis supplied)

323. In *Union of India v. T.R.Varma, reported in AIR 1957 SC 882*, the Supreme Court held that "*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*." Where there is no witness examined, there

is no question of cross examination.

324. In *K.L.Tripathi*, supra, the Supreme Court held:

"31. Wade in his Administrative Law, 5th Edn. at pp. 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

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

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

33. ..... ***Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases****."*

(emphasis supplied)

325. As held by the Supreme Court in *K.L.Tripathi,* supra*,* in order to sustain the complaint of violation of principles of natural justice on the ground of absence of opportunity of cross examination,

it must be established that some prejudice has been caused to the appellant by the procedure followed.

326. Even assuming that the Chief Minister's assertion in his response to the disqualification petition, that the writ petitioners had not approached him for redressal of their grievances was not factually correct, that would not save the writ petitioners from disqualification, if the writ petitioners were to be held to have, by their conduct, relinquished the membership of the political party, on whose ticket they had been elected. This proposition derives support from *G.Viswanathan*, supra. Non-examination of the Chief Minister or officials of his Secretariat could not, therefore, have caused any prejudice to the writ petitioners. The statements of Mr.Jakkaiyan were used to dismiss the disqualification petition against him, and not in the context of the findings against him. The observation in *Ravi S. Naik*, supra, of the consequences of not making any request for cross-examination of Dr.Jhalmi have no application in the facts and circumstances of this case, since Dr.Jhalmi had apparently made statement before the Speaker in that case.

327. With regard to the prayer for police protection to attend the personal enquiry from Kudagu of Karnataka to Chennai, the Speaker

found that the second reply filed on 14.9.2017 had been signed at Chennai, which showed that the writ petitioners were in Chennai, but had chosen not to appear before him.

328. The Speaker, *inter alia*, held:

"45. The Respondents have all signed the vakalat dt.30th August 2017, an interim reply on the same day, reply/ comments on 5th September 2017 and Second Reply/Comments on 14th September 2017. All these pleadings are said to have been signed at Chennai. It is documented by the statements of some of the Respondents themselves that they were not in Chennai on the said days. In fact, the 9th Respondent in his Petition filed on 14th September 2017 seeking for Police protection has categorically sought for Police protection for the other Respondents to travel from Kudagu, Karnataka to Chennai. Further, even on 30th August 2017, the Respondents were present at Puducherry. The statements made by the 17th Respondent bears out this fact. Therefore, in my opinion all the Respondents have made false submissions before me. Yet another false statement made by all these Respondents is in their reply dated 5th September 2017 wherein, in Paragraph 14 they have claimed that due to continuous holidays they were out of station in order to attend the functions of the party cadres, relatives and friends. It has been the statement by the Respondents themselves that they

have all been staying at Puducherry at that point of time.

46. The Respondents have raised several technical objections in the present proceedings. They have claimed that I have not issued Case number and that the proceedings are being conducted in a D.O. Letter number. The other objections include the validity of the alleged Representation made by them to the Hon'ble Governor on 22nd August 2017 and the evidentiary value of other Annexures. The other technical objections include the authority of Petitioner as a Whip and the need for cross examination in the present matter. While these objections are in any case incorrect, I would only wish that the Respondents had raised specific objections instead of relying on their technical prowess. The Tamil Nadu Legislative Assembly has so far conducted proceedings under Tenth Schedule only by referring to the Letter number and not by assigning any separate case number, which has been followed in the present case as well. The next technical objection regarding the validity of Annexure I filed with the Petition is again unwarranted. The Respondents have repeatedly admitted that they had met the Hon'ble Governor and had given a Representation on 22nd August 2017 stating that they are withdrawing their support for the Chief Minister Thiru Edappadi K.Palanisamy. While on one hand, they admit to the letter, their objection is that the letter

filed as Annexure I is not signed and does not contain the name of the person who has submitted it. The Petitioner had very categorically stated in this petition that he has received the said letter from the media. ***The Respondents in any case do not deny the existence of such a letter. Neither have they come forward with a different letter as the one submitted by them to the Governor****. In such circumstances, based on the submissions of the Respondents themselves, I have to proceed on the basis that Ex P1 is that Representation which the Respondents have submitted to the Hon'ble Governor. During the personal hearing, the 17th Respondent admitted to the said Annexure being the representation submitted by them to the Hon'ble Governor. Therefore, this technical objection does not have any merit at all. I have dealt with in detail regarding the locus of the Petitioner to file the present petition and the objection raised by the Respondents has to be negated. Similarly, the repeated claim for cross examination in the present proceeding is also not warranted.*

47. With the above facts in mind, I am proceeding to consider the Petition filed by Thiru S.Rajendiran. The Petitioner has submitted that the Respondents have met the Hon'ble Governor on 22nd August 2017 and have given a Representation withdrawing their support to the Chief Minister who was unanimously elected by the Members of the Legislature Party at the meeting

held on 14th February 2017. The reasons stated in the representation to the Hon'ble Governor were that the Chief Minister had become corrupt and showing favoritism. The Respondents had in their representation sought for the Hon'ble Governor to initiate constitutional process as the Constitutional Head of the State. According to the Petitioner, the allegations in the letter to the Governor were false and the real intention behind the Representation was that Thiru O.Paneerselvam and Thiru K.Pandiarajan were inducted into the Cabinet. The real intention of the Respondents was manifest in the interviews given by them and they had made false Representation only to hide their ulterior motive, which was to support Smt. V.K.Sasikala and Thiru T.T.V.Dhinakaran. The act of the Respondents according to the Petitioner was an act of voluntarily giving up the Membership of the AIADMK party and the Respondents, by acting against the decision of the Legislative Party have in fact gone away from the party ideals. Therefore deemed to have voluntarily given up their Membership of the party. While the Respondents have given several defences, their defence to this issue is that they have not voluntarily given up their Membership of the Party and that mere meeting with the Hon'ble Governor would not amount to giving up of Membership or defection from the party. According to them, their act is completely covered by the judgment of the Hon'ble

Supreme Court in Balachandra L.Jarikholi & Others v. B.S.Yediyurappa & Others. (2011) 7 SCC 1.

.....

54. ... As members of the Legislative Assembly and as part of the AIADMK Legislature Party, the Respondents themselves had the right to call for a meeting of the Legislature Party and their claim that they were not able to reach any of the party high command is not believable....

55. It is to be seen whether, as admitted by the respondents, in their reply statements, addressing a letter to the Hon'ble Governor of Tamil Nadu, specifically stating that they have lost confidence in the Chief Minister of State, which act, according to them, has been done with conscious state of mind and purporting to be one as per the majority view of the party would amount to voluntarily giving up membership of the political party to which they belong. In more than one place in their written reply/comments filed in these proceedings they have admitted to the fact that a representation was given to the Hon'ble Governor of Tamil Nadu and the same was only against the Chief Minister and they have communicated lack of confidence in the Chief Minister. It has been further admitted by them that they had requested in their letter to the Hon'ble Governor of Tamil Nadu to institute the constitutional process as the constitutional head of the state. The Respondents herein only

contended that the letter filed in Annexure I {Ex.P1} to the petition of the petitioner was not the exact letter they had lodged. They have not disputed handing over of a letter to the Hon'ble Governor. The Respondents herein had further in their reply gone ahead to validate their act and legalize the same. They have unequivocally admitted that the contents and substance of their letter was communicating the lack of confidence in the present Chief Minister and asking for setting the constitutional process in motion. In this background, it is to be seen whether the letter would amount to voluntarily giving up of the respondents' membership of AIADMK political party expressly or impliedly.

56. The respondents have categorically admitted to the fact of submission of a letter to the Hon'ble Governor of Tamil Nadu. All that they would plead is that they are protected under Article 19(1)(a) of the Constitution of India, Freedom of Speech and Expression, in submitting a petition to the Hon'ble Governor of Tamil Nadu communicating lack of confidence in the present Chief Minister would not amount to giving up of voluntarily membership of a political party. The Hon'ble Supreme Court in a decision reported in 1994 Sup (2) SCC 641 in the case between Ravi S Naik vs Union of India and others considered the meaning and scope of the expression "voluntarily giving up his membership". It has been categorically held therein that the

expression "voluntarily given up membership" has a wider connotation. That even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member. Paragraph 11 reads thus:

> *"11.. . ..The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. 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." Thus, even in the absence of formal resignation from membership, inference can be drawn from the conduct of the member that he has voluntarily given up his membership of a political party to which he belongs."*

...

63. The only question which remains to be answered in this regard is whether the Respondents can take shelter under the judgment of Hon'ble Supreme Court in Balachandra L.Jarikholi & Others vs B.S. Yeddiyurappa & Others reported in (2011) 7 SCC 1. The said judgment finds prominence in the submissions of the Respondents right from their representation to

the Hon'ble Governor to all the reply statements given by them in the present proceeding. I always thought that precedents are taken help of when there arises a need to establish a similar act had been done before. But the manner in which the said judgment is being referred to by the Respondents gives me a feeling that they had first read the said judgment, decided that they will frame their letter to the Hon'ble Governor based on the said judgment and had then given the representations on those lines to the Hon'ble Governor. I have also read the said judgment and the said judgment refers to a dissent within a party as against a defection. ***The Order of the Hon'ble Speaker in the said judgment was set-aside since the Hon'ble Speaker had failed to follow all the procedures that are required to ensure fair play and the Order was based solely on documents which were not even given to the Members facing disqualification therein. However, in the instant case, the documents have all been given to the Respondents and the Respondents have been given more than an ample opportunity to put-forth their case. The Respondents have filed not one but three Reply statements along with documents on every given occasion and cannot have a complaint regarding lack of opportunity. Further, as observed above, the Respondents have not only identified themselves with an ideology different from that of their original party***

but have also aligned themselves against the Party and with the Leader of the Opposition. I cannot again lose sight of the fact that a Leader of the Opposition based on the representations of these respondents had immediately followed up a representation with the Hon'ble Governor seeking him to initiate the Constitutional process. This had not happened in the case so heavily relied on by the respondents. Therefore, the judgment heavily relied on by the Respondents in my humble opinion was on a different set of facts and the same cannot be relied for the present circumstances."

(emphasis supplied)

329. The proceedings before the Election Commission under Paragraph 15 of the Symbols Order was rightly found by the Speaker to be inconsequential, since 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 1.1.2004.

330. In proceedings under Article 226 of the Constitution of India, this Court does not sit in appeal over the decision impugned. The Court exercises its extraordinary power of judicial review to examine if the decision is so unreasonable that no person acting

reasonably would have, on the basis of the materials before it, arrived at such a decision. It is equally well settled that when a decision is impugned under Article 226 of the Constitution of India, this Court does not interfere, if two views are possible and the Court prefers a view different from the view taken in the decision impugned.

331. If one reads the letter dated 22.08.2017 of the 18 petitioners, there is an assertion that the writ petitioners are not giving up membership of the party from which they have been elected. There are only complaints against the Chief Minister with a request to initiate the constitutional process. Whether such a letter would, in effect and substance, amount to voluntary relinquishment of the party had to be judged having regard to surrounding facts and circumstances.

332. It is the case of the writ petitioners that, in *Yeddyurappa* supra, a similarly worded letter was held not to attract disqualification. In *Yeddyurappa's* case (supra), 13 Members of Karnataka Legislative Assembly belonging to the Bharatiya Janata Party wrote identical letters to the Governor on 6th October 2010, stating that they had become disillusioned with the functioning of the Government headed by the Chief Minister Yeddyurappa and withdrawing the support to the

State Government. On the same day, the Governor addressed a letter to the Chief Minister informing him of the letters received from 13 Members of Legislative Assembly and 5 independent Members of Legislative Assembly withdrawing their support to the Government.

333. A doubt having arisen about the majority support enjoyed by the Government in the Legislative Assembly, the Governor requested Chief Minister Yeddyurappa to prove that he still had the support of the majority of the Members of the House by getting a confidence motion passed in his favour on or before 12th October 2010 by 5 p.m.

334. On the same day, i.e., 6th October 2010, B.S.Yeddyurappa made an application before the Speaker under Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, for a declaration that all the said 13 Members of Legislative Assembly elected on BJP tickets had incurred disqualification in view of the Tenth Schedule to the Constitution. All the 13 Members of Legislative Assembly were given time till 5 p.m., on 10th October 2010, to submit their objections, if any and they were directed to appear in person and make their oral submissions to the Speaker, failing which, it was to be presumed that they had no

explanation to offer and further action would thereafter be taken *ex parte* in accordance with law. The concerned Members of Legislative Assembly submitted their interim replies on 9th October 2010 stating that they had come to learn from the media that a show cause notice had been issued as per the orders of the Speaker and had been pasted on the doors of the MLA quarters in the MLA hostels at Bangalore, which were locked and used by the legislators only when the House was in session.

335. In the interim replies, it was submitted neither the disqualification petition, nor the documents appended thereto had either been pasted on the MLA quarters or forwarded to the appellants along with the show cause notices. The notice was questioned as violative of Rule 6 of the concerned Disqualification Rules, inasmuch as the concerned MLAs had to be given seven days time to reply.

336. One of the main contentions of the concerned MLAs was that the Speaker was proceeding in hot haste with the collateral object to prevent 13 MLAs from participating in the Vote of Trust scheduled on 12th October 2010.

337. The issues before the Speaker were, (i) Whether the

concerned MLAs were disqualified under paragraph 2(1)(a) of the Tenth Schedule of the Constitution as alleged by the applicant? and (ii) Whether there was any requirement to give seven days' time?

338. Both the questions were answered against the MLAs concerned. Relying on the decisions of the Supreme Court in *Ravi S. Naik, supra, and Rajendra Singh Rana, supra,* the Speaker held that a person could voluntarily give up membership of a political party even without tendering his resignation from the membership of the party. Even in the absence of formal resignation from the party, inference could be drawn of relinquishment of membership by the said person.

339. The main questions before the Supreme Court in *Yeddyurappa's* case (supra), were:

i. *Whether the appellants had voluntarily given up their membership from the Bharatiya Janata Party?*

ii. *Whether the show cause notices were vitiated since only three days time had been given to the concerned MLAs., to reply thereto as against the period of seven days or more prescribed in Rule 7(3) of the Disqualification Rules?*

iii. *Whether the Speaker had acted in hot haste in disposing of the disqualification application filed by B.S.Yeddyurappa introducing a whiff of bias as to the procedure adopted?*

iv. *What is the scope of judicial review of an order passed by the Speaker under paragraph 2(1)(a) of the Tenth Schedule to the Constitution having regard to the provisions of Article 212 of the Constitution?*

340. In *Yeddyurappa,* supra, the Supreme Court observed that whether the concerned MLAs had voluntarily given up membership of their political party, would have to be tested in relation to the action of the members concerned. The 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. The Supreme Court took serious exception to the manner in which the disqualification application of B.S.Yeddyurappa was disposed of.

341. In *Yeddyurappa,* supra, the concerned MLAs wrote to the Governor on 6th October 2010; on the same day, i.e., 6th October 2010, the Governor forwarded the said letters to the Chief Minister and

asked him to prove his majority on the floor by proposing a confidence motion on 12th October 2010. On 6th October 2010 itself, B.S.Yeddyurappa filed the disqualification application before the Speaker. On the next day, i.e., 7th October 2010, the Speaker issued show cause notices giving the concerned MLAs time till 5 p.m., on 10th October 2010 to submit objections. No papers were furnished to the concerned MLAs and notices were affixed on the doors of the MLAs quarters in the MLAs hostel which were generally locked when the Assembly was not in session.

342. In paragraph 147, the Supreme Court observed, "*The procedure adopted by the Speaker seems to indicate that he was trying to meet the time schedule set by the Governor for the trial of strength in the Assembly and to ensure that the appellants and the other independent MLAs stood disqualified prior to the date on which the Floor Test was to be held.*" On 10th October 2010, the Speaker concluded the hearing refusing the prayer for adjournment and passed a speaking order on the same day.

343. In paragraph 149, the Supreme Court analysed the decision in *Jagjit Singh,* supra, wherein the Supreme Court held that failure to provide documents relied upon by the Speaker to the member

concerned whose membership of the House was in question and denying him the right of cross-examination did not amount to denial of natural justice and did not vitiate the proceedings. However, a rider was added to the said observation to the effect that ***the Speaker's decision in such a situation would have to be examined on a case-to-case basis***.

344. In *Yeddyurappa's* case, the Supreme Court held: *"**If one were to take a realistic view of the 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 v. State of Haryana reported in (2006) 11 SCC 1**."*

345. In paragraphs 153 to 156, the Supreme Court further held as under:

> *"153. ... Under Para 2(1)(a) of the Tenth Schedule, the Speaker functions in a quasi-judicial capacity, which makes an order passed by him in such capacity, subject to judicial review. The scope of Para 2(1)(a) of the Tenth Schedule to the Constitution, therefore, enables*

the Speaker in a quasi-judicial capacity to declare that a Member of the House stands disqualified for the reasons mentioned in Para 2(1)(a) of the Tenth Schedule to the Constitution.

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.

155. As we have earlier indicated, even if the Disqualification Rules were only directory in nature, even then sufficient opportunity should have been given to the appellants to meet the allegations levelled against them. ***The fact that the show-cause notices were issued within the time fixed by the Governor for holding the trust vote, may explain service of the show-cause notices by affixation at the official residence of the appellants, though***

without the documents submitted by Shri Yeddyurappa along with his application, but it is hard to explain as to how the affidavits, affirmed by Shri K.S.Eswarappa, Shri M.P.Renukacharya and Shri Narasimha Nayak, were served on the learned advocates appearing for the appellants only on the date of hearing and that too just before the hearing was to commence. Extraneous considerations are writ large on the face of the order of the Speaker and the same has to be set aside.

156. Incidentally, in Para 5 of the Tenth Schedule, which was introduced into the Constitution by the Fifty-second Amendment Act, 1985, to deal with the immorality of defection and floor-crossing during the tenure of a legislator, it has been indicated that notwithstanding anything contained in the said Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of the State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under the Schedule if he by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election, and does not, so long as he continues to hold such office

thereafter, rejoin that political party or become a member of another political party. The object behind the said Para is to ensure that the Speaker, while holding office, acts absolutely impartially, without any leaning towards any party, including the party from which he was elected to the House."

(emphasis supplied)

346. In *Yeddyurappa*, supra, the decision of the Speaker was set aside on the ground it did not meet the twin tests of natural justice and fair play. The Supreme Court was of the view that the Speaker had proceeded to meet the deadline set by the Governor irrespective of whether in the process, he was ignoring constitutional norms as 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. The Court further held that even if the Disqualification Rules were only directory in nature, sufficient opportunity should have been given to the appellants to meet the allegations levelled against them. The fact that the Show Cause Notices were issued within the time fixed by the Governor for holding the trust vote might explain service of the Show Cause Notices by affixation at the official residence of the appellants without the documents submitted by Mr.Yeddyurappa. However, affidavits

affirmed by Mr.K.S.Eswarappa, Mr.M.P.Renukacharya and Mr.Narasimha Naik were served on the advocates appearing on behalf of the disqualified MLAs only on the date of hearing just before the hearing was to commence. The Supreme Court, thus, found that the extraneous consideration was writ large on the face of the decision of the Speaker and the same had to be set aside.

347. In *Yeddyurappa,* supra, the Supreme Court took note of the fact that the Speaker had taken the impugned decision dated 10th October, 2010 when the vote of confidence on the floor of the House was slated for 12th October and the affidavits relied upon by the Speaker was served immediately before commencement of hearing. However, in this case, the Chief Government Whip filed the petition for disqualification of the 18 writ petitioners before the Speaker on 24.08.2017. On the same day, the 18 writ petitioners were directed to file their reply within seven days, as required under the Disqualification Rules. Mr.Singhvi's submission that the writ petitioners were given five days is not factually correct. The writ petitioners filed their interim reply (first reply) with sufficient details within 30.08.2017 and sought time to file further reply. On 05.09.2017, second reply was filed. On 07.09.2017, prayer was made for time to file further reply. Time was again granted, but for the last time till 14.09.2017. On 14.09.2017,

when the writ petitioners sought further adjournment for 15 days, such adjournment was declined. As stated above, the Speaker had, by his notice of 7.9.2017, warned the writ petitioners that no further time would be granted. There was no direction for any vote of confidence.

348. As observed above, in this case, the writ petitioners admitted having made a representation to the Governor to initiate the constitutional process. The question was whether this act would be construed as an act of defection. Since this Court does not sit in appeal over a decision of the Speaker, it is not for this Court to adjudicate the merits of the decision. The question is whether the decision was so perverse and/or unreasonable that no person acting reasonably and properly instructed in law would have taken the decision. The Speaker found that in Yeddyurappa, supra, the order of the Speaker was set aside having regard to the facts and circumstances of the case on the ground of violation of natural justice as the concerned MLAs were found not to have been given reasonable opportunity to explain their representation.

349. *Yeddyurappa,* supra, is distinguishable on facts. As noted by the Supreme Court in paragraph (14) of the judgment (as reported in (2011) 7 SCC 1), the concerned MLAs had in their reply to the show

cause notice emphatically stated that they had chosen to withdraw their support only to the government headed by Mr.Yeddyurappa as Chief Minister as he was corrupt, but not to BJP itself, which could form another government led by any person other than Yeddyurappa.

350. In the reply to the show cause in *Yeddyurappa*, supra, it was inter alia stated:

> *"My letter submitted to H.E. Governor of Karnataka of withdrawing the support from the Government headed by Shri B.S. Yeddyurappa as the Chief Minister of the State is an act of an honest worker of BJP and a Member of the Legislative Assembly to salvage the image and reputation of BJP or BJP as such. In fact my letter is aimed at cleansing the image of the party by getting rid of Shri B.S. Yeddyurappa as the Chief Minister of the State who has been acting as a corrupt despot in violation of the Constitution of India and contrary to the interests of the people of the State."*

351. It would also be pertinent to note paragraph (16) of the judgment in *Yeddyurappa*, supra, set out herein below:

> *"16. It was also categorically stated that as the disciplined soldiers of BJP the appellants would continue to support any Government headed by a clean and efficient person who could provide good*

governance to the people of Karnataka. The appellants appealed to the Speaker not to become the tool in the hands of a corrupt Chief Minister and not to do anything which could invite strictures from the judiciary. A request was, therefore, made to withdraw the show-cause notices and to dismiss the petition dated 6-10-2010 moved by Shri B.S. Yeddyurappa, in the capacity of the leader of the legislature party of the Bharatiya Janata Party and also as the Chief Minister, with mala fide intention and the oblique motive of seeking disqualification of the answering MLAs and preventing them from voting on the confidence motion on 11-10-2010."

352. In *Yeddyurappa*, supra, the Supreme Court further held:

"21. ..... the Speaker arrived at the finding that after 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, the respondents, who are the appellants herein, other than Shri M.P. Renukacharya and Shri Narasimha Nayak, had voluntarily given up their membership of the party by withdrawing support to the said Government. In arriving at such a conclusion, the Speaker took into consideration the allegations made by Shri Yeddyurappa that after submitting their respective letters to the Governor withdrawing support to the Government, the said respondents 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.

22. The Speaker also took personal notice of the statements alleged to have been made by the appellants and observed that they had not denied the allegations made by Shri Yeddyurappa that they had negotiated with the State Janata Dal, its members and Leader, Shri H.D. Kumaraswamy, regarding formation of another Government. In support of the same, the Speaker relied on media reports and the affidavit filed by Shri Eswarappa. The Speaker recorded that the same had not been denied by the appellants herein.

24. The Speaker also observed that the Governor never elects the leader of the legislature party. Accordingly, from the conduct of the appellants in writing to the Governor that they had withdrawn their support, joining hands with the leader of another party and issuing statements to the media, it was evident that by their conduct the appellants had become liable to be disqualified under the Tenth Schedule.

28. .... The Speaker was of the view that by their conduct the appellants had voluntarily given up the membership of the party from which they were elected, which attracted disqualification under the Tenth

Schedule. The Speaker further held that the act of withdrawing support and acting against the leader of the party from which they had been elected, amounted to violation of the object of the Tenth Schedule and that any law should be interpreted by keeping in mind the purpose for which it was enacted."

353. The Supreme Court found:

"122. .... 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."

354. The proposition which emerges from the judgment of the Supreme Court in *Yeddyurappa*, supra, is that criticism of a Chief Minister or withdrawal of support to a Chief Minister may not, in itself, attract disqualification under Paragraph 2(1)(a) of the Tenth Schedule, if it does not prejudicially affect the interest of the party as a whole.

355. The question that would be of utmost importance in deciding whether the representation of the writ petitioners withdrawing support to the Chief Minister and calling upon the Governor to initiate the constitutional process attracts disqualification would be the impact of the said representation on the political party.

356. In *Yeddyurappa*, supra, the concerned MLAs had made a categorical assertion that they had lost confidence in the Chief Minister, who, according to the concerned MLAs, had, *inter alia*, indulged in corrupt practices. The concerned MLAs had asserted that they were not resigning from the party. They were interested in clearing the image of the party. They would support the party under the leadership of any person other than the Chief Minister. The Supreme Court found that the manner in which the proceedings had been conducted in hot haste, without opportunity to the petitioners,

had denied them the opportunity of defence.

357. As argued by Mr.Raman in the context of the judgment of the Supreme Court in *Nabam Rebia,* supra, a judgment is a precedent for the authority of law which is raised and decided and not what might logically be deduced from the judgment. It is equally well settled that words and sentences in a judgment cannot be read in isolation. Whatever is written in a judgment does not become a binding precedent.

358. If the effect of withdrawal of support and calling for initiation of constitutional process meant fall of the Government constituted by the party, that, in my view, would tantamount to implied relinquishment of membership of the party and would attract disqualification under Paragraph 2(1)(a) of the Tenth Schedule.

359. As observed above, *Nabam Rebia*, supra, neither discussed nor overruled *Yeddyurappa*, supra. However, in *Nabam Rebia*, supra, the Supreme Court affirmed:

> *"209. .... 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."

360. The Governor might have drawn the President's attention to the political scenario of the State and thereby invited President's rule, dislodging the government or alternatively called for a floor test.

361. There is substance in the argument advanced on behalf of Mr.Rohatgi, Mr.Sundaram and Mr.Vaidyanathan that a letter to the Governor withdrawing support from the Chief Minister and requiring him to initiate the constitutional process could be viewed as implied relinquishment of Membership of the party, unless it could be shown that the government would survive notwithstanding withdrawal of support to the Chief Minister. In fact, in *Yeddyurappa*, supra, too, the Supreme Court in effect and substance held that the manner in which the proceedings had been conducted denied the concerned MLAs this opportunity of showing that they had only acted against an individual and not the party.

362. Unlike in *Yeddyurappa's case*, supra, in this case, there is no assertion that the writ petitioners would continue to support the political party under any other leader except Mr.E.Palaniswami. They have not even asserted that the withdrawal would not dislodge the government formed by the party.

363. In these writ petitions, it is not necessary to enter into the 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. Reference may be made to the judgments of the Supreme Court in *International Trading Co.*, supra, and *National Aluminium Company Limited*, supra. This observation is not, however, to be construed as any finding of this Court that the dismissal of the disqualification petition in respect of Mr.S.T.K.Jakkaiyan is illegal.

364. It is by now well settled that judicial review of administrative action/quasi-judicial orders passed by the Government is limited to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot

be re-appreciated by the Court in exercise of its powers of judicial review. The Court does not exercise the powers of an appellate court in exercise of its powers of judicial review. The proposition finds support from *Kalinga Mining Corporation v. Union of India, reported in (2013) 5 SCC 252.*

365. In *Tata Cellular v. Union of India, reported in (1994) 6 SCC 651*, the Supreme Court held:

> "Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself."

366. The Supreme Court quoted with approval Lord Brightman in the *Chief Constable of the North Wales Police v. Evans, reported in (1982) 3 All ER 141*:

> *"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."*

367. In judicial review, the duty of the Court is to confine itself to the question of legality. Its concern should be (i) whether the decision making authority exceeded its powers; or (ii) committed an error of law; or (iii) committed a breach of rules of natural justice. A decision is interfered with in exercise of the power of the Court of judicial review only when there is a patent error of law which goes to the root of the decision; where, but for that error, the decision would be otherwise. Errors, if any, which do not go to the root of the decision do not vitiate the decision.

368. The Supreme Court quoted with approval Lord Fraser in *Amin v. Entry Clearance Officer, reported in (1893) 2 All ER 864:*

> *"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made.... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."*

369. In the light of the decision in *Kihota Hollohon*, supra, the

power of judicial review is very limited one and Court will not interfere unless decision of the Speaker is perverse. The concept of perversity is a concept as explained by Lord Diploc in *Council of Civil Service Unions v. Minister for the Civil Services, 1985(1) A.C. 374*:

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

370. The test was adopted by the Supreme Court in the case of *UOI v. G. Ganayutham*, reported in (1997) 7 SCC 463, and it was observed in para 28 as under:

> *"(1) To judge the validity of any administrative order or statutory discretion, normally, the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the*

administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

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

371. In my opinion, the view taken by the Speaker is a possible, if not plausible view, and I am unable to hold that the said decision is any way unreasonable, irrational or perverse. It is well settled that when 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. No interference is, therefore, warranted with the impugned order passed by the Speaker.

The writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(I.B., CJ.)
14.06.2018

Index : Yes
Internet : Yes
bbr/sasi

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.01.2018

DATE OF DECISION : 14.06.2018

CORAM

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE
AND
The Hon'ble Mr.Justice M.SUNDAR

W.P.Nos.25260 to 25267, 25393 to 25402 of 2017
and
W.M.P.Nos.26704, 26706, 26708, 26710, 26712, 26714, 26716, 26718, 26830 to 26832, 26834, 26836, 26838, 26840, 26842, 26844, 26846, 26848, 27514 to 27531 of 2017

P.Vetrivel .. Petitioner in W.P.No.25260 of 2017
N.G.Parthiban .. Petitioner in W.P.No.25261 of 2017
P.Palaniappan .. Petitioner in W.P.No.25262 of 2017
C.Jayanthi Padmanabhan .. Petitioner in W.P.No.25263 of 2017
V.Senthil Balaji .. Petitioner in W.P.No.25264 of 2017
Dr.S.Muthiah .. Petitioner in W.P.No.25265 of 2017
R.Murugan .. Petitioner in W.P.No.25266 of 2017
R.Balasubramani .. Petitioner in W.P.No.25267 of 2017
T.A.Elumalai .. Petitioner in W.P.No.25393 of 2017
M.Kothandapani .. Petitioner in W.P.No.25394 of 2017
Thanga Tamilselvan .. Petitioner in W.P.No.25395 of 2017
S.Mariappan Kennady .. Petitioner in W.P.No.25396 of 2017
Dr.K.Kathirkamu .. Petitioner in W.P.No.25397 of 2017
R.Thangathurai .. Petitioner in W.P.No.25398 of 2017
S.G.Subramanian .. Petitioner in W.P.No.25399 of 2017
M.Rengasamy .. Petitioner in W.P.No.25400 of 2017
K.Uma Maheswari .. Petitioner in W.P.No.25401 of 2017
R.Sundaraj .. Petitioner in W.P.No.25402 of 2017

Vs.

1.P.Dhanabal,
The Speaker,
Tamil Nadu Legislative Assembly,

Fort St. George,
Chennai-600 009.

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

3.K.Palanisamy,
The Chief Minister,
Government of Tamil nadu,
Fort St. George,
Chennai-600 009.

4.The Secretary,
Legislative Assembly Secretariat,
Secretariat,
Chennai-600 009. .. Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the impugned order dated 18.9.2017 published vide Gazette Notification No.294 dated 18.09.2017 passed by respondent Nos.1 and 4 as unauthorised, illegal and is without jurisdiction as per the binding law in Yeddyurappa's case and quash the same and consequently to forbear the respondents from interfering with the petitioners' right as elected representatives.

For Petitioners : Dr.Abishek Singhvi, Senior Counsel
for Mr.N.Raja Senthoor Pandian
Mr.Vivek Singh
Mr.Mohit Paul
Mr.Amit Bhandari
in W.P.Nos.25260 to 25266 of 2017
W.P.Nos.25393 to 25397 of 2017

Mr.P.S.Raman, Senior Counsel

for Mr.C.Seethapathy
Mr.Vivek Singh
Mr.Mohit Paul
Mr.Amit Bhandari
in W.P.Nos.25267, 25398 to 25402 of 2017

For Respondents : Mr.C.Aryama Sundaram, Senior Counsel
for Mr.K.Gowtham Kumar
Ms.Rohini Misra
Mr.Athiban Vijay
Mr.Imthiaz Ahmed
for RR1 and 4 in all writ petitions

Mr.Mukul Rohatgi, Senior Counsel
for Mr.C.Thirumaran
Mr.Muthu Thangathurai
Mr.Sameer Rohatgi
for R-2 in all writ petitions

Mr.C.S.Vaidyanathan, Senior Counsel
for Mr.S.R.Rajagopal,
Mr.S.R.Raghunathan
Mr.Harish V.Shankar
for R-3 in all writ petitions

- - - -

COMMON ORDER

M.SUNDAR, J.

1(a) With the greatest of respect for Hon'ble Chief Justice, I find myself in disagreement with the order and conclusion arrived at by Hon'ble Chief Justice. Therefore, I am delivering this separate dissenting order in these 18 writ petitions.

1(b) **Preface** :

Arguments concluded and orders in these 18 writ petitions were reserved on 23.01.2018. Thereafter, another Division Bench of this Court heard, reserved

orders on 07.03.2018 and delivered orders on 27.04.2018 in W.P.Nos.26017, 27853 to 27856 of 2017 (5 writ petitions). Therefore, though rival submissions made by senior counsel on both sides (para 13 infra) capture the hearing and submissions made as it unfolded before this Division Bench, i.e., upto / as of 23.01.2018, discussion from paragraph 14 and the entire order itself does not deal with or express any opinion regarding subject covered in the aforesaid five writ petitions as a matter of strict judicial discipline. To be noted, the rival submissions made by senior counsel before us (upto 23.01.2018) have been captured and encapsulated in paragraph 13 infra solely for the purpose of clarity. Such of those submissions which this Court refrains from going into, as a matter of strict judicial discipline, in the light of the aforesaid order dated 27.04.2018 made by another Hon'ble Division Bench in the aforesaid five writ petitions have also been so identified by this Court by including a short script at the relevant places where the submissions of contestants to this lis have been encapsulated and captured. Also to be noted, there is a 'preface to discussion' in this regard in paragraph 14 infra and the same is to be read in conjunction with this preface.

1(c) Considering the nature of the matter, two immensely significant aspects were borne in mind while this judgment was penned. We have a written Constitution which is quasi federal in character wherein the three organs of the State have coordinate powers with coequal status. Constitutional Law scholar Dr.Durga Das Basu, known for his erudition and profound learning, in his magnum opus on this subject, very pithily summed up the basic foundation of the theory of separation of powers and the same is as follows :

> "So far as the courts are concerned, the application of the doctrine (the theory of separation of powers) may involve two propositions: namely,
>
> a.that none of the three organs of Government, Legislative Executive and Judicial, can exercise any power which **properly** belongs to either of the other two;
>
> b.that the legislature cannot delegate its powers."

In the considered but humble opinion of this Court, the above is a very simple and lucid summation, in comparison to *Montesquieu*, who had a far more complex approach to this issue in 18th century which is recorded by historians as 'Century of Philosophy' in Europe. Be that as it may, the pristine and sanctus principles pertaining to judicial review qua a Speaker's order have been laid down elaborately and elucidatively by Hon'ble Supreme Court in a line of authorities. This principle of separation of powers and judicial review qua Speaker's order culled out from our constitutional philosophy by the Hon'ble Supreme Court is the first cardinal principle that has been borne in mind. The second cardinal principle which has been borne in mind flows from the first. That is, judicial review is different and distinct from sitting on appeal. It has become necessary to mention this in the preface as certain areas of discussion, demand delving into the matter in some detail. Such delving into the matter in some detail is only to articulate with clarity and exactitude the manner in which judicial review has been exercised. In other words, such delving into the matter in some detail shall not be construed as sitting on appeal qua Speaker's order.

1(d) Aforesaid 18 writ petitions will stand disposed of by this common order.

2 Factual matrix in this case is given under two heads. One head is 'Facts in a nutshell' and the other head is 'Facts in detail'. While 'Facts in a nutshell' shall be in the nature of a thumbnail sketch of facts, 'Facts in detail' shall have more particulars with exactitude qua dates besides little elaboration wherever necessary. To be noted, facts have been set out in the order of the Hon'ble Chief Justice. However, it is deemed necessary to give factual matrix of this case under two such heads for the sake of ease of reference and for the sake of clarity in understanding and appreciating this order.

3 To be noted, with regard to 'Facts in a nutshell' and 'Facts in detail' infra, some undisputed events / happenings and particulars pertaining to the same were highlighted in the elaborate oral submissions by all learned Senior Counsel. These events / happenings were highlighted with specific dates. Most importantly, some of such facts that were highlighted in the oral hearing are not explicitly / expressly and specifically pleaded. Considering that they are undisputed facts / events, in the light of their relevance, such facts / events with dates have also been set out infra under 'Facts in a nutshell' and 'Facts in detail'.

4 Before 'Facts in a nutshell' and 'Facts in detail' are set out, it is necessary to give the list of abbreviations and short forms that shall be used in this order. Considering the number of abbreviations, short forms as well as the nature of the order, a list of abbreviations and short forms are being given under a dedicated head in the following paragraph infra. To be noted, all are either

abbreviations or short forms and there are no acronyms.

5 **ABBREVIATIONS AND SHORT FORMS** :

(i) 'All India Anna Dravida Munnetra Kazhagam' shall be referred to as 'AIADMK'.

(ii) 'Dravida Munnetra Kazhagam' shall be referred to as 'DMK'.

(iii) 'Indian National Congress' shall be referred to as 'INC'.

(iv) 'Indian Union Muslim League' shall be referred to as 'IUML'.

(v) 'Mr.Edappadi K.Palaniswami', Hon'ble Chief Minister of Tamil Nadu shall be referred to as 'EPS'.

(vi) 'Mr.O.Panneerselvam' Hon'ble Deputy Chief Minister of Tamil Nadu shall be referred to as 'OPS'.

(vii) 'Constitution of India' shall be referred to as 'COI'.

(viii)Tenth Schedule to COI which inter-alia deals with Disqualification on Grounds of Defection shall be referred to as 'Tenth Schedule'.

(ix) 'The Members of the Tamil Nadu Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986' being rules made by the Hon'ble Speaker of Tamil Nadu Legislative Assembly in exercise of his powers under paragraph 8 of Tenth Schedule shall be referred to as 'TN Defection rules'.

(x) 'The Tamil Nadu Legislative Assembly Rules' made under Article 208(1) of COI shall be referred to as 'TN assembly rules'.

(xi) 'The Representation of the People Act, 1951' shall be referred to as '1951 RP Act'.

(xii) 'Code of Civil Procedure, 1908' shall be referred to as 'CPC'.

(xiii) 'Chief Minister' shall be referred to as 'CM'.

(xiv) 'Election Commission of India' shall be referred to as 'ECI'.

(xv) Order of Speaker of Tamil Nadu Legislative Assembly dated 18.9.2017 disqualifying 18 writ petitioners under paragraph 2(1)(a)

of Tenth Schedule shall be referred to as 'impugned order'.

(xvi)Member of a Legislative Assembly is referred to as 'MLA' and Members of a Legislative Assembly are referred to as 'MLAs'.

6 **FACTS IN A NUTSHELL** :

6(a) Tamil Nadu Legislative Assembly consists of 234 assembly constituencies. General elections to the 15th Legislative Assembly of Tamil Nadu was held on 16.05.2016. To be noted, out of 234 assembly constituencies, elections were postponed for two assembly constituencies, i.e., Aravakurichi assembly constituency, Thanjavur assembly constituency and elections to those two constituencies were subsequently held on 19.11.2016.

6(b) Court is informed that the constitution of 15th Legislative Assembly of Tamil Nadu (post 19.11.2016 elections to aforesaid two constituencies) was as follows :

AIADMK	- 136
DMK	- 89
INC	- 8
IUML	- 1
Total	- 234

6(c) As some arguments were made regarding floor test and attempt to create artificial majority qua the impugned order, for the purpose of clarity in understanding and appreciating this argument, learned counsel were requested to give the partywise break-up and composition of the 15th Tamil Nadu

Legislative Assembly. In such a backdrop, though these details have not been set out in the pleadings, partywise break-up and composition of 15th Legislative Assembly was given at the hearing which is set out supra. To be noted, there is no dispute with regard to this factual detail as between the parties before this court.

6(d) Late Selvi J.Jayalalitha the then General Secretary of AIADMK was sworn in as CM of Tamil Nadu on 23.05.2016. Date of demise of Selvi J.Jayalalitha is 05.12.2016. On 06.12.2016, OPS was sworn in as CM. Court is informed that on 29.12.2016, General Council of AIADMK met, elected Mrs.Sasikala as General Secretary, OPS resigned as CM, Mrs.Sasikala staked her claim to be sworn in as CM of Tamil Nadu and OPS was requested to continue as caretaker CM.

6(e) While things stood thus, on 14.02.2017, Hon'ble Supreme Court of India delivered its verdict in what is known in popular parlance as disproportionate assets case, wherein Mrs.Sasikala and others were convicted. On the same day, i.e., 14.2.2017, legislature party of AIADMK met and elected EPS as the Leader of AIADMK legislature party pursuant to which EPS was sworn in as CM of Tamil Nadu on 16.2.2017. In the interregnum, OPS stated that he was forced to resign and he took a stand opposing Mrs.Sasikala and EPS.

6(f) On being sworn in as CM of Tamil Nadu, EPS was requested by the Governor to prove his majority in the floor of the house and a confidence motion was moved by EPS on 18.2.2017. In the confidence motion on 18.2.2017, EPS established his majority with 122 MLAs supporting the motion.

To be noted, there was a demand by the opposition for secret ballot, resulting in pandemonium in the house. This floor test on 18.2.2017 and its outcome itself is under challenge in this court vide W.P.Nos.4390, 4500 and 4869 of 2017 and W.P.(MD)No.3033 of 2017. To be noted, this comes to light from a chart circulated by learned Senior counsel for third respondent Mr.C.S.Vaidyanathan. This chart was circulated to show the details of all the writ petitions, which were listed together and were on board along with the instant 18 writ petitions. The chart given by learned senior counsel Mr.C.S.Vaidyanathan is reproduced below and the same reads as follows :

S. No	Proceedings No.	Petitioners	Relief Sought	Remarks
1	W.P.Nos.24156 of 2017 to 24176 of 2017	M.K.Stalin & Ors	Certiorarified mandamus to quash the reference in Serial No.9 of the Tamil Nadu Assembly Bulletin No.37 dated 19.07.2017 and the Consequential Notice dated 28.08.2017 issued by the Privileges Committee to the Petitioners	Counters have been filed by R1 and R4 Petitions to Vacate Stay have also been filed
2	W.P.No.24708 of 2017	M.K.Stalin	Mandamus to direct respondents to call for a floor test	Interim order passed tagged with item 3 by order dated 20.09.2017
3	W.P.No.25260 – 25267 of 2017 and 25393-25402 of 2017 (18 WPs)	P.Vetrivel & Ors	Certiorified Mandamus to quash the order passed by the Speaker	Pleadings Completed
4	W.P.No.26017 of 2017	R.Sakrapani	Mandamus to direct the Speaker to initiate disqualification proceedings against 11 MLAs of AIADMK for	Transfer Petition filed before Supreme Court in T.P.(c)

			having voted against the directions of the Whip in the Assembly on 18.02.2017	No.2063/2017 Petition to amend the prayer filed
5.	W.P.No.27696 /2017 and W.P.No.27697 /2017	Pichandi	Qua Warranto against Mr.O.Pannerselvam and K.Pandiarajan	Notice yet to be issued
6	W.P.No.27853/ 2017 to W.P.No.27856 /2017	P.Vetrivel & Ors	Mandamus against the speaker to initiate disqualification proceedings against 7 MLAs of AIADMK for having voted against the directions of the Whip in the Assembly on 18.02.2017	Transfer Petition filed before Supreme Court in D.No.36379 /2017 tagged with Item 4.
7	W.P.4390/2017	Thiru.M.K.Stalin, Leader of Opposition	To declare that the decision taken on the Confidence motion held on 18.2.2017 as illegal, unconstitutional null and void and to direct the respondents to Conduct the floor test on the vote of confidence afresh in the Tamil Nadu Legislative Assembly by adopting secret ballot and under the supervision of an independent observer appointed by this Hon. Court	
8	W.P.4500/2017	Advocates forum for Social Justice, rep. By its President, Thiru K.Balu.		
9	WP(MD) 3033 / 2017	Thiru. T.Analagan		
10	W.P.No.4869 /2017	Thiru.K.Ravi, Advocate		

6(g) Some MLAs of Tamil Nadu Legislative Assembly gave a representation dated 22.8.2017 to the Governor of Tamil Nadu inter-alia making

allegations of corruption, favoritism, misuse of government machinery, abuse of power and other shortcomings against EPS. To be noted, for the sake of convenience, from hereon in this order, MLAs who gave the representation are referred to as '18 MLAs' also (besides other appropriate references, such as writ petitioners), though representation to Governor was originally given by more than 18 MLAs.

6(h) The Chief Whip of the ruling party, i.e., AIADMK gave a complaint to the Speaker alleging that the act of the 18 MLAs i.e., act of giving representation to the Governor as aforesaid tantamounts to voluntarily giving up membership of AIADMK party and sought their disqualification under Tenth Schedule. Speaker issued notices to the 18 MLAs on the same day and ultimately passed the impugned order dated 18.9.2017 disqualifying the 18 MLAs under paragraph 2(1)(a) of Tenth Schedule on the ground that they have voluntarily given up membership of the political party on whose ticket they were elected. These 18 MLAs have filed separate writ petitions assailing the common order of the Speaker dated 18.9.2017, i.e., the impugned order, which are the instant writ petitions. Further, to be noted, as mentioned supra, originally the number of MLAs who gave the aforesaid representation to Governor was more, complaint of Chief Whip was against 19 MLAs, but one changed his stand subsequently and only 18 were disqualified.

7 **FACTS IN DETAIL** :

7(a) When things stood as above (as in Facts in a nutshell supra),

dissensions arose within AIADMK resulting in two major groups making rival claims that they are the original AIADMK political party. Dispute was carried to ECI. On 22.03.2017 / 23.03.2017, ECI passed an interim order vide Dispute Case No.2 of 2017 being E.Madhusudhanan and two others Vs. V.K.Sasikala and another. The sum and substance of this interim order of ECI is that AIADMK was to function as two groups/factions in the names AIADMK (Puratchi Thalaivi Amma) and AIADMK (AMMA) and the reserved symbol of AIADMK party being 'Two Leaves' symbol was frozen. This order of ECI shall be discussed in greater detail in the later part of this judgment.

7(b) Thereafter, pending aforesaid dispute case in ECI, on 21.8.2017, OPS and EPS got together and shook hands. As a consequence, OPS was sworn in as Deputy CM. On the same day, one T.T.V.Dhinakaran in his capacity as Deputy General Secretary of AIADMK (Amma) group wrote a letter to all legislators of AIADMK (Amma) group, urged them to meet the Governor and take necessary steps to replace EPS as CM. In response to this call, 18 MLAs (with another MLA, i.e., S.T.K.Jakkaiyan) met the Governor of Tamil Nadu on 22.8.2017 and gave the aforesaid representation which is the epicenter of these 18 writ petitions. Court is informed that local dailies carried this information. It is submitted by the respondents that on 23.8.2017, the Leader of Opposition, i.e., Mr.M.K.Stalin met the Governor and gave a representation inter-alia alleging that EPS has lost majority in the House. Though the fact that Mr.M.K.Stalin met the Governor and gave a representation as contended is not in doubt / not disputed, there is some doubt / dispute regarding the actual date on which he met the

Governor.

7(c) Under the aforesaid circumstances, AIADMK Chief Whip Mr.S.Rajendiran (Respondent No.2 herein) based on the aforesaid reports in local dailies filed a petition before the Speaker on 24.8.2017 seeking action inter-alia against 18 writ petitioners herein under Tenth Schedule and under Rule 6 of TN Defection rules alleging that their action of meeting the Governor and giving the aforesaid representation tantamounts to voluntarily giving up membership of AIADMK.

7(d) On the same day, i.e., 24.8.2017, the Speaker of Tamil Nadu Legislative Assembly issued notices inter-alia to 18 MLAs and sent a copy of the complaint to EPS for his comments. To be noted, a copy of the complaint was so sent to EPS by the Speaker in accordance with Rule 7(3)(b) of TN Defection rules. 18 MLAs gave an interim reply dated 30.8.2017. On the next day, i.e., on 31.8.2017, the Speaker sent a communication directing the noticees to give final reply by 5.9.2017, appear in person and represent their case on 7.9.2017. Thereafter, in the interregnum, on 3.9.2017, Speaker forwarded the comments of EPS to the 18 writ petitioners / MLAs i.e., noticees. This led to the 18 MLAs filing further comments and response to Speaker on 5.9.2017.

7(e) One very important aspect to be noted is, upto this point of time, there were 19 noticees. One of them, namely, Mr.S.T.K.Jakkaiyan, changed his position and he also withdrew the vakalat he had given to his counsel to represent him before the Speaker. Under such circumstances, on 7.9.2017, Speaker adjourned the hearing to 14.9.2017. On 14.9.2017, it is the case of the

18 writ petitioners that Speaker adjourned the hearing without any further notice and therefore they were under the impression that further date will be communicated to them in due course. However, they learnt from the media that the Speaker had passed the impugned order on 18.9.2017 in the forenoon and it was ultimately uploaded in the official website at 8.30 p.m. on 18.9.2017. It was communicated to the 18 writ petitioners / MLAs on various dates between 20.9.2017 and 22.9.2017. These 18 writ petitions came to be filed in this Court assailing the impugned order of the Speaker. On 20.09.2017, an interim order came to be passed by this court inter-alia to the effect that floor test shall not be conducted until further orders and that the Election Commission shall not notify the assembly constituencies of these 18 writ petitioners / MLAs as vacant. Subsequently, this interim order was continued vide order dated 4.10.2017.

7(f) One other relevant factor is, ECI passed final order in the aforesaid proceedings (proceedings pertaining to two AIADMK factions and as to which faction will constitute real / original AIADMK, entitled to the reserved 'Two leaves' symbol) only on 23.11.2017. To be noted, interim order granted by the ECI dated 22.3.2017 / 23.3.2017 referred to supra continued to operate until this date, i.e., until 23.11.2017. Further, Court is informed that final order of ECI has been assailed in the Delhi High Court and notice has been issued on 4.12.2017 by the Delhi High Court. In other words, Delhi High court is in seizin of the challenge to final order of ECI dated 23.11.2017.

8 In the backdrop of the factual matrix set out in a nutshell and in

detail supra, the submissions and issues that fell for consideration in these 18 writ petitions are being discussed under the caption ‘Discussion’ infra.

9 Before commencing the discussion, it is deemed appropriate to set out the case laws that were cited/pressed into service in this case.

10 The case laws pressed into service have been catalogued / enlisted under the caption 'Catalogue of Case Laws' only for the purpose of ease of reference, but case laws have been discussed under a sub-heading 'Further discussion with emphasis on Case laws' (under the head 'Discussion') infra besides some discussions at the relevant and appropriate places elsewhere also.

11 **CATALOGUE OF CASE LAWS** :

11(a) As many as 40 case laws were placed before the court in the course of hearing. To be noted, some of these 40 case laws were pressed into service and read elaborately, some were briefly cited at the Bar and some others were given to the Court across the Bar at the hearing mentioning the relevant paragraph/s alone.

11(b) Besides these 40 case laws, the court finds that four case laws have been referred to in the affidavit filed in support of the writ petitions, but they were not pressed into service in the hearing. Out of these four case laws, which have been referred to in the writ affidavits, one judgment has been set out as ***Union of India Vs. Tulsiram Patel [(1998) 7 SCC 517***]. This has been so set out in ground (hh) of writ affidavits to be precise. From research by this court, it comes to light that the name of the case and the citation do not match. ***Union of***

India Vs. Tulsiram Patel is reported in ***(1985) 3 SCC 398***, but (***1998) 7 SCC 517*** is ***Mayawati Vs. Markandeya Chand***. Therefore, obviously, only one of the two, i.e., either the citation or the name of the case can be correct. In other words, both cannot be correct. Court examined these two cases. ***Tulsiram Patel*** case turns on Article 311 of COI and pertains to service law. On the contrary, ***Mayawati*** case is one arising out of proceedings under Tenth Schedule pertaining to defection. Therefore, the Court takes it that citation is correct and name of the case has been wrongly given. However, to make this judgment as complete and as comprehensive as possible, court is taking note of the four case laws referred to in the writ affidavit also though they were not pressed into service in the hearing. In addition to this, one case law, which was never placed before the court in the course of the hearing has been introduced in the written submission of the writ petitioners and that also is being considered. This takes the tally of case laws to 45. In addition to all these, court finds that ten case laws are of relevance to this order and those case laws have also been taken into account, as they are either referred to in the case laws pressed into service before us or are relatable to the same in one form or the other. Therefore, there are 55 case laws in all. As mentioned supra, these case laws are being discussed under a caption 'Further discussion with emphasis on Case Laws' and there shall be elaboration on this under that head.

11(c) The court put it to all Senior Counsel that the issue as to whether quia timet action qua a Speaker can be issued by the Court has been referred to a Larger Bench vide order dated ***08.11.2016 in Special Leave to Appeal (c)***

No.33677 of 2015 [S.A.Sampath Kumar Vs. Kale Yadaiah and others]. The court also pointed out that this reference has been made by a two member Bench of the Supreme court primarily in the light of paragraph 110 of ***Kihoto*** and two judgments of the Supreme court in ***Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi, (2015) 12 SCC 381*** and ***Orissa Legislative Assembly v. Utkal Keshari Parida, [(2013) 11 SCC 794***. All the learned senior counsel very fairly agreed that this is the obtaining position. Therefore, though this case law was not cited at the Bar, the same is also included in the list / catalogue of cases.

11(d) ***Prakash Amichand Shah v. State of Gujarat, [(1986) 1 SCC 581***] case, for the proposition of implied overruling, has been annexed only to the written submissions.

11(e) Be that as it may, it is deemed appropriate to catalogue the case laws in chronological order. By saying that case laws are being cataloged in chronological order, it is meant that they have been arranged chronologically based on the date of judgment and not necessarily the date of the report.

11(f) This is normally done by the law journals while reporting case laws. However as the chronology, bench strength qua some of the case laws pressed into service are of relevance, it is deemed necessary to adopt such a course in this order. This is more so, as there are submissions touching upon implied overruling / per incuriam which shall be discussed and dealt with at the appropriate place infra in this order.

11(g) The 55 case laws arranged in chronological order are as follows:

Sl. No.	Date of Decision	Name of Parties and citation
1	30.07.1948	G.Narayanaswami Naidu Vs. Inspector of Police, Mayavaram [(1949) 1 MLJ 1] (hereinafter referred to as '**Narayanaswami Naidu case**') (**Full Bench of Madras High Court**)
2	18.09.1957	Union of India Vs. T.R.Varma [AIR 1957 SC 882] (hereinafter referred to as '**T.R.Varma case**') (5 Judges Constitution Bench)
3	02.09.1963	S. Pratap Singh v. State of Punjab, [(1964) 4 SCR 733 : AIR 1964 SC 72] (hereinafter referred to as '**Pratap Singh case**') (5 Judges Constitution Bench)
4	07.09.1965	Ram Manohar Lohia Vs. State of Bihar and another [AIR 1966 SC 740] (hereinafter referred to as '**Ram Manohar Lohia case**') (5 Judges Constitution Bench)
5	04.05.1966	Barium Chemicals Ltd. Vs. Company Law Board [AIR 1967 SC 295] (hereinafter referred to as '**Berium Chemicals Ltd. Case**') (5 Judges Constitution Bench)
6	29.4.1969	A.K.Kraipak Vs. Union of India [(1969) 2 SCC 262] (hereinafter referred to as '**Kraipak case**') (5 Judges Constitution Bench)
7	07.02.1972	Kanungo and Company v. Collector of Customs, [(1973) 2 SCC 438] (hereinafter referred to as '**Kanungo case**') (3 Judges Bench)
8	03.02.1977	Board of Mining Examination and Chief Inspector of Mines and another Vs. Ramjee [(1977) 2 SCC 256] (hereinafter referred to as '**Board of Mining case**') (2 Judges Bench)
9	02.11.1978	S.R.Venkataraman v. Union of India, [(1979) 2 SCC 491] (hereinafter referred to as '**Venkataraman case**') (2 Judges Bench)
10	25.10.1979	State of Punjab and another Vs. Gurdial Singh and others [(1980) 2 SCC 741] (hereinafter referred to as '**Gurdial Singh case'**) (2 Judges Bench)
11	04.10.1983	K.L. Tripathi Vs.State Bank of India, [(1984) 1 SCC 43] (hereinafter referred to as '**K.L.Tripathi case**') (3 Judges Bench)
12	11.07.1985	Union of India v. Tulsiram Patel, [(1985) 3 SCC 398] (hereinafter referred to as '**Tulsiram Patel case**') (5 Judges Constitution Bench)

Sl. No.	Date of Decision	Name of Parties and citation
13	20.12.1985	Prakash Amichand Shah v. State of Gujarat, [(1986) 1 SCC 581] (hereinafter referred to as '**Prakash Shah case**') (5 Judges Constitution Bench)
14	18.11.1986	Amarjit Singh v. Khatoon Quamarain, [(1986) 4 SCC 736] (hereinafter referred to as '**Amarjit Singh case**') (2 Judges Bench)
15	18.11.1987	Chandrama Tewari Vs. Union of India [1987 (Supp) SCC 518] (hereinafter referred to as '**Chandrama Tewari case**') (2 Judges Bench)
16	19.10.1989	Goodyear India Ltd. v. State of Haryana, [(1990) 2 SCC 71] (hereinafter referred to as '**Goodyear case**') (2 Judges Bench)
17	13.07.1990	Krishena Kumar v. Union of India, [(1990) 4 SCC 207] (hereinafter referred to as '**Krishena Kumar case**') (5 Judges Constitution Bench)
18	27.02.1991	Joint Commercial Tax Officer-II, Tuticorin Vs. Ekambareeswarar Coffee and Tea Works [Manu/TN/0338/1991] (hereinafter referred to as '**Ekambareeswarar Coffee case**') (**Division Bench of Madras High Court**)
19	22.01.1992	Philip Jeyasingh Vs. The Joint Registrar of co-operative Societies and others [1992-1-LW-216] (hereinafter referred to as '**Philip Jeyasingh case**') (**Full Bench of Madras High Court**)
20	18.02.1992	Kihoto Hollohan v. Zachillhu, [1992 Supp (2) SCC 651] (hereinafter referred to as '**Kihoto case**') (5 Judges Constitution Bench)
21	01.10.1993	ECIL v. B. Karunakar, [(1993) 4 SCC 727] (hereinafter referred to as '**Karunakar case**') (5 Judges Constitution Bench)
22	09.02.1994	Ravi S.Naik Vs. Union of India and others [1994 Supp (2) SCC 641] (hereinafter referred to as '**Ravi Naik case**') (2 Judges Bench)
23	10.01.1995	Chandigarh Administration v. Jagjit Singh, [(1995) 1 SCC 745] (hereinafter referred to as '**Chandigarh Administration case**') (2 Judges Bench)
24	24.01.1996	G. Viswanathan v. T.N. Legislative Assembly, [(1996) 2 SCC 353] (hereinafter referred to as '**G.Viswanathan**

Sl. No.	Date of Decision	Name of Parties and citation
		case') (2 Judges Bench)
25	07.09.1998	Wilfred A. De Souza (Dr.) v. Tomazinho Cardozo, [1998 SCC OnLine Bom 400 : (1999) 1 Bom CR 594] (hereinafter referred to as '**Wilfred De Souza case**') (**Division Bench of Bombay High Court**)
26	09.10.1998	Mayawati v. Markandeya Chand, [(1998) 7 SCC 517] (hereinafter referred to as '**Mayawati case**') (3 Judges Bench)
27	01.05.2000	Prabodh Sagar Vs. Punjab State Electricity Board and others [(2000) 5 SCC 630] (hereinafter referred to as '**Prabodh Sagar case**') (2 Judges Bench)
28	05.05.2000	Jai Mangal Oraon v. Mira Nayak, [(2000) 5 SCC 141] (hereinafter referred to as '**Mira Nayak case**') (2 Judges Bench)
29	29.07.2002 / 30.07.2002	Narsingrao Gurunath Paril and others Vs. Arun Gujarathi, Speaker and others [2002 SCC Online Bom 698 = (2003) 1 Bom CR 363] (hereinafter referred to as '**Narsingrao case**') (**Division Bench of Bombay High Court**)
30	07.05.2003	Union of India v. International Trading Co., [(2003) 5 SCC 437] (hereinafter referred to as '**International Trading Co. case**') (2 Judges Bench)
31	27.10.2004	Dr.Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council, [(2004) 8 SCC 747] (hereinafter referred to as '**Mahachandra Prasad Singh case**') (3 Judges Bench)
32	11.01.2005	K. Prabhakaran v. P. Jayarajan, [(2005) 1 SCC 754] (hereinafter referred to as '**Prabhakaran case**') (5 Judges Constitution Bench)
33	11.12.2006	Jagjit Singh v. State of Haryana, [(2006) 11 SCC 1] (hereinafter referred to as '**Jagjit Singh case**') (3 Judges Bench)
34	12.12.2006	Doiwala Sehkari Shram Samvida Samiti Ltd. v. State of Uttaranchal, [(2007) 11 SCC 641] (hereinafter referred to as '**Doiwala case**') (2 Judges Bench)
35	10.01.2007	Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, [(2007) 3 SCC 184] (hereinafter referred to as '**Raja Ram Pal case**') (5 Judges Constitution Bench)

Sl. No.	Date of Decision	Name of Parties and citation
36	14.02.2007	Rajendra Singh Rana v. Swami Prasad Maurya, [(2007) 4 SCC 270] (hereinafter referred to as '**Rajendra Singh Rana case**') (5 Judges Constitution Bench)
37	12.01.2007 / 16.2.2007	All India Anna Dravida Munnetra Kazhagam Vs. State Election Commissioner and others [2007 (1) CTC 705] (hereinafter referred to as '**AIADMK case**') (**Division Bench of Madras High Court, referred to Third Judge**)
38	08.07.2008	Haryana Financial Corpn. v. Kailash Chandra Ahuja, [(2008) 9 SCC 31] (hereinafter referred to as '**Haryana Financial Corporation case**') (2 Judges Bench)
39	07.10.2009	Arulvelu Vs. State [(2009) 10 SCC 206] (hereinafter referred to as '**Arulvelu case**') (2 Judges Bench)
40	16.04.2010	Union of India v. Alok Kumar, [(2010) 5 SCC 349] (hereinafter referred to as '**Alok Kumar case**') (2 Judges Bench)
41	08.02.2011	Parimal v. Veena, [(2011) 3 SCC 545] (hereinafter referred to as '**Parimal case**') (2 Judges Bench)
42	13.05.2011	Balchandra L. Jarkiholi v. B.S. Yeddyurappa, [(2011) 7 SCC 1] (hereinafter referred to as '**Yeddyurappa case**') (2 Judges Bench)
43	02.03.2012	Ravi Yashwant Bhoir Vs. District Collector, Raigad and others [(2012) 4 SCC 407] (hereinafter referred to as '**Ravi Yashwant Bhoir case**') (2 Judges Bench)
44	28.09.2012	Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi, [(2015) 12 SCC 381] (hereinafter referred to as '**Kuldeep Bishnoi case'**) (2 Judges Bench)
45	08.11.2012	Ayaaubkhan Noorkhan Pathan v. State of Maharashtra, [(2013) 4 SCC 465] (hereinafter referred to as '**Ayaaubkhan case**') (2 Judges Bench)
46	17.01.2013	Orissa Legislative Assembly v. Utkal Keshari Parida, [(2013) 11 SCC 794] (hereinafter referred to as '**Utkal case'**) (3 Judges Bench)
47	13.02.2013	Telstar Travels (P) Ltd. v. Enforcement Directorate, [(2013) 9 SCC 549] (hereinafter referred to as '**Telstar case**') (2 Judges Bench)
48	28.05.2013	S.R.Tewari Vs. Union of India [(2013) 6 SCC 602] (hereinafter referred to as '**S.R.Tewari case**'] (2 Judges

Sl. No.	Date of Decision	Name of Parties and citation
		Bench)
49	12.12.2013	National Aluminium Co. Ltd. v. Bharat Chandra Behera, [(2013) 16 SCC 622] (hereinafter referred to as '**NALCO case**') (2 Judges Bench)
50	13.12.2013	PRP Exports v. State of T.N., [(2014) 13 SCC 692] (hereinafter referred to as '**PRP Exports**') (2 Judges Bench)
51	18.09.2014	Anvar P.V. v. P.K. Basheer, [(2014) 10 SCC 473] (hereinafter referred to as '**P.V.Anvar case**') (3 Judges Bench)
52	14.05.2015	Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and others [(2015) 8 SCC 519] (hereinafter referred to as '**Dharampal Satyapal case**') (2 Judges Bench)
53	12.02.2016	Alagaapuram R. Mohanraj v. T.N. Legislative Assembly, [(2016) 6 SCC 82] (hereinafter referred to as '**Mohanraj case**') (2 Judges Bench)
54	13.07.2016	Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly, [(2016) 8 SCC 1] (hereinafter referred to as '**Nabam Rebia case**') (5 Judges Constitution Bench)
55	08.11.2016	S.A.Sampath Kumar Vs. Kale Yadaiah and others [Special Leave to appeal (c) No.33677 of 2015) (2 Judges Bench) (hereinafter referred to as '**S.A.Sampath Kumar case**')

12 Before embarking upon 'Discussion', broad outline of summary of submissions made before the Court by the parties at lis is set out under the caption 'Submissions' infra.

13 **SUBMISSIONS** :

13(a) Dr.Abhishek Manu Singhvi, learned Senior counsel and

Mr.P.S.Raman, learned Senior Counsel, appearing for writ petitioners made submissions which can broadly be outlined as under :

(i)Writ petitioners / 18 MLAs only wanted change of CM and therefore, they have not acted against the interest of the political party, i.e., AIADMK in whose ticket they were elected.

(ii)As writ petitioners/18 MLAs have not even acted against the interest of the political party (AIADMK) in whose ticket they were elected, it cannot be said that writ petitioners / 18 MLAs have voluntarily given up membership of the political party in whose ticket they were elected.

(iii)Writ petitioners / 18 MLAs met the Governor and gave a representation after making every possible attempt within the party, i.e., after exhausting all intra party mechanisms to change the CM.

(iv)It is the specific and categorical case of writ petitioners / 18 MLAs that it is the CM, who is acting against the interest of the political party on whose ticket CM as well as the 18 writ petitioners were elected, thereby bringing disrepute to the political party (AIADMK) and it is owing to this that writ petitioners / 18 MLAs wanted change of CM.

(v)The Speaker violated principles of natural justice and did not give them opportunity to cross examine the CM, the complainant-Whip and few others (whose cross examination they sought) besides not being permitted to let in evidence. To be noted, it is also their further case that writ petitioners / legislators were not allowed to cross examine certain witnesses who, according to them, are crucial to establish their case.

(vi)It is also the case of writ petitioners / 18 MLAs that the impugned order of the Speaker is liable to be set aside on the ground of mala fides as the same Speaker did not even issue

notice in a complaint regarding OPS and other 10 MLAs in a complaint of actually voting against the party, i.e., AIADMK on 18.2.2017 when there was a floor test (To be noted, one abstained and action was sought against that MLA also, but for the sake of convenience they are referred to as 'OPS and 10 others'). It was also argued that ECI was not in seizin of which faction is real AIADMK on this date as ECI took seizin much later. *To be noted, as a matter of strict judicial discipline, I refrain from dealing with this point, in the light of the aforesaid order dated 27.04.2018 (made by another Hon'ble Division Bench) in the five writ petitions about which there is a mention under the captions 'Preface' supra and 'Preface to Discussion' infra. In other words, this point is left open for being carried to its logical end based on further proceedings in the other five writ petitions in the Hon'ble Supreme Court. Also to be noted, petitioners pitched themselves very strongly in arguments on this point.*

(vii)It is the specific case of writ petitioners / 18 MLAs that the Speaker has acted in a manner which is in the realm of mala fides as according to them the objective behind disqualifying the writ petitioners is to ensure that EPS has adequate majority in terms of number of MLAs present and voting, if there is a floor test. In other words, it is the allegation of writ petitioners that the Speaker acted in a manner which clearly falls in the realm of mala fides, to help EPS continue as CM, by creating an artificial majority in the House.

(viii)The instant case is squarely covered by Yeddyurappa case, wherein disqualification of MLAs was set aside and the instant case has facts closest to Yeddyurappa case.

(ix)18 MLAs / writ petitioners would not have voted against Whip if the Governor had ordered for a floor test and if a whip had been issued.

(x)While the original party on whose ticket MLAs concerned were elected, i.e., AIADMK was intact on 18.02.2017 when OPS and 10 others voted against the motion in the floor of the house, no action was taken in contradistinction to writ petitioners / 18 MLAs. This according to the writ petitioners is mala fides qua impugned order. *To be noted, as a matter of strict judicial discipline, I refrain from dealing with this point, in the light of the aforesaid order dated 27.04.2018 (made by another Hon'ble Division Bench) in the five writ petitions about which there is a mention under the captions 'Preface' supra and 'Preface to Discussion' infra. In other words, this point is left open for being carried to its logical end based on further proceedings in the other five writ petitions in the Hon'ble Supreme Court. Also to be noted, petitioners pitched themselves very strongly in arguments on this point.*

(xi)There was no AIADMK in its original form (owing to ECI's seizin and interim order) on 22.08.2017 when the aforesaid representation was given to the Governor. In other words, as far as writ petitioners / 18 MLAs are concerned, as of 22.08.2017, there is no question of giving up membership of AIADMK as there was no AIADMK in its original form which is the party in whose ticket, 18 MLAs were elected (to be noted, 'political party' within the meaning of Section 2(1)(f) of 1951 RP Act).

(xii)S.T.K.Jakkaiyan also gave the representation dated 22.8.2017 along with 18 wit petitioners herein, he was also a co-noticee, he also gave the first as well as second interim replies dated 30.8.2017 and 05.09.2017 respectively and did a volte-face thereafter, but was not disqualified vide the impugned order. This according to writ petitioners is clearly mala fides qua impugned order. If mere giving of representation is defection,

S.T.K.Jakkaiyan also should have been disqualified is their further say. It was very strongly urged that this is use of powers under Tenth Schedule for political exigencies which is foreign to the purpose of the power resulting in mala fides and violation of Constitutional mandate.

(xiii)S.T.K.Jakkaiyan's statement / reply has been put against 18 writ petitioners and adverse conclusion has been made on that basis, but no opportunity to cross examine S.T.K.Jakkaiyan was given. Copies of statement / reply of S.T.K.Jakkaiyan was not given to writ petitioners. Both are violations of natural justice principles.

13(b) Mr.Aryama Sundaram, learned Senior counsel appearing on behalf of respondent Nos.1 and 4, i.e., Speaker, who has been arrayed as respondent No.1 by name and Speaker's Secretariat, which has been arrayed as respondent No.4, made submissions which can broadly be set out as follows :

(i)The Speaker has given adequate opportunity and Yeddyurappa case does not help the case of writ petitioners. It is the specific submission of Mr.Sundaram that in Yeddyurappa case, only three days time was given to the MLAs, though rules prescribe seven days, whereas in the instant case, three weeks time had been given to the writ petitioners / 18 MLAs.

(ii)The scope of judicial review of Speaker's order is very limited considering the high office of the Speaker and therefore, as long as the view taken by the Speaker is a plausible view, the court will not interfere even if the court feels that another plausible view is more convincing.

(iii)Demanding cross examination is not a matter of right in cases of this nature. The intention of writ petitioners/ 18 MLAs in

approaching the Governor and requesting constitutional mechanism to be set in motion clearly brings out the fact that their intention was to pull down the government, which is against the interest of the political party, on whose ticket they were elected.

(iv)Representation given by writ petitioners / 18 MLAs was activated by a communication dated 21.8.2017 from one T.T.V.Dhinakaran, which according to Mr.Aryama Sundaram, learned senior counsel was the sole stimulus. On this basis, it is submitted that the conduct and action of writ petitioners / 18 MLAs clearly tantamounts to voluntarily giving up membership of the political party (in whose ticket they were elected) within the meaning of paragraph 2(1)(a) of Tenth Schedule.

(v)Inaction of Speaker in the complaint against OPS and 10 other MLAs in a complaint for disqualification on the ground that they voted against the Whip in the floor test on 18.2.2017 is owing to ECI being in seizin and an interim order made by ECI on 22.3.2017 and therefore, it cannot be construed as mala fides on the part of the Speaker. *To be noted, as a matter of strict judicial discipline, I refrain from dealing with this point, in the light of the aforesaid order dated 27.04.2018 (made by another Hon'ble Division Bench) in the five writ petitions about which there is a mention under the captions 'Preface' supra and 'Preface to Discussion' infra. In other words, this point is left open for being carried to its logical end based on further proceedings in the other five writ petitions in the Hon'ble Supreme Court. Also to be noted, petitioners pitched themselves very strongly in arguments on this point.*

13(c) Mr.Mukul Rohatgi, learned Senior counsel appearing for

respondent No.2, Rajendran, who is the Whip of the ruling AIADMK party and who is also the complainant before the Speaker in the proceedings which have culminated in the impugned order, made submissions which are broadly on the following lines:

(i)The entire matter falls in a very narrow compass and that narrow compass is whether writ petitioners / 18 MLAs have voluntarily given up membership of the political party in whose tickets they were elected and whether ample opportunity was given to them to defend themselves.

(ii)With regard to voluntarily giving up membership of a political party, Mr.Mukul Rohatgti submitted that paragraph 2(1)(a) of Tenth Schedule is the soul of the matter. Paragraph 2(1)(a) of Tenth Schedule being the soul of the matter, it was submitted that the term 'political party' occurring in paragraph 2(1)(a) should be read as 'original political party' as defined in paragraph 1(c) of the Tenth Schedule. To be noted, subsequently, Mr.Mukul Rohatgi, took the stand that 'political party' as occurring in paragraph 2(1)(a) should be read as 'political party' as defined in Section 2(1)(f) of 1951 RP Act and submitted that this would be the most appropriate and correct constitutional position.

(iii)On the same day when writ petitioners / 18 MLAs met the Governor, the Leader of Opposition Mr.M.K.Stalin has also met the Governor and therefore, it should be presumed that 18 MLAs / writ petitioners were acting in cahoots with the Leader of Opposition. This by itself is clearly a case of voluntarily giving up membership of the political party, on whose ticket they were elected and therefore, paragraph 2(1)(a) stands attracted.

(iv)***Yeddyurappa*** case reported in (2011) 7 SCC 1,

wherein the bench strength is two Hon'ble Judges, should give way to ***Nabam Rebia*** case reported in (2016) 8 SCC 1, where the bench strength is five Hon'ble Judges, i.e., Constitution Bench.

(v)As a more pointed version of the previous submission, it was submitted by Mr.Mukul Rohatgi that paragraph 122 of Yeddyurappa at page 36 of the reported judgment should give way to paragraphs 164 and 209 of Nabam Rebia case. (Paragraphs and page numbers are as reported in the journals set out in the Catalogue supra).

13(d) Mr.C.S.Vaidyanathan, learned Senior counsel appearing for third respondent EPS made submissions, which can broadly be summarised as follows:

(i)The impugned order is dated 18.9.2017 and the events should not be frozen on that day. Subsequent events also should be looked into. Subsequent events including 18 MLAs / writ petitioners campaigning for an independent candidate, namely, T.T.V.Dhinakaran in the by-election in Dr.R.K.Nagar Assembly election will clearly show that paragraph 2(1)(a) of Tenth Schedule is attracted. However, in his usual fairness, Mr.C.S.Vaidyanathan, learned senior counsel submitted that subsequent events being looked into in Tenth Schedule proceedings is not blessed with direct authorities and law in this regard has to be laid down by this Bench was his further say. In other words, learned senior counsel urged that this Bench should lay down the law in this regard.

(ii)Yeddyurappa judgment has clearly been overruled by Nabam Rebia by implied overruling principle was his assertion.

(iii)Inaction of Speaker in the complaint against OPS and

other MLAs, who voted against AIADMK on 18.2.2017 cannot be looked into in the instant writ petitions and should be looked into in other writ petitions pending in this court, details of which have been set out in the chart given by him which has been extracted supra in this order. To be noted, the other writ petitions are W.P.Nos.26017, 27853 to 27856 of 2017, wherein inter-alia a direction to Speaker has been sought for in this regard. *To be noted, as a matter of strict judicial discipline, I refrain from dealing with this point, in the light of the aforesaid order dated 27.04.2018 (made by another Hon'ble Division Bench) in the five writ petitions about which there is a mention under the captions 'Preface' supra and 'Preface to Discussion' infra. In other words, this point is left open for being carried to its logical end based on further proceedings in the other five writ petitions in the Hon'ble Supreme Court. Also to be noted, petitioners pitched themselves very strongly in arguments on this point.*

(iv)Writ petitioners / 18 MLAs in their representation to the Governor have clearly asked for constitutional machinery to be set in motion. Constitutional machinery being set in motion according to him would mean only two things, i.e., imposition of President's Rule under Article 356 of COI or calling for a floor test.

(v)As a corollary to the previous point, it was argued that the Governor cannot change the CM and it is a matter of internal affairs of the legislature party. The Governor has to keep away from the thicket of politics as clearly laid down by the Constitution Bench in Nabam Rebia case, particularly paragraphs 209 and 210 of the said judgment.

(vi)The submission on the part of the writ petitioners that they gave representation to the Governor only for the purpose of changing the CM is completely untenable as the constitutional scheme does not provide for such a course to be adopted /

effected by the Governor. In fact, the Supreme Court has held that the Governor should refrain from getting into such internal affairs of a legislature party. On a demurrer, even if one is able to show that principles of natural justice have been violated, that will not be the end of the matter as prejudice owing to such violation of principles of natural justice has to be established to assail the order of the Speaker (impugned order) on this ground. Besides this, he submits that Yeddyurappa stands impliedly overruled by Nabam Rebia and is per incuriam in the light of ***Kihoto case***.

13(e) After completion of rival submissions, in the course of reply, it was put to learned senior counsel on both sides about formulating the entire gamut of facts and legal submissions into one pointed issue. That pointed issue (as suggested by the Bench) was like this: 'Whether action of writ petitioners / 18 MLAs in giving representation dated 22.8.2017 to the Governor attracts the rigor of paragraph 2(1)(a) of Tenth Schedule is the core issue, which should be examined and answered by perambulating within the four corners of the scope of judicial review of the Court qua order of Speaker?' Senior counsel on both sides agreed.

13(f)It is deemed appropriate to set out that by 'four corners of the scope of judicial review of Court qua Speaker's order', what is meant is the four grounds for judicial review qua Speaker's order as laid down in ***Kihoto case*** being (i) violation of constitutional mandate, (ii) non compliance with principles of natural justice, (iii) mala fides and (iv) perversity.

13(g) In the light of the above broad outline of submissions and case laws, Court proceeds with 'Discussion'.

14 **DISCUSSION** :

Preface to Discussion :

14(a) Read this in conjunction with and in continuation of the preface in paragraph 1(a) supra. I have noticed the aforesaid order dated 27.04.2018 made by another Hon'ble Division Bench in the aforesaid five writ petitions, i.e., W.P.Nos.26017, 27853 to 27856 of 2017. As that order pertains to some of the grounds urged by 18 MLAs / writ petitioners in this matter, I am not going into those grounds and those aspects urged before this Bench by the writ petitioners which form subject matter of the aforesaid five writ petitions. In other words, as a matter of judicial discipline, I refrain from expressing anything and I refrain from even dealing with grounds regarding OPS and 10 others and their voting in the floor test on 18.02.2017 as well as the mala fides plea insofar as it is pivoted and predicated on this inaction in OPS and 10 others ground. This course is being adopted in strict adherence to judicial discipline. To be noted, mala fides plea on other grounds have been dealt with.

14(b) The reference made by Hon'ble Supreme Court in ***S.A.Sampath Kumar*** case vide order dated 08.11.2016 pertains to two aspects. The first aspect is whether a High Court exercising powers under Article 226 of the COI can direct a Speaker of a Legislative Assembly (acting as a Tribunal qua Tenth

Schedule) to decide a disqualification petition within a certain time frame. The question is whether such a direction would not fall foul of *quia timet action* doctrine mentioned in paragraph 110 of ***Kihoto*** case. The second aspect is whether quia timet action is permissible qua Speaker as the aforesaid Tribunal (Tenth Schedule). It was nobody's case before us that the aforesaid reference in ***S.A.Sampath Kumar*** case touches upon the powers of judicial review of this Constitutional court qua impugned order, i.e., order made by a Speaker in exercise of his powers under Tenth Schedule. In other words, the four grounds of judicial review as laid down in ***Kihoto*** case and restated by the Hon'ble Supreme court in subsequent judgments, i.e., violation of constitutional mandate, non compliance with principles of natural justice, mala fides and perversity remain unaffected. This is a common platform and basis on which arguments were advanced before this Court. Also to be noted, this Division Bench, post ***S.A.Sampath Kumar*** reference on 08.11.2016 passed orders in W.P. Nos.16275, 18788, 29591 to 29593 of 2017 dated 22.03.2018 in the Puducherry Assembly nominated MLAs case. Though the order of Speaker in that case was not under Tenth Schedule, this is mentioned only to restate that the powers of judicial review under Article 226 of COI qua orders of the Speaker remain unaffected by S.A.Sampath Kumar case reference.

14(c) As alluded to supra, it was nobody's case before us in these 18 writ petitions that powers of judicial review qua Speaker's order on the aforesaid four grounds as laid down as a constitutional determination by the Hon'ble Supreme Court in ***Kihoto*** case and restated in a line of authorities thereafter have been

altered in any manner. Therefore, I set out to examine the impugned order in the instant 18 writ petitions by perambulating within the four corners of judicial review of Speaker's order in the light of grounds urged before this court by writ petitioners, except the ground pertaining to OPS and 10 others.

14(d) With regard to the aforementioned order dated 27.04.2018 in W.P.Nos.26017, 27853 to 27856 of 2017, it is also noticed that the other Division Bench of this Court has acceded to the request of writ petitioners therein requesting leave to appeal to the Supreme Court. Therefore, in my humble and considered view, order in those five writ petitions shall also be treated as a matter that Hon'ble Supreme Court is in seizin owing to which I will not be saying anything on grounds pertaining to OPS and 10 others urged before us, leaving it to travel in accordance with law, as a matter of judicial discipline. In other words, this ground is left open.

14(e) From the narrative supra, it will be noticed that Five learned Senior Counsel addressed this Division Bench in these 18 writ petitions. To be noted, two of them, i.e., Dr.Abhishek Manu Singhvi and Mr.P.S.Raman appeared on behalf of 12 and 6 writ petitioners respectively (18 writ petitioners in all). Mr.Aryama Sundaram appeared on behalf of the Speaker and his Secretariat (Respondent Nos.1 and 4). Mr.Mukul Rohatgi appeared on behalf of the Chief Whip, who is the complainant before the Speaker and Respondent No.2 before this Court. Mr.C.S.Vaidyanathan appeared on behalf of EPS (Respondent No.3).

14(f) Notwithstanding elaborate submissions and serious contest between the two sides, there was one common platform on two aspects of the

matter, on the basis of which submissions were made.

14(g) Aforesaid two aspects of the matter constituting the common platform on which submissions were made are (i) status and character of the high office of the Speaker and (ii) scope of judicial review when an order of the Speaker is called in question.

14(h) On the first aspect, i.e., with respect to the character and status of the office of the Speaker, there is no dispute or disagreement before this Court that the office of the Speaker is a very high constitutional office and is a Tribunal exercising quasi judicial powers when issues such as disqualification are adjudicated. There is also no dispute that the high constitutional office of the Speaker is such that the Speaker should be completely above political thicket and party politics. It is also not in dispute that the Speaker alone has been given the privilege under Tenth Schedule to resign from a political party in whose ticket Speaker is elected to the House (on being elected as Speaker) and thereafter rejoin the political party if he ceases to be a Speaker within his tenure as an MLA. While Tenth Schedule itself is to eliminate the mischief of defection and floor crossing, such an exemption has been made only for the Speaker and this is to ensure that Speaker can act with complete impartiality and be completely above party politics though he or she himself / herself may have been elected to the House on the ticket of one political party or the other. Therefore, the principle that the office of the Speaker is a very high and honourable constitutional position, wherein and whereby a Speaker shall be completely dispassionate being the sanctus constitutional mandate requires no qualification

and admits of no exception.

14(i) In this regard, Courts have also laid emphasis on the dispassionate disposition of the Speaker besides reiterating the need for the Speaker to be above political thicket and Hon'ble Supreme Court has outlined how a speaker should function. Common platform in this regard is that this be construed as a Code for a 'Model Speaker'. This aspect is lucidly articulated by Hon'ble Supreme Court in ***Nabam Rebia*** case in paragraphs 237 and 238 and it will be extremely pertinent and appropriate to extract paragraphs 237 and 238 of ***Nabam Rebia***, which read 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 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."

(Underlining done by Court to supply emphasis and

highlight)

14(j) Courts have gone as far as saying that the very upholding of the Tenth Schedule (by a Constitution Bench of Honourable Supreme Court in the celebrated ***Kihoto*** case) was owing to the high office of the Speaker. This is eloquently articulated by Hon'ble Supreme Court in ***Jagjit Singh*** case reported in ***(2006) 11 SCC 1*** in paragraph 84 which reads as follows:

> **"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 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] ."

14(k) The second aspect of the common platform is the scope of judicial review qua a Speaker's order. As culled out from ***Kihoto*** and a line of authorities thereafter, judicial review of Speaker's order by Court can be on four grounds, viz., (a) violation of constitutional mandate, (b) non compliance with principles of natural justice, (c) mala fides and (d) perversity. To be noted, this has been set out supra.

14(l) Now that there is no dispute or disagreement amongst parties at lis before us about the stature of the Speaker and about the scope of judicial review of the order of the Speaker, the discussion shall proceed on these two basic fundamental undisputed principles which constitute the aforesaid common platform.

14(m) It would be appropriate to begin the discussion with the question whether adequate opportunity was given to the 18 MLAs / writ petitioners by the Speaker. It was argued before us emphatically that in Yeddyurappa case, only three days time was given to noticees, whereas three weeks time was given in the instant case. Testing whether principles of natural justice have been given a go-by or not may not be as simple as just counting the number of days given. What is to be tested is the nature of opportunity that was given / not given, as also the kind of opportunity the facts of the case demand. However, it is not necessary to delve more into this aspect of the matter as this court is not relying on ***Yeddyurappa case*** as the questions as to whether it is impliedly overruled and as to whether it is per incuriam are left open about which there shall be elaboration infra elsewhere in this order. It is also made clear that it is not for the High Court to go into the question as to whether a particular judgment of the Supreme Court has been impliedly overruled or is per incuriam. What is of relevance is, there are three sets of replies (replies to the show cause notice from Speaker dated 24.08.2017) from writ petitioners / 18 MLAs in the instant case. The first set of reply is dated 30.8.2017, the second is dated 5.9.2017 and the third is dated 14.9.2017. Common thread in all these replies is, 18 MLAs had

sought for cross examination of EPS, Whip / complainant (respondent No.2 before us). Besides this, writ petitioners have also sought for cross examination of concerned reporter, cameraman and news editor qua two Tamil TV channels.

14(n) According to writ petitioners, the above would have brought out very clearly the correct factual position as to whether they had exhausted all intra party mechanisms before going to the Governor. It would have also thrown light regarding the issue as to which faction is the political party (AIADMK) within the meaning of Section 2(1)(f) of 1951 RP Act (as on the date of the impugned order). To be noted, this is a demurrer plea as Speaker cannot decide this issue ('political party' on whose ticket MLAs were elected) when ECI was in seizin is their plea. In answer to this, it was argued that cross examination is not a matter of right and merely because an opportunity of cross examination is not given, it does not mean that there has been prejudice. It was also argued by learned senior counsel for Speaker that EPS and Whip cannot be called upon to prove the negative. It was argued by learned senior counsel for Speaker that onus of proof that they did meet EPS or at least attempted to meet EPS and exhausted all intra party mechanisms is on writ petitioners. There is no difficulty in finding an answer to this controversy. There can be no two opinions about the obtaining position that no one can be called upon to prove the negative. Equally, there can be no dispute about the legal position that burden of proof does not shift, but onus of proof shifts. In fact, onus of proof does not merely shift, but it oscillates / swings like a pendulum in a clock from one end of the lis to the other end. Writ petitioners are making positive assertion that they did meet and take every

attempt to sort out the matter within the party and therefore, they exhausted all intra party mechanisms. This assertion is denied by the complainant and EPS. Obviously, the complainant Whip and EPS cannot be called upon to prove the negative, but, nothing prohibits an opportunity being given to writ petitioners to prove their assertion.

14(o) To make the discussion in this regard complete, it is deemed necessary to place on record that Mr. Aryama Sundaram, learned senior counsel pressed into service Parimal's case in this regard. On facts, Parimal's case is one that arose out of a matrimonial dispute between husband and wife. The case of the wife was that divorce papers were not served on her and it was fraudulently shown as if it was served by manipulating and manufacturing an acknowledgement. Wife contended that she did not accept the divorce terms. It was held that burden of proof lies on the party which asserts a fact and not on the party which denies it. To set out a little more facts, this is a case arising from Delhi High Court. Originally, Divorce Petition was filed in Additional District Judge's Court and *ex parte* divorce was granted. After four years from the date of *ex parte* divorce, application to set aside the decree of divorce granted by the Additional District Judge was filed and the application was dismissed by the trial Court. Wife filed appeal against the trial Court order and Delhi High court allowed the appeal. When husband carried the matter to Supreme Court, Delhi High Court Judgment was set aside and the trial Court judgment was restored. In doing so, it was held that burden of proof lies on the person who asserts a fact and not on the person who denies it. This case law does not help the

respondents to advance their case. The reason is, factual background of Parimal's case is completely different. Furthermore, in this case, it is onus which does shift unlike burden. However, it is deemed relevant to extract paragraph 19 of ***Parimal***'s case, which reads as follows :

> **"19.**The provisions of Section 101 of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an allegation before he is entitled to a judgment in his favour. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The provision of Section 103 amplifies the general rule of Section 101 that the burden of proof lies on the person who asserts the affirmative of the facts in issue. "

14(p) In this regard, it is to be noted that Dr.Singhvi, learned senior counsel very fairly submitted that considering the high office that is held by EPS, an opportunity should have been given to cross examine his Secretaries or somebody else in the CM Secretariat as the writ petitioners, after all wanted to establish that they met EPS and / or they did make attempts to meet EPS and to sort out the matter within the party and with regard to the party. Considering the position that the issue as to whether writ petitioners / 18 MLAs exhausted all intra party mechanisms before going to the Governor or whether they rushed to the Governor is a very important determinant in this lis before the Speaker as this touches upon the issue of which faction is AIADMK political party within the meaning of Section 2(1)(f) of 1951 RP Act, these two issues are actually

dovetailed and therefore, such an opportunity to cross examine the individual concerned ought to have been given.

14(q) To put it in simple and straight terms, while according to writ petitioners, going to the Governor with the representation dated 22.8.2017 is the last straw on the camel's back, according to Mr.Aryama Sundaram, learned senior counsel for Speaker it is not the last straw after exhausting intra party mechanism, but it is based solely on T.T.V.Dhinakaran's letter dated 21.8.2017, which according to him is the sole stimulus. Therefore, the factual issue between the parties is whether the act of writ petitioners/ 18 MLAs approaching the Governor is the last straw on the camel's back or whether T.T.V.Dhinakaran's letter dated 21.8.2017 is the sole stimulus. This factual controversy could have been put to rest, if an opportunity to let in oral evidence on their side and cross examine (as sought for by the writ petitioners) had been given.

14(r) Let us now examine the procedure in this regard which is to be followed in Tenth Schedule proceedings before the Speaker. Rule 7(7) of TN Defection Rules mandates that the procedure to be followed would be the same as the procecdure for enquiry and determination by the Privileges Committee on any question as to breach of privilege. To find out what is the procedure to be followed by the privileges committee in a complaint of breach of privilege, Court looked into the TN assembly rules. Rule 230 of TN assembly rules says that it would be the procecure of the select committee. This takes us to Rule 150(4) of TN assemby rules which reads as follows :

"150.(1) x x x x x x x

x x x x x x x x x x x x x

(4)The Committee may administer oath or affirmation to a witness examined before it."

A reading of the aforesaid provision indicates that letting in oral evidence is built in as an integral part of any proceeding under the TN Defection Rules. In this case, owing to the aforesaid reasons and the peculiar facts of this case, this court is of the view that it was imperative to have permitted writ petitioners to let in oral evidence (which was sought for by writ petitioners) as that would have answered several crucial and critical questions (which now remain unanswered). To be noted, such unanswered questions include those which are determinants that go to constitute paragraph 2(1)(a) of Tenth Schedule which is the soul of this matter. To be noted, there is one more dimension to this aspect of the case. From the rule extracted supra, it may not come out clearly that the Speaker while acting as a Tribunal in Tenth Schedule proceedings, has the powers of the civil court including summoning of witnesses. On a demurrer, even if Speaker as a Tribunal under Tenth Schedule does not have civil court powers to summon witnesses, from the rule which is extracted supra (which is indisputably and undoubtedly applicable), it is clear that there is provision for examining witnesses on oath. Therefore, there was no impediment in permitting the writ petitioners to bring their witnesses and let in oral evidence, even if the witnesses they had sought for had not been summoned for cross examination. This demurrer submission of the writ petitioners is acceptable.

14(s) Be that as it may, considering the nature of the matter, Court

deems it appropriate to delve more into this aspect based on the submissions made before this court. It was argued on behalf of EPS that whether it is the last straw on the camel's back or whether aforesaid letter from T.T.V.Dhinakaran was sole stimulus, writ petitioners ought not to have gone to the Governor, as the Governor has no role in changing the CM. Therefore, it becomes necessary for the writ petitioners / 18 MLAs to answer two questions in this regard. Those two questions are :

(i)What at all did writ petitioners expect the Governor to do? And

(ii)Whether they would have voted against a Whip if the Governor had called for a floor test?

14(t) The answers to the aforementioned two questions are very intriguing and interesting. It was submitted by Mr.P.S.Raman, learned senior counsel that writ petitioners approached the Governor with the representation dated 22.8.2017 for the purpose of changing the CM, i.e., EPS. With regard to the second question, Dr.Singhvi, learned senior counsel categorically said that the writ petitioners would not have voted against a Whip if floor test had been called.

14(u) Let us now analyse the two questions and answers to the respective questions. With regard to the first question as to what writ petitioners expected the Governor to do, the answer that writ petitioners wanted the Governor to change the CM, definitely does not appeal to this court. The reason is, law is well settled by a Constitution Bench of the Hon'ble Supreme Court inter-

alia in ***Nabam Rebia's*** case that it is not for the Governor to change the CM and that the Governor should keep himself away from such political thicket. In support of his answer, Mr.P.S.Raman, learned senior counsel referred to ***Yeddyurappa*** judgment, wherein there is a reference to change of CM by Governor by constitutional process. It was argued by Mr.C.S.Vaidyanathan, learned senior counsel that owing to the subsequent Constitution Bench judgment, i.e., ***Nabam Rebia's*** case, Yeddyurappa stands impliedly overruled. This was countered by Mr.P.S.Raman, learned senior counsel by saying that there can be no implied overruling in the light of the fact that ***Yeddyurappa*** case was not even cited before the Supreme Court in ***Nabam Rebia*** case and he pressed into service ***Krishena Kumar case, Prakash Shah case*** and ***Philip Jeyasingh case*** to say that there can't be implied overruling.

14(v) This Court is clear in its mind that in ***Nabam Rebia,*** the Constitution Bench of the Supreme Court has clearly stated that it is not within the realm of the Governor to embroil himself in any political thicket and ***Nabam Rebia*** principle is not only a ratio, but it has the status of a constitutional determination. The Constitution Bench in ***Nabam Rebia*** case (speaking through Justice Khehar, as His Lordship then was) went on to say that Governor must remain aloof from any disagreement, discord, disharmony, discontent or dissension within individual political parties. However, this Court refrains itself from going into the question as to whether ***Yeddyurappa*** stands impliedly overruled by ***Nabam Rebia***. This court is of the considered view that it is not for a High Court to decide whether a judgment of one Bench of Hon'ble Supreme

Court stands implied overruled by another. To be noted, Court has left the question of implied overruling of ***Yeddyurappa*** by ***Nabam Rebia*** open. There shall be little more elaboration on this (by relying on case laws) elsewhere infra in this order.

14(w) Besides implied overruling, respondents also wanted this court to hold that ***Yeddyurappa*** is per incuriam owing to ***Kihoto***. In other words, it is the pointed case of respondents that while ***Yeddyurappa*** has been impliedly overruled by ***Nabam Rebia***, it becomes per incuriam because of ***Kihoto***. A Full Bench of this court, i.e., Madras High Court vide ***Philip Jeyasingh Vs. The Joint Registrar of Co-operative Societies [(1992) 1 LW 216 (Mad) FB]*** judgment dated 22.01.1992 has clearly held that it is impermissible for this Court (High Court) to embark on such an exercise. Therefore, in sum and substance with regard to question No.1 and answer to the same, it follow as an inevitable sequitur that writ petitioners went to the wrong forum. However, going to the wrong forum alone will not attract ingredients of paragraph 2(1)(a) unless there is buttressing material. Discussion whether there was buttressing material follows. This puts an end to the analyse of question No.1 and answer to the same.

14(x) As would be evident from the narrative supra, the second question is whether writ petitioners / 18 MLAs would have voted against a Whip if the Governor had called for a floor test. As mentioned supra, there is a categoric answer given to this by Dr.Singhvi.

14(y) As already set out supra, the term 'political party' according to paragraph 2(1)(a) of Tenth Schedule should necessarily be given the meaning of

'political party' within the meaning of Section 2(1)(f) of 1951 RP Act as emphatically submitted by learned senior counsel Mr.Mukul Rohatgi without any disagreement from the co-respondents. Therefore, the plain and straight question is whether writ petitioners have voluntarily given up membership of AIADMK. It should be borne in mind while searching for an answer to this question that AIADMK here is not AIADMK 'legislature party' or 'original political party' as under paragraph 1(b) or 1(c) respectively of Tenth Schedule, but it is 'political party' within the meaning of Section 2(1)(f) of 1951 RP Act. To be noted, this is the stated position and also the constitutional position according to learned senior counsel for respondent No.2, which submission has been captured and set out supra. If a particular individual who had been elected as leader of AIADMK legislature party is acting against the interest of AIADMK political party and if some action has been taken by some MLAs to protect and preserve the AIADMK political party, whether it would attract paragraph 2(1)(a) is the moot question. As already alluded to supra, paragraph 2(1)(b) is hard facts and empirical, whereas paragraph 2(1)(a) is inferential.

14(z) Therefore, if a 'political party' as occurring in paragraph 2(1)(a) is read as 'political party' within the meaning of Section 2(1)(f) of 1951 RP Act (which learned senior counsel Mr.Mukul Rohatgi wanted this court to do) even if some action of some MLAs are against the majority view of the legislature party, it can well be argued that it is in the interest of the political party. To be noted, in the instant case, writ petitioners have actually not voted against any Whip. If this was a case under paragraph 2(1)(b), the answer may have been different.

14(aa) To be noted, writ petitioners also asked for some documents which are of relevance in this regard about which this court has alluded to supra.

14(ab) There is another very interesting aspect of this matter. The political party in whose ticket writ petitioners were elected to the 15th legislative assembly of Tamil Nadu is indisputably AIADMK. To be noted, representation was given to Governor on 22.8.2017 and complaint to the Speaker was given on 24.8.2017. Court may have to see whether AIADMK political party on whose ticket MLAs were elected (within the meaning of Section 2(1)(f) of 1951 RP Act) existed in the same form on the said dates. It is very doubtful as to whether AIADMK political party as it stood and party in whose ticket writ petitioners got elected existed as an entity in the same form on 22.8.2017 and 24.8.2017. The reason is, ECI being in seizin of the matter as also the interim order of ECI dated 22.3.2017 / 23.3.2017. In and by the interim order of ECI, Two Leaves reserved symbol of AIADMK party on which MLAs got themselves elected was frozen. Even if this is construed to be pertaining to Symbols Order, AIADMK party itself was recognised as two groups by ECI, namely AIADMK (Amma) and AIADMK (Puratchi Thalaivi Amma). It is necessary to remind ourselves that we are examining 'political party' within the meaning of Section 2(1)(f) of 1951 RP Act. It was argued that even if 'political party' occurring in paragraph 2(1)(a) is construed to be 'original political party' as defined in paragraph 1(c) of Tenth Schedule, it does not make much difference. In the light of peculiar facts and circumstances of this case, particularly, the issue of which faction of AIADMK is the real AIADMK political party and entitled to reserved Two Leaves symbol

being in seizin of ECI, this submission also is indisputable. The reason is, to put it in scientific / zoological parlance, 'political party' under Section 2(1)(f) of 1951 RP Act is a family, 'legislature party' and 'original political party' under paragraphs 1(b) and 1(c) respectively of the Tenth Schedule are species thereunder. To be noted, 'political party' is not defined in Tenth Schedule.

14(ac) In this regard, it is worthwhile to extract a portion of paragraph 2.2 of the written submissions filed by EPS. That portion reads as follows :

> "2.2.In the definition of Legislature Party and Original Political Party in Para-1 of the Tenth Schedule, the reference to the Political Party is that party to which the Member had got elected from. The definition of original Political party is relevant only for the purposes of paragraph 3 and 4 of the Tenth Schedule and has no significance for a dispute in paragraph 2(1)(a) of the Tenth Schedule....."

14(ad) It cannot be said that there is clear, categoric, unambiguous answer against the writ petitioners to the question as to whether writ petitioners / 18 MLAs voluntarily gave up their membership of AIADMK political party ('political party' within the meaning of Section 2(1)(f) of 1951 RP Act) on 22.8.2017 and 24.8.2017 when AIADMK political party (on whose ticket the MLAs concerned had got elected) itself did not exist as an entity in that same form owing to ECI being in seizin of the said matter and interim orders of ECI dated 22.3.2017 / 23.3.2017. The moment you move into the realm of 1951 RP Act, what ECI says becomes paramount. To be noted, only 'legislature party' and 'original political party' (both in relation to a House) have been defined in Tenth Schedule. 'Political party' as such has not been defined in Tenth Schedule and it

has been defined under Section 2(1)(f) of 1951 RP Act. In this regard, Court deems it appropriate to extract paragraph D(vii) of written submissions of writ petitioners in W.P.Nos.25267 and 25398 to 25402 of 2017 and paragraph II(2.2) of written submissions filed on behalf of third respondent. Aforesaid two extracts read as follows :

Paragraph D(vii) of written submissions of writ petitioners in W.P.Nos.25267 and 25398 to 25402 of 2017 :

"(vii) Lastly, the question of which is the original political party (as defined in Para 1(c) of the Tenth Schedule) and who belongs to it and who can claim the Two Leaves Symbol were all open issues on the date of the impugned order and clearly it is a matter of Constitutional doubt as to from which political party (as defined in Section 2(1)(f) of the of the Representation of Peoples Act, 1951) the 18 MLAs are believed to have voluntarily resigned from and which political party have they been disqualified from. Viewed from the point of the two groups, on the date of the representation to the Governor (22.08.2017) the 18 MLAs were admittedly the supporters of the AIADMK (AMMA) faction and Thiru TTV Dhinakaran was the Acting Deputy General Secretary to whom the CM itself had aligned with."

Paragraph II(2.2) of written submissions filed on behalf of third respondent :

"2.2.In the definition of Legislature Party and Original Political Party in Para-1 of the Tenth Schedule, the reference to the Political Party is that party to which the Member had got elected from. The definition of original Political party is relevant only for the purposes of paragraphs 3 and 4 of the Tenth Schedule and has no significance for a dispute in paragraph 2(1)(a) of the Tenth Schedule. The Political Party referred to in paragraph 2(1)(a) is the Political Party on whose ticket, a Member was elected to the Parliament or Assembly. In the present case, the political party inside the Tamil Nadu

Legislative Assembly is only All India Anna Dravida Munnetra Kahagam (AIADMK)."

14(ae) Now, for the purpose of absolute clarity, let us have a closer look at what exactly ECI was in seizin of in Dispute Case No.2 of 2017 and also the interim order of ECI dated 22.03.2017/23.03.2017. From the case file placed before the Court and the submissions made at the hearing, it becomes clear that ECI was in seizin of which of the two groups (i.e., E.Madhusudhanan and others on one side and V.K.Sasikala and another on the other side) is the real AIADMK and consequently as to which of these two groups will be entitled to have the reserved symbol of AIADMK, being two leaves symbol. To be noted, AIADMK is a recognized political party in the State of Tamil Nadu and Union Territory of Puducherry. Therefore, from the date of filing of Dispute Case No.2 of 2017 in ECI i.e., 16.03.2017 or at least from 22.03.2017 / 23.03.2017 when interim order was passed by ECI till 23.11.2017, when the ECI delivered its final verdict in Dispute Case No.2 of 2017, there was no AIADMK political party as an entity in its form in which / whose ticket writ petitioners got elected ('political party' within the meaning of Section 2(1)(f) of 1951 RP Act) in law. It is to be noted that it is ECI that has to decide which is a political party within the meaning of Section 2(1)(f) of 1951 RP Act. In fact, issues as to which are all registered, which are all recognized in State and the political parties which are recognised in the national level are issues which are in the exclusive domain of ECI inter-alia under Article 324 of COI. Therefore, there is no difficulty in coming to the conclusion that which faction of AIADMK political party, i.e., a political party recognized in the

State of Tamil Nadu and Union Territory of Puducherry, is the real AIADMK political party (on whose ticket writ petitioners were elected) was in issue between 16.03.2017 and 23.11.2017 before the sole Constitutional Authority in this regard, i.e., ECI. It means that which set of people can actually be called AIADMK and which group of people will be entitled to the reserved symbol was an issue which the ECI was in seizin of. The only election that happened in the aforesaid period is the by-election to R.K.Nagar Assembly constituency and the last date for receiving nomination was 23.03.2017. Therefore, the interim order was passed by ECI. To be noted, the interim order was passed by the ECI because of the by-election in Dr.Radhakrishnan Nagar Assembly Constituency only because the last date for receiving nominations was 23.03.2017. Otherwise, there would have been no need for the interim order at all and every individual concerned should necessarily await the outcome of ECI to decide which faction is the real AIADMK political party within the meaning of 1951 RP Act. This is clearly articulated in Paragraphs 4 and 6 of the interim order of ECI. It is deemed appropriate to extract the same, which read as follows:

> "4. In view of the fact that a bye-election from 11-Dr.Radhakrishnan Nagar Assembly Constituency in Tamil Nadu had been notified by the Commission on that day (16th March 2017), the Commission sent copy of the application to the Respondents asking them to submit their reply on 20th March 2017. Both the groups were directed to submit documents to support their claims by the said date. On a request from the Respondents, they were permitted to file the documents by 21 March, 2017.
>
> 6.In view of the urgency involved in the manner inasmuch as tomorrow 23rd March 2017) is the last date for filing nominations in 11-Dr.Radhakrishnan Nagar Assembly Constituency in Tamil Nadu, the mater was beard by the Full Commission todayi.e, 22nd march 2017. The hearing commenced at 10.30am, as scheduled, and continued for more than six hours at a stretch upto 05.00pm.

> Elaborate arguments were advanced by Shri.C.S.Vaidyanathan and Shri Krishnan Kumar, both learned senior counsels, for the petitioners No.1, 2 and 3. Equally detailed oral submissions were made by Shri A.Sundaram, Sri Mohan Parasaran and Shri Salman Khurshid, all learned senior counsels, on behalf of respondents No.1 and 2. In addition, the Commission also heard Shri Manoj Pandian, learned counsel for Shri.K.C.Palanisamy, Ex-Member of Parliament , who had easrlier made a petition before the various organization levels running into 15,890 pages contained in 59 volumes. The index of individual affidavits filed by the petitioners itself runs into three volumes containing 554 pages. To counter the claims of the petitioners, the respondents have also filed equally voluminous records in 57 volumes comprising approximately 3,975 pages. Commission on 6th January, 2017 in a related matter and who desired to be heard in the matter in terms of Para 15 of the Symbols Order, as per his request received on 21st March 2017. In support of their claims, the petitioners have filed voluminous records containing documents and individual affidavits of a large number of Members of Parliament, State Legislative Assembly of Tamil Nadu and members of the party at various organizational levels running into 15,890 pages contained in 59 volumes. The index of individual affidavits filed by the petitioners itself runs into three volumes containing 554 pages. To counter the claims of the petitioners, the respondents have also filed equally voluminous records in 57 volumes comprising approximately 3,975 pages."

14(af) In other words, it needs no elucidation to say, even dehors the interim order, what ECI was in seizin of and the consequences of the same is as set out supra. To add further clarity and specificity, in this period of 16.03.2017 to 23.11.2017, if a MLA had done something or had not done something, it would be completely untenable to apply an inferential process to say that such action or inaction of the MLA tantamounts to voluntarily giving up the membership of AIADMK political party (on whose ticket he was elected) until ECI gave its final verdict on 23.11.2017. To be noted, impugned order of Speaker is dated 18.9.2017. A question of voluntarily giving up membership of AIADMK political party in whose ticket a legislator was elected could not at all have been answered conclusively in this period. There is no doubt or dispute that AIADMK

political party being a political party within the meaning of Section 2(1)(f) of 1951 RP Act, is the political party in whose ticket writ petitioners were elected in May of 2016. The indisputable obtaining position in the period between 22.08.2017 and 18.09.2017 (being the period between the date on which the representations of 18 writ petitioners were given to the Governor and the date on which the impugned order was made), was that the ECI was in seizen 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 elected). Therefore, it is indisputable that it is impossible to find an answer to whether writ petitioners have voluntarily given up the membership of the real AIADMK in whose ticket or for that matter that AIADMK in whose ticket they were elected. In this regard, court has also taken note of 91st Amendment to the Constitution which came into effect from 1.1.2004 omitting paragraph 3 of Tenth Schedule. Court is also clear in its mind that this is not a case of break away, merger or allied issues. ECI proceedings are referred to only to highlight that the question of which entity is 'AIADMK' in whose ticket the MLAs were elected itself was in issue on the date of the impugned order and therefore, the question of whether an MLA has 'voluntarily given up his membership of AIADMK' could not at all have been decided much less decided conclusively on the date of the impugned order. To be noted, in the representations to Hon'ble Governor dated 22.8.2017, writ petitioners have categorically averred “I further submit that I have not given up my membership of AIADMK and I am only doing my duty as a conscious citizen.....”. Be that as it may, such intricate questions

could certainly not have even been attempted to be answered in this period. On a demurrer, even if it could have been done, it certainly cannot be done without oral and documentary evidene in this regard.

14(ag) The fact that such a conclusion, i.e., conclusion that writ petitioners have voluntarily given up the membership of the political party in whose ticket they were elected, resulting in paragraph 2(1)(a) being attracted qua writ petitioners, was arrived at by giving a complete go-by to the ECI proceedings. This is clear from paragraph 62 of the impugned order. This Court deems it appropriate to extract paragraph 62 of the impugned order which reads as follows :

> "62.A futile attempt on the part of the Respondents that the election Commission has passed an interim order restraining the use of the Party Symbol and Name simpliciter and the Petitioner having used the same, the petition suffers from infirmity would also not hold water. The petition filed before me is one for disqualification on the ground of defection. The Respondents have admitted in their reply that they have voted in favour of the resolution appointing Mr.Edapaddi K.Palanisamy as the Leader of the party. Based on the same Mr.Edapaddi K.Palanisamy was sworn in as a Chief Minister on 16.2.2017. Therefore in these proceedings I am required to determine whether the representation given by the respondents whether impliedly / expressly amounted to voluntarily giving up of his Membership of such a political party, which I have held against them."

14(ah) Interestingly, in the hearing now (obviously post impugned order), reliance has been placed on the final order of the Election Commission. This is articulated in paragraph 8.5 of the written submissions of EPS. Relevant portion reads as follows :

> "8.5.On the further question regarding the proceedings before the Election Commission, the Election Commission by an Order dated 23.11.2017 has held that the original AIADMK Party is the one which is headed by the 3rd Respondent herein and O.Paneer Selvam. The discussion in this regard relating to the meting of General Council on

> 12.9.2017 [paragraphs 8, 46 and 50 of the ECI Order] and all other issues have been discussed would clearly show that the petitioners owe their allegiance to an Individual who is not even a primary member of the party. The majority enjoyed by the Original Party i.e. Respondent No.3 and O.Paneer Selvam had been discussed in paragraphs 56 to 60] of the Order of Election Commission. ....."

14(ai) Unfortunately, this is of no avail and does not help the respondents as the impugned order is dated 18.09.2017 is much prior to the final order of ECI dated 23.11.2017.

14(aj) Besides proceedings before ECI not being taken into account in the aforesaid manner, there is one other fundamental error / flaw in the impugned order. On 16.02.2017, there were no proceedings before ECI. However, the impugned order says that writ petitioners have voted in favour of a resolution appointing EPS as leader of the party and therefore, this does not hold water.

14(ak) The aforesaid approach of coming to the above conclusion, more so on the basis of writ petitioners voting in favour of an intra party resolution on 16.02.2017 before the ECI was seized of the matter, is clearly perverse. The fact that such conclusion was arrived at without oral evidence enhances the error. To be noted, 'perversity' is one of the four grounds of judicial review qua Speaker's order.

14(al) It may be necessary to look at what exactly is perversity. In ***S.R.Tewari*** case, Hon'ble Supreme Court held that finding of fact can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant materials or by taking into consideration irrelevant / inadmissible materials. This is artiulated in paragraph 30 of ***S.R.Tewari*** case, which reads as follows :

> **"30.** The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide *Rajinder Kumar Kindra* v. *Delhi Admn.* [(1984) 4 SCC 635 : 1985 SCC (L&S) 131 : AIR 1984 SC 1805],*Kuldeep Singh* v. *Commr. of Police* [(1999) 2 SCC 10 : 1999 SCC (L&S) 429 : AIR 1999 SC 677], *Gamini Bala Koteswara Rao* v. *State of A.P.* [(2009) 10 SCC 636 : (2010) 1 SCC (Cri) 372 : AIR 2010 SC 589] and *Babu* v. *State of Kerala* [(2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] .) "
>
> (Underlining made by court to supply emphasis and highlight)

14(am) Perversity is not necessarily always regarding weight of evidence. In ***Godfrey Vs. Godfrey [106 NW 814]***, perversity was defined as tuned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc., This was quoted with approval by Hon'ble Supreme Court in ***Arulvelu*** case authored by Hon'ble Mr.Justice Dalveer Bhandari (as His Lordship then was). Relevant paragraphs are paragraphs 26, 27 and 30 which read as follows :

> **"26.** In *M.S. Narayanagouda* v. *Girijamma* [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In *Moffett* v. *Gough* [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In *Godfrey* v. *Godfrey* [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.
>
> **27.** The expression "perverse" has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

"*Perverse*.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."

2. Longman Dictionary of Contemporary English, International Edn.

Perverse.—Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English, 1998 Edn.

Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)

Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.

"*Perverse*.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

30. The meaning of "perverse" has been examined in *Excise and Taxation Officer-cum-Assessing Authority* v. *Gopi Nath & Sons* [1992 Supp (2) SCC 312] , this Court observed as under: (SCC pp. 316-17, para 7)

"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court to reappreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness —as distinguished from the legal permissibility—of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.""

14(an) As much has been said about the interim order of ECI dated

22.03.2017/23.03.2017, this Court deems it appropriate to crystallize its reading and understanding of the same in the light of the factual matrix of this case. The reading of this Court is that the question as to whether a particular MLA has voluntarily given up membership of AIADMK political party with regard to actions in the period between 16.03.2017 and 23.11.2017, could have neither been taken up nor tested in this period. Considering that this is a judicial review of the impugned order of the Speaker, conscious of the fact that the Court is not sitting on appeal over the order of the Speaker, this court has no difficulty in holding that the question whether MLAs have voluntarily given up the membership of AIADMK political party during the aforesaid period could not have been answered in the impugned order. 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 COI was in seizin.

14(ao) Another very important aspect that requires to be looked into (obviously on a demurrer) for deciding whether 18 writ petitioners have voluntarily given up membership of AIADMK political party is whether they were acting in cahoots with the DMK. Mr.Mukul Rohatgi, learned senior counsel pointed out that the leader of opposition Mr.M.K.Stalin met the Governor on the same day and gave a representation requesting him to call for a floor test. To be noted, according to respondents, it is the same day as the day on which 18 writ petitioners met the Governor. There is a slight dispute on facts here and it is not clear as to whether the Leader of opposition Mr.M.K.Stalin met the Governor on

the same day or a fortnight later in the first week of September, 2017.

14(ap)Therefore, this point can be tested by assuming that Mr.M.K.Stalin met the Governor on the same day. In the course of the hearing, the Court asked Mr.Mukul Rohatgi, learned senior counsel as to whether there is any material (either before Speaker or before this Court) to show that 18 writ petitioners were acting in cahoots or in tandem with DMK. In other words, the Court asked Mr.Mukul Rohatgi, learned senior counsel as to whether there is any material other than saying Mr.M.K.Stalin met the Governor on the same day and requested the Governor to call for a floor test.

14(aq) Mr.Mukul Rohatgi in his usual fairness submitted that there is none and in fact, he went a little further and said if there was any such material, he would have placed that first before the Court and projected/highlighted the same.

14(ar) In the light of the above trajectory that transpired in the hearing, the action of Mr.M.K.Stalin appears to be very natural and on expected lines. The reason is, the two political parties, i.e., AIADMK and DMK are arch-rivals and DMK is the principal opposition party. The principal opposition party has as many as 89 MLAs in the assembly and it also has the support of 8 INC members and the lone IUML member, with whom Court is informed DMK had a pre-poll alliance. That takes the tally to 98 in a 234 member assembly. In other words, the principal opposition party has a very sizeable presence in terms of numbers in the assembly. Under such circumstances, the moment the principal opposition party finds some dissension in the ruling dispensation, it is only natural that the

leader of opposition will try to seize the moment inter-alia by requesting the Governor to call for a floor test. In very simple terms, the moment you find fire in enemy's camp, it is only natural and logical that there will be an attempt to strike/ambush. When the principal opposition party with sizeable presence in the assembly sees fire in the enemy camp, it is only natural that it would try to seize the opportunity / seize the moment, attempt to ambush and leader of opposition Mr.M.K.Stalin meeting the Governor and giving representation requesting for floor test should be seen in this light and there cannot be any other perspective in the absence of corroborating or buttressing material.

14(as)However, it was argued that the view taken in the impugned order that the act of Mr.M.K.Stalin meeting the Governor on the same day being seen as 18 writ petitioners acting in cahoots is also a plausible view. Mr.Mukul Rohatgi, learned senior counsel may have been correct if there was at least some shred of evidence or material before the Speaker (or at least before this Court) to show that the two, i.e., 18 writ petitioners and DMK are acting in tandem. It has already been set out that learned senior counsel very fairly submitted that there is no such material and that he would have placed it first if there was some such material. Therefore, 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 constitutionally 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 the principal opposition party when there was no material before it. This is evident from paragraph 59 of the impugned order. Paragraph 59 of the impugned order reads as follows :

> "59. After the respondents visited the Hon'ble Governor and gave him their representation on 22nd August 2017, the Leader of the Opposition, Thiru. M. K.Stalin had also paid a visit to the Hon'ble Governor and had sought for a test of majority for the AIADMK government on the ground that the 19 MLAs who are the respondents here had withdrawn their support to the Chief Minister. I cannot view this as an isolated act or an unconnected incident. It is quite evident that the respondents herein have deviated from their loyalty to their party and have voluntarily taken the side of an Opposition party. In my view even though the respondents have not submitted any letter of resignation to the AIADMK party and claim that they continue in the party, this act of them followed by the representation of the Leader of the Opposition cannot be lost sight of. It is quite clear from the sequence of events that the Respondents are acting in concert with the Leader of the Opposition Thiru. M.K. Stalin."

14(at) Making an assumption without any material before the Tribunal is clearly perverse.

14(au) This takes us to the next point. With regard to Mr.S.T.K.Jakkaiyan, it was argued that he rescinding / changing his political position has been dealt with separately by Speaker under a sub-head styled '***II.Concerning Respondent No.17***', under which paragraphs 66 to 71 of the impugned order fall. It was pointed out by respondents that this S.T.K.Jakkaiyan issue has been dealt with separately by the Speaker though in the same impugned order. This submission on behalf of respondents that S.T.K.Jakkaiyan matter has been dealt with separately by the Speaker (though in the same

impugned order) in the aforesaid manner, is in response to the writ petitioners' allegation that they were not given an opportunity to cross examine S.T.K.Jakkaiyan and that a different yardstick had been applied to him owing to political exigencies resulting in mala fides. It is the specific case of respondents that S.T.K.Jakkaiyan's stand has had no impact whatsoever on the outcome of the impugned order qua writ petitioners. On this basis, it was argued that there was no need or necessity for giving an opportunity to writ petitioners to cross examine S.T.K.Jakkaiyan. If this stand and support of the impugned order and the stand of the co-respondents is accepted, anything that S.T.K.Jakkaiyan may have said also cannot be looked into. However, it is seen that in the impugned order statements made by 17th respondent before the Hon'ble Speaker, i.e., S.T.K.Jakkaiyan have been relied on to come to the conclusion that the writ petitioners have made false submissions before the Hon'ble Speaker. This is borne out in paragraph 45 of the impugned order and the relevant portion reads as follows :

> "45.The Respondents have all signed the vakalat dt.30th August 2017, an interim reply on the same day, reply/comments on 5th September 2017 and Second Reply/Comments on 14th September 2017. All these pleadings are said to have been signed at Chennai. It is documented by the statements of some of the Respondents themselves that they were not in Chennai on the said days. In fact, the 9th Respondent in his Petition filed on 14th September 2017 seeking for Police protection has categorically sought for Police protection for the other Respondents to travel from Kudagu, Karnataka to Chennai. Further, even on 30th August 2017, the Respondents were present at Puducherry. The statements made by the 17th Respondent bears out this fact. Therefore, in my opinion all the Respondents have made false submissions before me....."
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> (Underlining made by Court to supply emphasis and highlight)

14(av) It is the specific case of the writ petitioners that even this

statement of respondent No.17, S.T.K.Jakkaiyan, was not given to them. In other words, writ petitioners besides advancing an argument regarding opportunity to cross examine respondent No.17 are also saying that there is nothing on record to show that aforesaid statement of respondent No.17 was even furnished to writ petitioners. Therefore, besides being a case of not giving the right of cross examination to writ petitioners, it is also a case where material (statement / stand of respondent No.17) which has been put against them for arriving at conclusions adverse to writ petitioners in the impugned order, has not been furnished. Independent of each other, this court has no difficulty in coming to the conclusion that both are fatal qua impugned order as the statement of respondent No.17 has been used to come to a conclusion adverse to the writ petitioners. Relevant paragraph in the impugned order has been extracted supra.

14(aw) To be noted, this Court is not expressing any opinion whatsoever about dismissal of the disqualification complaint against respondent No.17. Whether using the statement of respondent No.17 against co-respondents before Hon'ble Speaker, i.e., writ petitioners without giving them a copy and without giving them opportunity of cross examination has been analysed / tested, in the light of the writ petitioners' complaint of non compliance with principles of natural justice which is one of the four grounds of judicial review qua Speaker's order. Equally, whether dismissing the petition against respondent No.17 alone while disqualifying writ petitioners amounts to applying different yardsticks resulting in mala fides (mala fides is also one of the four grounds of judicial review qua Speaker's order) has been examined. Therefore,

this shall not be construed as expression of any opinion one way or the other about dismissal of the petition against respondent No.17.

14(ax) It is also the stated position of the Speaker that S.T.K.Jakkaiyan's issue had no impact on the outcome in the impugned order qua writ petitioners. As this court is exercising powers of judicial review, we need to necessarily look at the order as a whole. Court has to necessarily look at the manner in which the Speaker has dealt with S.T.K.Jakkaiyan's case, who is respondent No.17 before the Speaker. There is no dispute or disagreement on facts that S.T.K.Jakkaiyan also gave a representation to the Governor. In fact, he gave the same representation on the same day along with the writ petitioners. To be noted, S.T.K.Jakkaiyan has even given the same first interim reply dated 30.8.2017 as well as the same second interim reply dated 05.09.2017 along with writ petitioners herein. Thereafter, S.T.K.Jakkaiyan has changed his position. This assumes significance for another reason which shall be discussed infra.

14(ay) In the instant case, if the Speaker comes to the conclusion that the moment 22.8.2017 representation was given, paragraph 2(1)(a) of Tenth Schedule is attracted, it is argued on a demurrer that this would apply to S.T.K.Jakkaiyan too. If he subsequently changed his position, it is for the political party in whose ticket he was elected to re-admit him in the party. That political party may even give him a ticket to contest elections again and he may even get re-elected. All that is in the realm of political party concerned / electoral politics and it is indisputable that the high office of Speaker is beyond and above all this. When it is the stated position of the respondents as a legal principle that

paragraph 2(1)(a) of Tenth Schedule is attracted, the moment writ petitioners gave 22.8.2017 representation to the Governor, S.T.K.Jakkaiyan also should stand disqualified. After all, the age old adage is 'what is sauce to Goose is sauce to Gander too'. It is seen from the impugned order that different yardsticks have been applied for respondent No.17, i.e., S.T.K.Jakkaiyan and other respondents, who are writ petitioners before us. This is mala fides argument that is being advanced by the writ petitioners as one of the grounds for assailing the impugned order. In this regard, it is to be noted that what exactly is mala fides has been dealt with with reference to case laws in this regard infra.

14(az) While on the S.T.K.Jakkaiyan issue, Court deems it appropriate to deal with / discuss one argument that was put forth by respondents, particularly by learned Senior counsel appearing for respondents 1 and 4. Learned Senior counsel submitted that in any legislative assembly where ruling party (political party) has a thin majority, a handful of legislators (MLAs) can join together, go to the Governor, give a representation because they are not able to have their way in the intra party mechanism / get their demands acceded to, create a threat of pulling down the Government and get their intra party grievance/s redressed and get their demands acceded to under such threat. This according to learned Senior counsel will lead to instability.

14(ba) On first blush, this argument appeared attractive. However, on a close and careful scrutiny of this argument, particularly in the light of the submissions made by writ petitioners dovetailed with arguments regarding S.T.K.Jakkaiyan, in the considered opinion of this court, it emerges very clearly

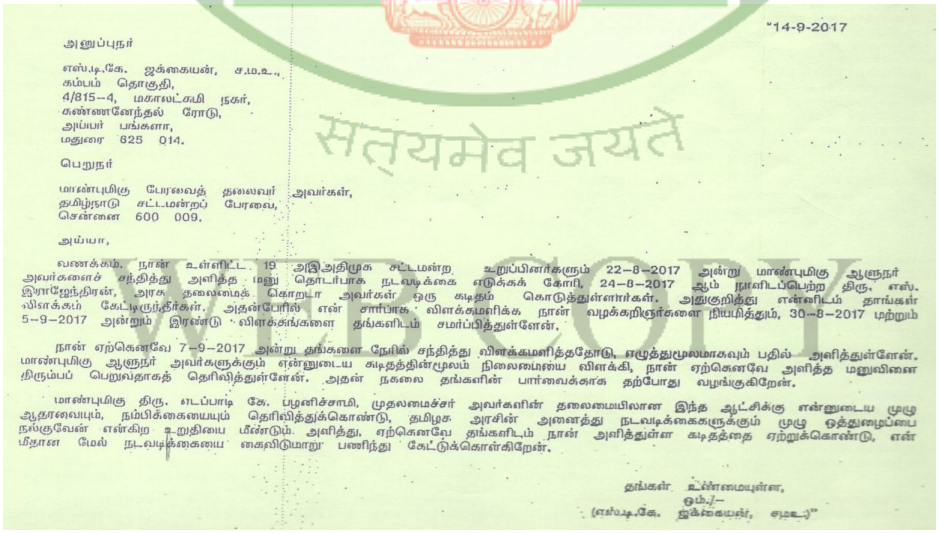
that this argument is not available for respondents in this case. The logic and the reason is straight and simple. In other words, it is no conundrum. S.T.K.Jakkaiyan (respondent No.17 before the Speaker) as per the admitted facts and as can be culled out from the impugned order of the Speaker not only went to the Governor along with writ petitioners and gave the same representation (dated 22.08.2017), but he also gave the same first interim reply dated 30.08.2017 and also the same second reply dated 05.09.2017 along with the 18 writ petitioners. Thereafter, as is evident from the impugned order of the Speaker, he has given a letter dated 14.09.2017 to the Speaker stating that he has changed his stand. On this basis, Hon'ble Speaker in the impugned order has held that allegations made against S.T.K.Jakkaiyan are not subsisting now and therefore, no further action is needed and the petition against 17th respondent before Speaker, i.e., S.T.K.Jakkaiyan has been dismissed by the Speaker vide this very impugned order.

14(bb) Going back to the aforesaid argument, from the impugned order, it emerges as an indisputable sequitur that a legislator can give a letter to the Governor, making allegations against the CM and thereafter, if he changes / rescinds his political position, the complaint under Tenth Schedule against him will be dismissed. If the aforesaid argument, particularly on behalf of respondents 1 and 4 is accepted, a legislator (MLA) can go to the Governor, give a representation making allegations against the CM and thereafter change / rescind his position (may be after the intra party demands which were earlier not acceded to, have been acceded to) and avoid disqualification. As according to

the impugned order, this is permissible, respondents 1 and 4 in this case cannot be heard to contend that in any legislature where the ruling party does not have overwhelming majority, a handful of MLAs can go to the Governor, put the CM and ruling party in tenterhooks and make them accede to the request which have to be sorted out through intra party mechanism.

14(bc) The relevant portions of the impugned order in this regard are paragraphs 67, 70 and 71. Court deems it appropriate to extract the same which read as follows:

> "67.After filing of the two reply statements dated 30th August 2017 and 5th September 2017, the 17th Respondent presented himself before me on 7th September 2017 and had handed over me a letter stating that he was pressurized into submitting the Representation dated 22nd August 2017 before the Hon'ble Governor and that he had realized that the same was a mistake and is seeking to withdraw the same from the Governor. He had also revoked the vakalat issued by him to his Advocate and had also withdrawn the reply statements submitted by him on 30th August 2017 as well as 5th September 2017. Thereafter, at the time fixed for the 17th Respondent on 14th September 2017, he was personally present and he had once again submitted a letter to me. The contents of which are reproduced herein below:



"14-9-2017

அனுப்புநர்

எஸ்.டி.கே. ஜக்கையன், எ.ம.உ.,
கம்பம் தொகுதி,
4/815-4, மகாலட்சுமி நகர்,
கண்ணாளேந்தல் ரோடு,
அப்பர் பங்களா,
மதுரை 625 014.

பெறுநர்

மாண்புமிகு பேரவைத் தலைவர் அவர்கள்,
தமிழ்நாடு சட்டமன்றப் பேரவை,
சென்னை 600 009.

அய்யா,

வணக்கம். நான் உள்ளிட்ட 19 அஇஅதிமுக சட்டமன்ற உறுப்பினர்களும் 22-8-2017 அன்று மாண்புமிகு ஆளுநர் அவர்களைச் சந்தித்து அளித்த மனு தொடர்பாக நடவடிக்கை எடுக்கக் கோரி, 24-8-2017 ஆம் நாளிடப்பெற்ற திரு. எஸ். இராஜேந்திரன், அரசு தலைமைக் கொறடா அவர்கள் ஒரு கடிதம் கொடுத்துள்ளார்கள். அதுகுறித்து என்னிடம் தாங்கள் விளக்கம் கேட்டிருந்தீர்கள். அதன்பேரில் என் சார்பாக விளக்கமளிக்க நான் வழக்குரிஞர்களை நியமித்தும், 30-8-2017 மற்றும் 5-9-2017 அன்றும் இரண்டு விளக்கங்களை தங்களிடம் சமர்ப்பித்துள்ளேன்.

நான் ஏற்கெனவே 7-9-2017 அன்று தங்களை நேரில் சந்தித்து விளக்கமளித்ததோடு, எழுத்துமூலமாகவும் பதில் அளித்துள்ளேன். மாண்புமிகு ஆளுநர் அவர்களுக்கும் என்னுடைய கடிதத்தின்மூலம் நிலைமையை விளக்கி, நான் ஏற்கெனவே அளித்த மனுவினை திரும்பப் பெறுவதாகத் தெரிவித்துள்ளேன். அதன் நகலை தங்களின் பார்வைக்காக தற்போது வழங்குகிறேன்.

மாண்புமிகு திரு. எடப்பாடி கே. பழனிச்சாமி, முதலமைச்சர் அவர்களின் தலைமையிலான இந்த ஆட்சிக்கு என்னுடைய முழு ஆதரவையும், நம்பிக்கையையும் தெரிவித்துக்கொண்டு, தமிழக அரசின் அனைத்து நடவடிக்கைகளுக்கும் முழு ஒத்துழைப்பை நல்குவேன் என்கிற உறுதியை மீண்டும் அளித்து, ஏற்கெனவே தங்களிடம் நான் அளித்துள்ள கடிதத்தை ஏற்றுக்கொண்டு, என் மீதான மேல் நடவடிக்கையை கைவிடுமாறு பணிந்து கேட்டுக்கொள்கிறேன்.

தங்கள் உண்மையுள்ள,
ஒம்/-
(எஸ்.டி.கே. ஜக்கையன், எ.ம.உ.)"

70.In view of the statements of Respondent No.17, viz.,

> Thiru.S.T.K.Jakkaiyan, MLA, I do not see the allegations made against him in the Petition as subsisting. Therefore, I hold that no further action needs to be initiated against the Respondent No.17, Thiru S.T.K.Jakkaiyan, M.L.A., Cumbum Constituency and accordingly dismiss the above Petition as against the 17th Respondent, viz., S.T.K.Jakkaiyan, M.L.A., Cumbum Constituency.
> Conclusion:
> 71.In view of the statements of the 17th Respondent, as mentioned above, I do not see the allegations made against him in the Petition as subsisting. Therefore, I hold that no further action needs to be initiated against the Respondent Thiru S.T.K.Jakkaiyan, M.L.A., and accordingly dismiss the above Petition as against the 17th Respondent."

14(bd) Court has also examined another response of respondents 1 and 4 in this regard. The other response of respondents 1 and 4 is that the Speaker has decided the case of Mr.S.T.K.Jakkaiyan separately from that of the petitioners. In fact, this response of respondents 1 and 4 in this regard is that Speaker after deciding the case of petitioners (writ petitioners) has dealt with the submissions in respect of 17th respondent separately. This is contained in paragraph 20 of the written submissions filed by respondents 1 and 4. Relevant portion of paragraph 20 reads as follows :

> "20.The other allegations made against the Order of the Speaker is the reliance on the statements made by Mr.STK.Jakkaiyan. It is submitted that the Speaker had decided the case of Mr.STK.Jakkaiyan separately from that of the Petitioners. In fact, in para-17 of the impugned order (Para-106 of CV) the Speaker had categorically held that he has decided the matters in two parts (i)concerning Respondent 1 to 16, 18 and 19 and (ii)concerning 17th Respondent. After deciding the case of Petitioners herein, wherein the Speaker has held that a representation of the nature given by the Petitioners to the Governor would amount to disqualification, he then has held with the submission in respect of 17th Respondent separately....."

14(be) This is completely incorrect and unacceptable for more than one reason. The impugned order of the Speaker placed before this Court is a 72

paragraph order running to 20 continuous pages. To be noted, 72 paragraphs are also continuous and numbered sequentially. In other words, the impugned order runs to 20 pages and consists of 72 paragraphs in all. Paragraphs are clearly in one sequence. Merely because the caption '**Concerning Respondent No.17**' has been inserted between paragraphs 65 and 66, it cannot be gainsaid that the Speaker has dealt with the case of S.T.K.Jakkaiyan separately. The second reason is, it is clearly incorrect to contend that the Speaker has decided the case of 18 writ petitioners herein and then taken up the case of S.T.K.Jakkaiyan. In the 72 paragraphs order, discussion runs into 70 paragraphs and conclusions are contained in paragraphs 71 and 72. Court deems it appropriate to extract that portion of the impugned order, i.e., paragraphs 71 and 72 which read as follows :

> Conclusion:
> 71.In view of the statements of the 17th Respondent, as mentioned above, I do not see the allegations made against him in the Petition as subsisting. Therefore, I hold that no further action needs to be initiated against the Respondent Thiru S.T.K.Jakkaiyan, M.L.A., and accordingly dismiss the above Petition as against the 17th Respondent.
>
> 72.Therefore, in exercise of the powers conferred upon me by the Tenth Schedule of the Constitution of India, I, P.DHANAPAL, Speaker of the Tamil Nadu Legislative Assembly do hereby declare that, -
>
> i) the following 18 members elected to the Tamil Nadu Legislative Assembly from the Constituencies mentioned against their names, namely. --
> 1.Thiru Thangatamilselvan, M.L.A., Andipatti Constituency,
> 2.Thiru R.Murugan, M.L.A. - Harur Constituency.
> 3.Thiru S.Mariappan Kennedy, M.L.A.,-Manamadurai Constituency.
> 4.Dr.K.Kathirkamu, M.L.A.,- Periakulam Constituency.
> 5.Tmt.C.Jayanthi Padmanabhan, M.L.A.,-Gudiyattam Constituency.
> 6.Thiru P.Palaniappan, M.L.A., - Pappireddipatti Constituency.
> 7.Thiru V.Senthilbalaji, M.L.A.,- Aravakurichi Constituency.
> 8.Dr.S.Muthiah, M.L.A., - Paramakudi Constituency.
> 9.Thiru P.Vetrriivel, M.L.A., - Perambur Constituency.
> 10.Thiru N.G.Parthiban, M.L.A., - Sholingur Constituency.

11.Thiru M.Kothandapani, M.L.A.,- Thiruporur Constituency.
12.Thiru T.A.Elumalai, M.L.A., - Poonamallee Constituency.
13.Thiru M.Rengasamy, M.L.A., - Thanjavur Constituency.
14.Thiru R.Thangathurai, M.L.A., - Nilakottai Constituency.
15.Thiru R.Balasubramani, M.L.A., - Ambur Constituency.
16.Thiru Ethirkottai S.G.Subramanian, M.L.A. - Sattur Constituency.
17.Thiru R.Sundaraj, M.L.A., - Ottapidaram Constituency.
18.Tmt.K.Uma Maheswari, M.L.A.- Vilathikulam Constituency.

have incurred disqualification for being members of the Tamil Nadu Legislative Assembly under Article 191(2) of the Constitution of India, read with Clause (a) Sub-paragraph (1) of Paragraph 2 of the Tench Schedule. Accordingly, the above members cease to be members of the Tamil Nadu Legislative Assembly with immediate effect; and

(ii)that the seats held by them in the Tamil Nadu Legislative Assembly shall thereupon fall vacant according to the provisions of Article 190(3)(a) of the Constitution of India."

14(bf) Therefore, the theory that S.T.K.Jakkaiyan has been dealt with separately is least convincing. Further more, as rightly pointed out by writ petitioners, there are clear references to statements made by Mr.S.T.K.Jakkaiyan in the body of the impugned order in paragraphs 45 and 46 which are obviously above the aforesaid insertion between paragraphs 65 and 66. Therefore, it is completely incorrect to say that S.T.K.Jakkaiyan case has been taken up only from paragraph 66. Beyond all these, 72 paragraphs 20 pages impugned order has been placed before this Court and this Court has to necessarily look into the entire impugned order. As rightly pointed out by learned senior counsel for writ petitioners, on an extreme demurrer, even if S.T.K.Jakkaiyan's case is believed to have been dealt with separately, it makes no difference as far as this argument (handful of MLAs going to Governor argument) of respondents 1 and 4 is concerned.

14(bg) Significantly, in the written submission filed on behalf of respondent Nos.1 and 4, it has been categorically contended on behalf of the

Speaker that disqualification takes place the moment the act of voluntarily giving up membership of the party has been committed. In fact, this position has been categorically articulated in the written submission on behalf of the Speaker by placing reliance on ***Rajendra Singh Rana*** case. Relevant paragraph is paragraph 5 and the same reads as follows :

> "5.In fact the similar arguments as in the present case that it is an instance of collective dissent was also made before the Supreme Court previously in the case of **Rajendra Singh Rana & Ors Vs. Swami Prasad Maurya & Others reported in (2007) 4 SCC 270**. The Constitutional Bench of the Supreme Court after discussing the context behind introduction of Tenth Schedule has held that the intention was to prevent defection and had held that the disqualification takes place the moment the act of voluntarily giving up the membership of the party has been committed. Ref: Paragraphs 25, 32, 33, 34, 40 and 41 of the judgment."
>
> (Underlining made by Court to supply emphasis and highlight)

Therefore, by this unambiguous stated position taken by the counsel for Speaker, S.T.K. Jakkaiyan should have been held to have stood disqualified on the day he went to the Governor along with 18 others as it is axiomatic and it follows as a necessary corollary to the stated position. Treating S.T.K.Jakkaiyan on a different footing merely because he changed his political position / stand is mala fides, according to writ petitioners. Considering the stated position of the Speaker, this submission of writ petitioners is not unacceptable. To be noted, this plea is being made by the writ petitioners on a demurrer. In this regard, it is deemed relevant to extract a portion of paragraph 20 of written submissions of the Speaker, wherein it has been averred as follows :

> "20. .....After deciding the case of the Petitioners herein, wherein the Speaker has held that a representation of the nature given by the Petitioners to the Governor would amount to disqualification, he then has held with the submission in respect of 17th Respondent separately. ...."

(Underlining made by Court to supply emphasis and highlight)

The aforesaid portion of paragraph 20 of the written submission of the Speaker clearly buttresses the plea of writ petitioners that different yardsticks have been applied for them and S.T.K.Jakkaiyan based on political exigencies which according to writ petitioners is mala fides qua impugned order. In this regard, the argument of Dr.Singhvi, learned senior counsel that the impugned order is intended to create an artificial majority in favour of EPS assumes significance. It was his specific submission that out of 232 MLAs (in a 234 member House, one seat has vacant owing to the demise of former CM and one is the Speaker), simple majority required is 117 assuming all MLAs vote, which EPS will not have if the writ petitioners are not with him, whereas the majority required will come down from 117 to 107 if 18 MLAs are disqualified and ruling establishment will have 115. This court does not want to delve into these arithmetics in greater detail. However, if the stated position on behalf of the Spaker is disqualification occurs the moment an MLA goes to the Governor, it cannot be different for S.T.K.Jakkaiyan. When such is the position, the fact that S.T.K.Jakkaiyan has not been disqualified (though he has even sent two replies on the same line as the 18 writ petitioners) solely on the ground that he has rescinded his political position lends support to Dr.Singhvi's submission that the impugned order intends to create artificial majority. According to learned Senior counsel, besides mala fides, this is also violation of constitutional mandate and perversity. 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. The only reason given is he rescinded his political position. Therefore, court is inclined to accept this submission of learned Senior counsel Dr.Singhvi that the impugned order is hit by mala fides which is clearly one of the four grounds of judicial review qua Speaker's order.

14(bh) To be noted, in all the aforesaid observations, as already mentioned supra, this court is not expressing any view one way or the other regarding S.T.K.Jakkaiyan. This is merely examination of the impugned order of Speaker within the parameters of judicial review qua mala fides set out supra.

14(bi) To crystallize and make an enumeration, four aspects of the matter emerge very clearly from the aforesaid discussion.

14(bj) One aspect is that the argument of handful of legislators going to the Governor in any legislative assembly for getting their intra-party grievance redressed or getting their other demands met is clearly and certainly not available to respondents, particularly respondents 1 and 4 in the instant case.

14(bk) Second aspect of the matter is, arguments of mala fides (one of the four grounds of judicial review qua Speaker's order) canvassed by writ petitioners stands buttressed as in the case of respondent No.17 alone, the Speaker has clearly dealt with the same by applying a different yardstick. In this regard, it is necessary to refer to ***Rajendra Singh Rana*** case, wherein a Constitution Bench of Hon'ble Supreme Court held that the 'act' that constitutes disqualification in terms of paragraph 2 of Tenth Schedule is an act of 'giving up'. The Constitution Bench of Hon'ble Supreme Court went as far as saying that the decision of the Speaker is really a decision ex post facto and such a decision

cannot be taken by the Speaker based on the obtaining position on the date of the decision of the Speaker. Elaborating on this, Constitution Bench of Hon'ble Supreme Court has held clearly that interpretation of a contrary nature would leave the disqualification to an indeterminate point of time and to the whims of the decision making authority. This is articulated in paragraph 34 of ***Rajendra Singh Rana*** case and this Court deems it appropriate to extract the same, which reads as follows:

> **"34.**As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of para 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision ex post facto. The fact that in terms of para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (*sic* it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snowballing effect, will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the legislature party is alleged to have been voluntarily given up. "
>
> (Underlining made by court to supply emphasis and highlight)

14(bl) Therefore, applying the aforesaid constitutional determination made by Hon'ble Supreme Court, it is clear that even on a demurrer, disqualification, if at all, in this case could have occurred only on 22.08.2017 when MLAs gave the representation to the Governor. Based on one of the legislators rescinding / altering his political position subsequently, the impugned order has dismissed the petition against that one MLA alone while disqualifying 18 others. Therefore, this is clearly mala fides.

14(bm) The third aspect which emerges from the aforesaid part of the discussion is, the grievance of writ petitioners that they were not given an opportunity to cross examine S.T.K.Jakkaiyan is well founded. This is so as S.T.K.Jakkaiyan has clearly made statements pertaining to what culminated in giving the representation to the Governor on 22.8.2017 (which is the fulcrum and may be the epicenter of this entire lis). The impugned order has arrived at conclusions adverse to the writ petitioners based on the statements of respondent No.17 which has been adequately alluded to supra with elaboration. At least copies of his statement / reply should have been given to writ petitioners and their response should have been sought. Therefore, non compliance with principles of natural justice point urged by writ petitioners is also clearly established in this regard.

14(bn) The Court makes it clear that it is aware that S.T.K.Jakkaiyan is not before this Court in these 18 writ petitions. The aforesaid aspect is only to test the impugned order. This court is conscious that the

ultimate decision will not in any manner affect S.T.K.Jakkaiyan. If the impugned order is sustained, he gets the benefit under the order and continues to be a legislator. If the impugned order is dislodged, he will go back to the position which existed prior to the date of the complaint by Whip dated 24.8.2017. Logic is, if writ petitioners cannot be disqualified for giving 22.8.2017 representation, S.T.K.Jakkaiyan can also not be disqualified. Either way, he will continue as a MLA without any disqualification and without being visited with any one of the consequences of action under Tenth Schedule. This is being set out only for the purpose of abundant clarity and with the objective of making this order as comprehensive as possible.

14(bo) The fourth aspect that emerges from the aforesaid part of the discussion pertains to prejudice that has been caused to writ petitioners owing to non compliance with principles of natural justice. As alluded to supra, it is clear that respondent No.17 before the Speaker has made statements which concern the 18 writ petitioners and the events / run up that culminated in the representation dated 22.8.2017 being given to the Governor. The 22.8.2017 representation to the Governor being the fulcrum / eye of the storm / epicenter of this lis, it is clear that prejudice has been caused to writ petitioners owing to not being given an opportunity for cross examining respondent No.17. At the least, copies should have been given and response of writ petitioners should have been sought for. To be noted, statements of respondent No.17 have been put against the writ petitioners and on the basis of the statements of respondent No.17, it has even been concluded that the writ petitioners have made false

submissions. This is in paragraph 45 of the impugned order and the relevant portion of the impugned order in this regard has been extracted supra elsewhere in this order. This prejudice applies to other cross examination requests which also were made by writ petitioners. In other words, the request of writ petitioners to let in oral evidence as well as request for cross examination is not afflicted by empty formality doctrine.

14(bp) In continuation of the above, when the writ petitioners vide their reply requested that they should be permitted to examine witnesses on their side, the same was negatived by the Speaker, by saying that examination of witnesses is not necessary and all that is required is to consider whether the available material itself would show whether respondents have voluntarily given up membership of the political party in whose ticket they were elected. This is set out in paragraph 38 of the impugned order and that portion of paragraph 38 of the impugned order reads as follows:

> "38. ..... The Respondents have also sought in their reply for examining witness on their side. However, neither the name nor the identity of the witnesses had been revealed. In these proceedings the examination of witnesses would not be necessary. All that is required is consideration as to whether the available material itself would show whether or not the Respondents have voluntarily given up their membership of their Party. For the reasons mentioned and the explanations provided for all the above preliminary submissions, I am of the opinion that the prayers sought for by the Respondents seeking for documents and cross examination have to be dismissed."

14(bq) In paragraph 58 of the impugned order, it has also been said that 'there is no necessity of investigating or examining any person when the respondents themselves unequivocally admitted that in conscious state of mind,

they have submitted their representation'.

14(br) To be noted, there is no material placed before the Court to show that the Speaker had given a date for writ petitioners to let in evidence. On a demurrer, even if it is assumed that the Speaker has no power like Civil Court to summon a witness, there should have been some communication fixing a date for writ petitioners to bring their witnesses. It is nobody's case before this Court that a date was fixed for writ petitioners to bring their witnesses and they did not do so on that date.

14(bs) Besides this, it has been set out in the impugned order that proceedings before Hon'ble Speaker need not be in strict compliance of CPC or Civil Rules of Practice. Impugned order says so by relying on Article 212 of COI which in the considered opinion of this Court does not help the respondents' case herein, as the TN Defection Rules made by the Speaker himself by exercise of powers under paragraph 8 of Tenth Schedule provides for evidence being taken and this has been alluded to supra. This aspect of the matter has been set out in paragraph 23 of the impugned order and the same reads as follows:

> "23.I am also aware that even though it is a proceeding under Article 212 of the Constitution of India, my decision would be called to question before the Hon'ble Courts and it is for this reason that the Respondents have also repeatedly referred to several judgments in their pleadings. In any case, since it is proceedings as mentioned in Article 212 of the Constitution of India, the extent of procedural compliances required cannot be equated to those that are required when a matter is being taken up by a judicial forum. This is not to say that I have failed to comply with any procedure. I am referring to the said Article only to state that the Respondents in the name of procedure are seeking for strict compliance with Section 65 B of the Evidence Act, Civil Rules of Practice and Code of Civil Procedure. I am of the opinion that the proceedings before me need not be in strict

compliance of the above and it is only necessary that I ensure compliance with the Rules of natural justice and fair play."

14(bt) Before moving on to the next aspect, taking the S.T.K.Jakkaiyan issue as an illustration, it is considered appropriate to make some elaboration on the distinction between 'appeal' and 'judicial review' that has been applied in this order. The distinction as broadly / widely understood is, 'judicial review' is about the 'decision making process' unlike 'appeal' which is about the 'decision' itself. Court deems it appropriate to take the S.T.K.Jakkaiyan issue as an illustration to demonstrate that what has been done in this order is 'judicial review' of the impugned order within the ***Kihoto*** parameters and that this Court has not sat on 'appeal' qua the impugned order. For this purpose, it may be necessary to visualize a hypothetical scenario for gaining complete clarity. It is the stated position of the respondents that disqualification is attracted the moment voluntary giving up of membership happens. On this basis, hypothetically, if it has been held vide the impugned order that respondent No.17, i.e., S.T.K.Jakkaian also stood disqualified as he also went to the Hon'ble Governor and gave the representation (along with the writ petitioners), that may have been the end of the matter in this regard, even though there may be another possible view which in the Court's opinion may be more plausible, as examining it further would amount to testing the decision. What has happened is, in one breath while propounding and protagonizing the principle that disqualification occurs the moment there is voluntary giving up of membership, i.e., the moment they went to the Governor, in the same breath, in the case of

S.T.K.Jakkaiyan alone, that principle has not been applied / followed by saying that he had changed / rescinded his political position subsequently. This in the opinion of this court leaves the impugned order hit by mala fides. To put it otherwise, with regard to going to the Governor and giving the representation, if the impugned order had either held that all the 19 (including S.T.K.Jakkaiyan) have voluntarily given up membership or if all the 19 (including S.T.K.Jakkaiyan) have not voluntarily given up membership, that is a 'decision' / view, but when it is concluded that 18 have voluntarily given up membership the moment they went to the Governor and gave the representation and one (S.T.K.Jakkaiyan) has not voluntarily given up membership the moment he went to the Governor and gave the representation because he rescinded his position pertains to 'decision making process'. To be noted, the principle that disqualification occurs the moment there is voluntarily giving up of membership is not in dispute. This, therefore, is review of the decision making process as opposed to examining the decision in an appeal. In other words, this is neither an appellate exercise nor an exercise of re-appreciating the impugned order. It is a pure, simple and straight case of judicial review. This elaboration on S.T.K.Jakkaiyan issue is only an illustration to emphasis that this order is a judicial review exercise and not an appellate exercise. This elaboration is only an illustration qua judicial review principle and it is not exhaustive. In other words, this is not restricted to S.T.K.Jakkaiyan issue, but it applies to all other aspects of judicial review of impugned order in this order. This is set out only for enhanced clarity regarding judicial review scale applied to this case. Therefore, it is also to be noted that in

the peculiar facts of this case, a view has also been taken by this Court that merely going to the Governor with the representation will not attract paragraph 2(1)(a) in the absence of buttressing material.

14(bu) Tenth Schedule inter-alia deals with voluntarily giving up of membership of political party vide paragraph 2(1)(a) and consequent disqualification. In this regard, as mentioned supra, it is the stated position of the respondents before this Court that disqualification occurs the moment a legislator voluntarily gives up membership of the party in whose ticket the legislator was elected. There is no provision whatsoever in the Tenth Schedule for a legislator to avoid consequence of disqualification which has kicked in on the date of voluntarily giving up membership by rescinding his position and rejoining the political party in whose ticket the legislator was originally elected. In other words, disqualification occurs the moment membership is given up voluntarily. Therefore, constitutionally speaking disqualification is a consequence of voluntarily giving up membership. There is no constitutional mechanism whatsoever in Tenth Schedule for avoiding this consequence by rescinding the act of voluntarily giving up membership. This only means that the S.T.K.Jakkaiyan issue answers the plea in favour of writ petitioners not only with regard to mala fides, but also with regard to violation of constitutional mandate ground.

14(bv) To be noted, there is no provision in the Tenth Schedule for a legislator to rejoin the political party (in whose ticket he was elected) and avoid the consequence of disqualification. It is the considered view of this Court that

this is clearly in tune with and in consonance with the avowed objectives of the Tenth schedule. In other words, if there is a provision in the Tenth Schedule for a legislator to rejoin the party (in whose ticket he was elected) and avoid the consequence of disqualification, it will defeat the sanctus objective of Tenth Schedule as any legislator can give up membership / cross floors, come back and avoid disqualification, which is the very mischief that Tenth Schedule seeks to eliminate. If legislators can avoid disqualification by rescinding their position, it would result in a situation where the legislators can freely cross floors. 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 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, the 18 writ petitioners also will be in the same boat, as no disqualification has occurred on 22.8.2017. Therefore, the conclusion in the impugned order pertaining to 18 writ petitioners and the 17th respondent defies logic and reason. When a conclusion defies logic / reason and when there can be no two opinions or no two ways about a particular aspect of the matter, it is a straight forward, neat and clean case for judicial review. Equally, as there was a dispute about which faction is AIADMK political party (on the date of the impugned order), no logical or reasonable conclusion could have been made in this regard on the date of the impugned order and therefore, this is a fit case for judicial review on this ground also. This takes us to the next aspect of whether

subsequent events should be looked into.

14(bw) Mr.C.S.Vaidyanathan, learned senior counsel pressed into service three judgments, namely, ***Amarjit Singh*** case, ***Mira Nayak*** case and ***PRP Exports*** case to say that subsequent events have to necessarily be looked into. To be noted, none of these three citations pertain to Tenth Schedule proceedings. The first two cases pertain to rent control proceedings, and third one pertains to mines and minerals Act. It was very fairly submitted by Mr.C.S.Vaidyanathan, learned senior counsel that the question as to whether subsequent events have to be looked into qua Tenth Schedule proceedings is not blessed with authorities and that law in this regard has to be laid down by this court. In this view of the matter, this Court has carefully applied its mind to this aspect and it is the considered opinion of this court that it cannot be laid down as a general principle that subsequent events can be looked into in matters where orders of a Speaker are subjected to judicial review. The reasons are not far to seek. While discussing this aspect of the matter, it is deemed appropriate to lay down two important criteria pertaining to a Speaker's order and testing a Speaker's order by way of a judicial review.

14(bx)The two criteria are as follows:

a) Whether the Speaker can look beyond the material placed before him; and

b) Whether the testing/judicial review of order of a Speaker should be done by freezing the events on the date of the impugned order of the Speaker or one should look at

events beyond that date also.

14(by) With regard to the first question, the speaker, considering the nature of the Office, not only in terms of the high constitutional stature given to the Office, but also in terms of the nature of the functions the speaker has to perform, the question as to whether a Speaker can look beyond material placed before him will depend and vary from case to case.

14(bz) Therefore, it may not be possible to lay down any straight jacket formula in this regard, but what is relevant is, if the Speaker chooses to look beyond the material placed before him, it shall be strictly within the four corners /parameters laid down by the Supreme Court qua high office of a Speaker. To state this with little elaboration, if necessary, a Speaker can look beyond the material placed before him, but if such material touches upon political thicket, political dynamics, party politics and electoral politics which he has to keep away from, the Speaker will refrain from looking into it. If it is not within the realm of such forbidden areas, the Speaker can look into it. As already alluded to supra, even on this, whether the Speaker would actually look into or not will depend on the factual matrix of that particular case and would obviously vary from case to case.

14(ca) In this regard, it is deemed appropriate to usefully refer to '***Narsingrao case***', which is a judgment of a Division Bench of Mumbai High Court authored by Justice A.P.Shah as his Lordship then was. This is a case where a speaker's order under Tenth schedule was called in question. The

MLAs, who were part of a coalition Government sent letters to Governor withdrawing his support. This is a case where the MLAs went to the Governor along with the opposition. Therefore, ultimately the Division Bench did not interfere with the order of the speaker, but this is on facts. In this judgment, the Bombay High Court held that Speaker can rely on newspaper clippings also. As a proposition, it was laid down that the Evidence Act shall not ipso facto apply in disqualification proceedings. For this limited purpose, strength can be drawn from ***Narsingrao case*** to support the view that speaker can look into material as long as it is not in forbidden areas, which has been alluded to and articulated supra.

14(cb) With regard to the second question, this Court is of the view that a clear and firm answer can be given. To be noted, this has been argued before this Court, particularly by Senior counsel Mr.C.S.Vaidyanathan, appearing for EPS that whether subsequent events can be looked into qua a Speaker's order is not yet blessed with authorities and this Court should lay down the law in this regard. As already alluded to supra, case laws that were placed before us pertain to looking beyond / subsequent events is on other subjects, but not qua the Speaker's order or not in the process of judicial review of a Speaker's order. It is not in dispute that in the light of Kihoto's case and in the line of authorities following ***Kihoto***, the scope of judicial review of Speaker's order is very limited and narrow. This is a consequence of and in consonance with the high constitutional stature that has to be given to the Office of the Speaker and therefore, in the light of this back drop, if subsequent events post Speaker's

order are looked into for judicial review of a Speaker's order, it will expand the scope of judicial review and will also result in a unfair situation. Therefore, it will certainly not be healthy and not in tune with the constitutional determination made by the Supreme Court, particularly in ***Kihoto*** to look into subsequent events post Speaker's order in a case of judicial review. In other words, in the instant case, it is made clear that the facts in testing the Speaker's order by way of judicial review will stand frozen on 18.09.2017 when the impugned order was passed by the Speaker.

Further discussion with emphasis on Case Laws :

14(cc) Though there is some reference to case laws in the discussion supra, considering the large number of case laws which were pressed into service, court deems it appropriate to discuss the case laws separately under this head for the sake of convenience and clarity.

14(cd) While discussing case laws, there shall be correlation to the reasoning, inference and conclusions deduced supra.

14(ce) As would be evident from the catalogue of case laws supra, 55 case laws in all were placed before Court and / or noticed in the instant case. With regard to 55 case laws, ***Pratap Singh case, Venkataraman case, Tulsiram Patel case*** and ***Mayawati case*** find place only in the affidavit filed in support of the writ petitions without being pressed into service in the course of the hearing. ***Wilfred De Souza case*** is a case law that has found its way into the written submissions of writ petitioners without being pressed into service in the hearing. ***Narayanaswami Naidu case, Ram Manohar Lohia case, Barium***

Chemicals Ltd. Case, Gurdial Singh case, Prabodh Sagar case, Ravi Yashwant Bhoir case, S.A.Sampath Kumar case, S.R.Tewari case, Arulvelu case and ***Kuldeep Bishnoi case*** are case laws which have been looked into by the court as they are either referred to in the case laws pressed into service before Court or are relatable to the same in one form or the other. The remaining case laws were pressed into service in the course of hearing. It is to be noted that the case laws have been catalogued and given in tabular form supra under a dedicated paragraph captioned 'Catalogue of case laws'.

14(cf) The aforesaid 55 case laws can broadly be categorized in terms of propositions under 11 different heads / propositions, which are as follows :

(i)Kihoto – inter-alia for Validity of Tenth Schedule and scope of judicial review qua Speaker's order;

(ii)Yeddyurappa – inter-alia for jurisdiction and merits;

(iii)Natural Justice;

(iv)Implied overruling;

(v)S.A.Sampath Kumar case – reference made by Hon'ble Supreme Court;

(vi)Model Speaker;

(vii)Subsequent events and principle that even a legally correct order can be struck down on grounds of mala fides;

(viii)Defection;

(ix)Conviction on criminal charges

(x)Mala fides; and

(xi)Unique feature of this case owing to ECI being in seizin of which faction is AIADMK political party.

Though Court has referred to the above as 11 heads, to be noted, (i), (ii) and (v)

supra are stand alone case laws and their relevance have been set out therein.

14(cg) Further to be noted, some of the case laws were pressed into service for more than one proposition and therefore, they may be discussed under more than one head.

14(ch) Court now proceeds to look at the propositions with relevant correlation to the discussion supra wherever necessary.

Kihoto – inter-alia for Validity of Tenth Schedule and scope of judicial review qua Speaker's order :

(i) ***Kihoto*** case is one judgment where Tenth Schedule which forms the central legal theme of this lis was upheld by a Constitution Bench. Besides upholding the constitutional validity of Tenth Schedule, in ***Kihoto*** case, Hon'ble Supreme Court made a constitutional determination regarding the scope of judicial review qua Speaker's order. As can be deduced from ***Kihoto*** case, there are four grounds available for judicial review qua speaker's order and they are as follows :

(a)Violation of constitutional mandate;
(b)Non compliance with principles of natural justice;
(c)mala fides; and
(d)Perversity.

As would be evident from the discussion supra, this Court's entire process of judicial review of the impugned order of the Speaker was by applying the aforesaid scope and by perambulating within the four corners of the aforesaid scope of judicial review which has been laid down as constitutional determination by the Hon'ble Supreme Court.

(ii) The Constitution Bench judgment of ***Kihoto,*** as reported in SCC (law journal of Eastern Book Company which expands as 'Supreme Court Cases') does not give facts. The Court deems it relevant to briefly refer to the facts of the celebrated ***Kihoto*** judgment. To be noted, this was culled out from the order of Gauhati High Court (post remand) in ***Kihoto.*** Relevant paragraphs setting out facts are as follows :

> "4. In the elections held in 1989 to the 60 Member Nagaland Legislative Assembly, Congress (I) Party secured 36 seats and Nagaland People's Council (NPC) secured 24 seats and Shri S.C. Jamir, the leader of the Congress (I) Legislature Party formed the Council of Ministers. In May, 1990 on account of certain developments in the Congress (I) Legislature Party 12 MLAs broke away from the party and formed a Regional Party and two of them were expelled. The Congress (I) Ministry was dismissed on 4.5.90. The then Speaker disqualified 10 among the 12 MLAs and declared the other two to be unattached. This order is under challenge in Civil Rule No. 1778 of 1990. Thus, the effective strength of the House became 50. Shri K.L. Chishi, leader of the NPC Legislature Party with the support of 24 MLAs of NPC and two unattached M.L. As formed a new Ministry on 15.5.90. On 13.6.90, 17 among the M.L.As of the NPC withdrew support to Shri K.L. Chishi who resigned and with their support and support of Congress (I) Party Shri Vamuzo (a non-MLA) of NPC who was elected leader of Joint Legislative Party formed a new Ministry. He had the support of 24 Congress (I) Members and 17 members of the NPC group. On 19.7.90, the present Speaker (1st respondent) was elected Speaker. On 9.8.90 the first respondent passed an order revoking the earlier order dated 14.5.90 disqualifying 10 Congress (I) MLAs and declaring two Congress (I) MLAs unattached. The order of disqualification as well as the order of revocation are challenged in other writ petitions. With this order, the strength of the House was restored to 60. This was followed by a formal split in the NPC. On 9.11.90 Sri Vamuzo was elected M.L.A. On 16.11.90 Shri K.L. Chishi was expelled from NPC and was declared unattached. The Governor on 22.11.90 summoned the Legislative Assembly to meet on 18.12.90. On 2.12.90 the Congress (I) Party with 24 MLAs withdrew support to Shri Vamuzo's Ministry. On 3.12.90 a member of the Congress (I) Legislative Party gave notice of motion expressing no confidence in the Speaker, first respondent. The motion was placed on the agenda of the House for 18.12.90. There was also a motion expressing no confidence

in Sri Vamuzo Ministry.

5. On 12.12.90 the fourth respondent filed five separate petitions before the first respondent (copies are annexed to Annexure-II and other documents) stating that there are reasonable grounds to believe that a question has arisen as to whether five M.L. As have become subject to disqualification under the Tenth Schedule of the Constitution and that they have defected from Congress (I) Party and have therefore incurred disqualification under paragraph 2 of the Tenth Schedule, that the five M.L. As have signed separate statements agreeing to cause split in their political party along with other Members of the Assembly belonging to Congress (I) Party but there is no split for want of the required one-third (1/3) of the Members of the Legislature Party which is mandatory under paragraph 3 of the Tenth Schedule and requesting the 1st respondent to declare the M.L. As have become subject to disqualification under the Tenth Schedule and cause copy of the order to be delivered or forwarded to the petitioner and the concerned leader of the Legislature Party. Copies of the statements or declarations signed separately by the five MLAs were appended to each of the petitions filed by fourth respondent before the first respondent. These five MLAs are the writ petitioners.

6. On 14.12.90 the second respondent issued notice to each of the five writ petitioners informing them that the first respondent has received petitions as aforesaid and enclosing copies of the petition along with the notice and requesting them to meet the first respondent in his office chamber at 12 noon on 15.12.90 without fail for explaining their position. Each of the petitioners duly appeared before the first respondent in the presence of the second respondent and others and submitted identical explanations (see Annexure-III) stating merely that "I have never submitted any petition to the Speaker to cause a split in the Congress (I) Legislature Party, the question of attracting **clause 2(a) of tenth schedule of the constitution of india** does not arise." They also submitted a letter signed by all of them stating that as desired by the first respondent, they met him in his office chamber at 12 noon on 15.12.90 in the presence of the second respondent and the Joint Secretary of the Assembly for verifying their signatures etc. and that they "were falsified". They further stated therein that there was no petition addressed by them to the first respondent for a split.

7. On the same day the first respondent passed the impugned order (Annexure-VI) holding that it is clear from the declarations (copies of which were appended to the petitions against the writ petitioners) and which declarations were uncontroverted, that the petitioners had decided to voluntarily give up their membership of the original political party, namely, Congress (I) Party, that the plea they have taken is not inconsistent with the plea set up in

> the petitions and that 5 members do not constitute 1/3rd of the original political party which had a strength of 24 in the Nagaland Assembly. First respondent, therefore, accepted the uncontroverted declarations signed by the petitioners to be true and accordingly held that the five writ petitioners have become subject to disqualification under the Tenth Schedule of the Constitution of India. It is this order which is now challenged.
>
> 8. Two Members of the NPC Legislature Party were expelled and the first respondent by order dated 13.12.90 declared them unattached. The first respondent by order dated 13.12.90 disqualified another set of 10 MLAs belonging to NPC on the ground of defection. Thus effectively, the strength of the Assembly was reduced to 45. The present Chief Minister, Shri Vamuzo has thus the support of 23 MLAs and Congress (I) has 19 MLAs besides three unattached Members. The 10 disqualified MLAs of NPC have filed a batch of petitions, namely, Civil Rule Nos. 110-119 of 1991. It is incidentally mentioned that the first respondent is the brother-in-law of the present Chief Minister, Shri Vamuzo and the agenda of the Assembly for 18.12.90 included consideration of the motion of no confidence against the Ministry as well as the motion of no confidence against the Speaker"

Yeddyurappa – inter-alia for jurisdiction and merits :

(iii) One other case law which is virtually a stand alone case is ***Yeddyurappa*** case. Though there was argument regarding implied overruling of ***Yeddyurappa case*** by ***Nabam Rebia*** case, it is still being referred to as a stand alone case law as writ petitioners have referred to the same in their prayer itself. It was writ petitioners' emphatic submission that the factual matrix in the instant case is closest to ***Yeddyurappa case*** and therefore, ***Yeddyurappa case*** will virtually govern the judicial decision in this case. In fact, writ petitioners went as far as saying that except names of the parties and dates, the instant case is a virtual replay of ***Yeddyurappa case***. This court has exercised the power of judicial review in the manner alluded to supra. In other words, this Court has not

limited and / or curtailed itself to ***Yeddyurappa case***. This is more so as it was contended by respondents that ***Yeddyurappa case*** has been impliedly overruled by ***Nabam Rebia case***. To be noted, this court has left this question open. Therefore, without expressing any opinion one way or the other about ***Yeddyurappa*** case, the decision has been arrived at independent of ***Yeddyurappa*** as the issue of implied overruling is being left open.

(iv) Besides saying that ***Yeddyurappa*** case has been impliedly overruled by ***Nabam Rebia*** case, it was also argued that ***Yeddyurappa*** case is per incuriam in the light of ***Kihoto***. Court is of the view that it is not for a High Court to examine the issues of implied overruling and per incuriam aspects of a judgment of Hon'ble Supreme Court. Therefore, without making any foray into the arena of implied overruling and per incuriam qua ***Yeddyurappa*** case, principles set out in ***Nabam Rebia*** and ***Kihoto*** have been applied in this case for arriving at conclusions.

(v) Respondents submitted that ***Yeddyurappa case*** is clearly distinguishable on facts also, as that is a case where the Speaker has given only three days time to noticees, while the rule itself mandates seven days time to be given. However, it is not necessary to delve more into this aspect of the matter as this court is not relying on ***Yeddyurappa case*** as the questions as to whether it is impliedly overruled and as to whether it is per incuriam are left open. It is also made clear that it is not for the High Court to go into the question as to whether a particular judgment of the Hon'ble Supreme Court has been impliedly overruled or is per incuriam.

(vi) In sum and substance, this Court has followed ***Nabam Rebia*** and ***Kihoto*** and is returning findings and making determinations de hors ***Yeddyurappa case***. This safe approach is being taken as a matter of judicial discipline. Therefore, while not saying anything about ***Yeddyurappa case*** being impliedly overruled by ***Nabam Rebia*** or becoming per incuriam qua ***Kihoto***, Court has safely followed only ***Nabam Rebia*** and ***Kihoto***, both of which are Constitution Bench judgments as opposed to ***Yeddyurappa case*** where the Bench strength is two Hon'ble Judges.

Natural Justice :

(vii)***T.R.Varma*** case arises from Punjab and Haryana High Court which set aside the dismissal of the respondent therein from government service on the ground of violation of Article 311(2) of COI. On appeal to Supreme Court, the order of Punjab and Haryana High Court was reversed holding that natural justice was not violated. The Supreme court held that a Tribunal should follow the principles of natural justice and parties should have opportunity of cross examination and no material should be relied on without putting it to the other side.

(viii)***Kraipak case*** arose in a writ petition under Article 32 of COI, wherein officers of Indian Foreign Service challenged a notification issued by the Ministry of Home Affairs and alleged that the notification is violative of Articles 14, 16 of COI and violative of principles of natural justice also. Supreme Court allowed the petition holding that natural justice is used to prevent miscarriage of justice and will supplement the law when law is silent. It was also held that natural justice

shall also apply to quasi judicial proceedings and administrative decisions.

(ix)***Kanungo case*** arises from a decision of a Division Bench of Calcutta High Court which reversed the order of a learned Single Judge who had quashed an order of Additional Collector of Customs regarding confiscation of 280 watches of the appellant company. The order of Additional Collector of Customs was assailed on the grounds of violation of principles of natural justice and no opportunity of cross examination. On appeal by the appellant company, the Supreme Court held that no cross examination is needed and the person who gave information need not be cross examined. (In this regard, this Court notices the fine distinction between an 'informer' and an 'informant')

(x)***Board of Mining Case*** arises from Madhya Pradesh High Court. The High Court set aside an order which cancelled a certificate of the respondent therein alleging negligence, in the light of a shot fired by an unskilled third person. This case law was pressed into service to say that fairness should be shown based on facts and that every minuscule violation will not spell out illegality and only the party who was affected needs to demonstrate violation of principles of natural justice.

(xi)***K.L Tripathi*** case arises from Allahabad High Court, where a Government employee was dismissed from service for misconduct. The government employee assailed the order of dismissal on the ground of violation of principles of natural justice. This case law was pressed into service to say that the application of principles of natural justice will depend on the charges framed and to show violation of principles of natural justice, prejudice must follow.

(xii) ***Chandrama Tewari*** case is one where a fireman (government employee) was dismissed from service after disciplinary proceedings. The fireman alleged that no reasonable opportunity was given to him. The High Court set aside the decree of the lower court, holding that a reasonable opportunity was given to the employee and Supreme Court dismissed the appeal and affirmed the decision of the High Court. The Supreme Court held that natural justice is based on facts and circumstances of each case. This case law was pressed into service to say that documents which have no bearing on cross examination cannot be insisted upon.

(xiii)***Karunakar case*** arises from Andhra Pradesh High Court, wherein a learned Single Judge dismissed a petition filed by the petitioner who was a Senior Technical Officer and was dismissed from service for alleged misconduct and Division Bench allowed the appeal. This case law was pressed into service to highlight that Supreme Court applied the ratio in ***Board of Mining case*** and held natural justice is not an unruly horse and should be applied based on the facts of the case and if fairness is shown, there will be no violation of principles of natural justice.

(xiv)***Raja Ram Pal*** case arises from a writ petition under Article 32 of COI, where members of Parliament were expelled on the ground of allegedly accepting bribes for raising questions in the House. Supreme Court disposed of the writ petition by holding that the action of expulsion is invalid. Supreme Court also held that judicial review is limited and Court cannot go into the correctness of the order nor can the Court question the adequacy of documents. Further,

relying on Jagjit Singh case, Supreme Court held that natural justice is not a straight jacket formula and will depend on facts of each case. This case law was pressed into service to say that the court cannot draw inference from the time taken and if all the documents have been looked at, the court cannot go into the matter.

(xv)***Haryana Financial Corporation*** case which arises from the Punjab and Haryana High Court is one where an order of dismissal of an officer who was working as a branch manager in the corporation was interfered with. On appeal, the Supreme Court, allowed the appeal and remanded the matter back to the High court holding that principles of natural justice have been violated. Supreme Court held that natural justice and prejudice go hand in hand. This case law was pressed into service to say that non-supply of documents will not automatically vitiate the proceedings, but prejudice needs to be shown.

(xvi)***Alok Kumar*** case arises from the Allahabad High Court (Lucknow) which upheld an order of the Central Administrative Tribunal which set aside an order of punishment due to non supply of documents. The respondent was charged and dismissed from service upon a report by a retired officer. The Supreme Court upheld the doctrine of defacto prejudice and held that prejudice should be looked at on a case to case basis and should exist as a matter of fact.

(xvii)***Ayaaubkhan case*** arises from Bombay High Court wherein a caste certificate was issued and employment was given on that basis. After nine years, caste certificate was challenged and the matter was directed to be remitted to the Scrutiny committee. Supreme Court disposed of the appeal and directed the

Scrutiny Committee to consider the applications. Supreme Court held that natural justice and cross examination should be effective and cross examination is a part of natural justice. It went on to say that denial of cross examination will amount to denial of right to be heard (*audi alterm partem*).

(xviii)***Telstar case*** arises from a Bombay High court decision, wherein the appellant purchased tickets for crewmen, who had allegedly violated FERA. The Enforcement Directorate issued notice and the adjudicating authority found the appellant guilty. Tribunal allowed the appeal in part and upheld the charges. The appeal before Bombay High Court also failed. On further appeal, Supreme Court held that natural justice was complied with and dismissed the appeal. This case law was pressed into service to say that effect of denial of cross examination will depend on prejudice so caused and on the facts of the case.

(xix)***Dharampal Satyapal case*** arises from a judgment of Gauhati High Court, where the appellant challenged the withdrawal of tax free zones qua certain products by the Union of India and when a notice for refund was issued, the appellant alleged violation of principles of natural justice. The High Court on tax reference dismissed the appeal and Supreme Court dismissed the same as prejudice was not shown by the appellant. The Supreme Court held that (a) natural justice should be followed de hors any prejudice, (b) natural justice is applicable to those making administrative decisions, (c) procedural fairness should be followed, (d) both sides should be heard, and (e) when natural justice is not followed, then it needs to be seen whether remand will serve the purpose. This case law was pressed into service to say that while looking at natural

justice, one has to see what purpose would be served and one has to go back to the law of prejudice.

(xx)***Mohanraj case*** arose under Article 32 of COI which challenged a suspension order made by the Speaker of Tamil Nadu Legislative Assembly, wherein the Speaker relied on the recommendations of the Privilege committee to suspend the MLAs due to bad conduct. The suspension order was challenged on grounds of violation of principles of natural justice. Supreme Court in this case held that non supply of video grab to the MLAs violated principles of natural justice as it was a crucial document and it was also held that principles of natural justice cannot be put in a straight jacket formula.

(xxi)***Parimal case*** arises from Delhi High Court in a matrimonial dispute where wife challenged an ex parte divorce granted on the ground that the divorce paper was fraudulently signed. Trial court dismissed the application to set aside the ex parte divorce holding that four years have lapsed, but Delhi High court allowed the appeal, ultimately Supreme Court set aside the judgment of the Delhi High Court and restored the trial court judgment. Supreme Court held that burden of proof lies on the person who asserts the fact and not on the party who denies it.

(xxii)***P.V.Anvar*** case arises from Kerala High Court, wherein the election of an individual to the legislative assembly was challenged by alleging violation of provisions of 1951 RP Act. Kerala High Court dismissed the election petition holding that corrupt practices were not proved. Supreme Court also dismissed the appeal, but laid down the law relating to Section 65B of the Evidence Act.

Supreme Court held that if any electronic evidence is given, a certificate under Section 65B of the Evidence Act is imperative.

Three cases on natural justice qua disqualification proceedings were pressed into service :

(xxiii)***Ravi Naik case*** is a case that was pressed into service to say that the Supreme Court held that if cross-examination is sought for, the same shall be given to the party. On the other hand, this case law was pressed into service also to say that Supreme Court held that the Speaker can rely on newspaper clippings during the disqualification proceeding. ***Mahachandra Prasad Singh*** case was relied on to say that the Supreme Court held, when facts are admitted and not disputed, non supply of documents will not cause prejudice and thereby will not result in violation of principles of natural justice. In this case, number of disputed facts clearly outnumbered the admitted facts.

(xxiv)***Jagjit Singh*** case is one where Supreme Court laid down the law regarding principles of natural justice qua Speaker's order. It held that natural justice is not a straight jacket formula and will depend on facts and circumstances of each case. However, it was held that MLAs cannot make mere general denial. The test to decide whether opportunity was given is not to be measured based on time, but on whether it was sufficient.

(xxv)From a compendious and comprehensive analysis of aforesaid case laws pressed into service with regard to natural justice, what unfurls and emerges clearly is that there can be no straight jacket formula for testing allegations of violation of principles of natural justice. In other words, what unfurls

unambiguously from an analytical analysis of aforesaid case laws on natural justice is, any complaint of violation of principles of natural justice has to necessarily be dealt with on a case to case basis, taking into account every determinant in that case. Therefore, Court has examined the complaint of non compliance with principles of natural justice plea in the instant case, inter-alia on the basis of factual matrix, opportunity that was sought for, opportunity for letting in evidence and cross examination opportunity that was not given and consequential prejudice. To be noted, with regard to consequential prejudice, I have also taken into account the possibilities (not probabilities) as to how it would have altered the scenario in the instant case one way or the other if opportunity for letting in evidence and cross examination as sought for had been afforded. Cross examination and letting in evidence including filing documents in the instant case had the huge potential of conclusively establishing one way or the other as to whether it was a mere intra party wrangle or was it a consorted effort to defect as alleged. This is more so in the light of which faction of AIADMK is the party in whose ticket the MLAs were elected was also an issue that was completely fluid on the date of the impugned order.

Implied overruling :

(xxvi) As this court has left open the issue of implied overruling and per incuriam, this court is not discussing the case laws on this aspect of the matter. As the case laws were cited, for the purpose of capturing the trajectory of the hearing as accurately as possible, an enumeration of these case laws would suffice and the list of cases in this regard are (a)***Nabam Rebia case, (b) Kihoto***

case, (c) Krishena Kumar case, (d) Goodyear case, (e) Ekambareeswarar Coffee case (f)Philip Jeyasingh case and ***(g)Prakash Shah case***.

S.A.Sampath Kumar case – reference made by Hon'ble Supreme Court :

(xxvii) This is a case where a two member Bench of Hon'ble Supreme Court vide order dated 08.11.2016 made in SLP(C)No.33677 of 2015 in a case arising out of Telangana Speaker's order thought it fit to make a reference and held that there is necessity for a five member Hon'ble Bench of the Supreme Court to authoritatively decide two questions. First question is whether High Court exercising powrs under Article 226 of COI can direct the Speaker of a Legislative Assembly (acting in quasi judicial capacity under Tenth Schedule) to decide a disqualification petition within a certain time and the other / futher question is whether such a direction would not fall foul of quia timet action doctrine mentioned in paragraph 110 of ***Kihoto*** case. This has already been referred to supra. Suffice to say that it is nobody's case before us that this reference has in any manner varied the scope of judicial review (4 grounds) by a High Court qua Speaker's order as laid down in the celebrated ***Kihoto*** case and culled out in subsequent pronouncements.

Model Speaker :

(xxviii) The next proposition pertains to the very high office of the Speaker and as to how a model speaker should be. This court has alluded to this in detail in supra. This has been done so by drawing inspiration from three case laws, namely, ***Jagjit Singh case***, ***Nabam Rebia case*** and ***Wilfred De Souza*** case. To put it in very simple terms, ***Jagjit Singh case*** is a case where an

independent MLA joined a political party, i.e., INC. That MLA was disqualified and he complained of violation of principles of natural justice. Though this judgment was cited for principles of natural justice, it is deemed appropriate to notice that the Supreme Court has clearly and elucidatively laid down the nature of high office of the Speaker and the complete impartiality expected of a Speaker. This assumes significance in the light of the plea of different yardsticks being applied to S.T.K.Jakkaiyan and writ petitioners. As far as ***Nabam Rebia case*** is concerned, it is a case where a Governor of a State advanced the floor test and held it in a hotel instead of the floor of the house. This was a case arising from Gauhati High Court and the Hon'ble Supreme Court set aside the judgment of Gauhati High Court which upheld the action of the Governor. To be noted, ***Nabam Rebia*** case is a Constitution Bench judgment and the Supreme Court has very clearly laid down the legal principle that the level of dispassionate approach and impartial dispensation required of a Speaker is very high. The relevant paragraphs have been extracted supra in discussion.

(xxix) To be noted, ***Nabam Rebia*** case was a unanimous judgment of a five member Constitution Bench. More importantly, three out of five Hon'ble Judges penned separate judgments, but with concurring views and conclusions. This Court has respectfully followed ***Nabam Rebia*** case as mentioned supra.

(xxx) Principles pertaining to the high office of the Speaker and impartiality expected of a Speaker that have been laid down in the aforesaid cases is seen by this Court not only as legal principles, but as a code for a model speaker too.

(xxxi) The third case law is ***Wilfred De Souza*** case, where a Division Bench of Bombay High Court held that confidence in the impartiality of the Speaker is an indispensable condition for successful working of a democratic system. The Division Bench went as far as saying that Caesar's wife must be above suspicion. This case was also relied on to highlight the point that when a disqualification petition is before the Speaker under the Tenth Schedule, the Speaker can refer the matter to the Privilege Committee under Rule 7(4) of the Maharashtra Disqualifaication rules, if the Speaker considers it right to do so. However in this case the Speaker was facing a no-confidence motion when he decided the disqulification petition before him.

(xxxii) As alluded to supra, it is clear that the above is not only a determination of law, but also a code for a model Speaker. In my considered view, the principle is, higher the office, the rigor and degree of impartiality required is more. In other words, the degree and rigor of impartiality, dispassionate approach and objectivity required is directly proportional to the status and stature of an office in the hierarchy in a Republic / democratic set up. It is made clear that this is set out only to highlight that the possible view theory governing the exercise of judicial review in contradistinction to exercise of appellate powers has been applied in this backdrop while testing a Speaker's order.

(xxxiii) It is pointed out that Bombay High Court in ***Wilfred De Souza*** case (without meaning to be gender normative) says 'Caesar's wife must be above suspicion'. Court is unable to brush aside this in the light of the

complaint of the writ petitioners that different yardsticks have been applied to them on one hand and S.T.K.Jakkaiyan on the other hand in the same impugned order, depending on political exigencies. In this regard, I have also examined the position of Speaker in the House of Commons in the United Kingdom.

(xxxiv) As per Eriskine May in Parliamentary Practice 20th and 24th Editions, the Speaker of the House of Commons is a representative of the House itself, in its power, proceedings and dignity. There is also a reference to general practice and Democrates-Labour-Conservative pact which is the result of a long running convention, wherien and whereby major political parties will not field a candidate in the potential Speaker's constituency. This is part of a long running convention to uphold the neutrality of the Speaker.

(xxxv) Court finds that in Australia, it has been long regarded that as a rule, Speakers have to be completely detached from government activities to ensure what can be justly described as high degree of impartiality in the Chair. The position is the same in all advanced democracies. Therefore, from the constitutional determination of Supreme Court in ***Nabam Rebia*** and views in ***Jagjit Singh*** extracted supra, this Court has no hesitation in concluding that Speaker's office is so high that the degree of neutrality required of the Speaker, particularly in an action, such as disqualification is so high that it should not give scope for even a shred of doubt that the view has been taken inter-alia owing to political exigencies. As alluded to supra in the discussion, the contention of the writ petitioners that in the instant case, the impugned order of Speaker fails this test of high degree of neutrality cannot be ignored.

Subsequent events and principle that even a legally correct order can be struck down on grounds of malafides :

(xxxvi) With regard to the proposition as to whether Speaker can look at subsequent events, six case laws are relevant and they are : (a) ***Amarjit Singh case, (b) PRP Exports, (c)Mira Nayak case, (d) Rajendra Singh Rana case, (e) Narsingrao case and (f) AIADMK case***. It was very fairly submitted by all learned senior counsel before the court that there is no case law pertaining to action of Speaker regarding looking into subsequent events and that law has to be laid down in this regard. This court has taken a view that Speaker should not look at subsequent events and courts while testing the order of Speaker should freeze the same on the date of the order of the Speaker and this has been alluded to supra. This Court has also given its reasons for doing so. Therefore, the first three judgments which arise under rent control, mines and minerals (whether informer can be cross examined) and administrative law are of no great relevance and are not applicable to instant case.

(xxxvii)To be noted, with regard to whether the Speaker should look at subsequent events, as alluded to elsewhere in this judgment, the case laws that were pressed into service were under subjects like service law, mines and minerals and rent control. Therefore, as a principle it can be said that even a legally correct order will deserve to be dislodged if the order is hit by mala fides. It follows from this legal principle that is being laid down in this judgment that even if the impugned order of the Speaker is otherwise found to be legally correct, it will still deserve to be set aside if it is hit by mala fides.

(xxxviii)A Constitution Bench of Hon'ble Supreme Court in ***Barium Chemicals Ltd. Case*** held as a principle that an exercise of power under a Statute is liable to be quashed on grounds of mala fides even if such exercise of power had been done with the best intention of furthering the purpose of legislation which confers the power. This is articulated in paragraph 28 of the aforesaid judgment, which reads as follows :

> "**28.**The question is which of the two constructions is correct? In *Emperor* v. *Sibnath Banerjee* [1961 6 FCR 1 : AIR 1943 FC 75] one of the questions which arose was with regard to the interpretation of the words "the Central Government or the Provincial Government, if it is satisfied with respect to a particular person" in Rule 26 of the Defence of India Rules, 1939. What was questioned there was the correctness of the recital in the detention order that the Governor was satisfied that with a view to preventing the detenu from acting in a certain manner certain action was necessary. It was held that though the Court could not be invited to investigate the sufficiency of the material or the reasonableness of the grounds on which the Governor was satisfied, if the contention was that the Governor never applied his mind and therefore he could not have been satisfied, the court could enter into that question, the ingredient of satisfaction being a condition precedent to the exercise of power notwithstanding the satisfaction being subjective and there being a recital as to the satisfaction in the order. Referring to *Liversidge* v. *Anderson* [1942 AC 206] and *Greene* v. *Secretary of State* [1942 AC 284] it was observed:
>
> > "If the ground of challenge against the orders thus sought to be impugned had been that the cases had never been placed before the Secretary of State at all, so that he never had any opportunity of exercising his mind with respect to them, we have not the slightest doubt that this would have been a proper ground for challenge in a court of law."
>
> Again at p. 42 in *Sibnath Banerjee Case* [1961 6 FCR 1 : AIR 1943 FC 75] the observations are:
>
> > "The presence of the recital in the order will place a difficult burden on the detenu to produce admissible evidence sufficient to establish even a prima facie case that the recital is not accurate. If, however, in any case a detenu can produce admissible evidence to that effect, in my judgment, the mere existence of the

> recital in the order cannot prevent the court considering such evidence and if it thinks fit, coming to a conclusion that the recital is inaccurate."

These observations were made on the footing that though the satisfaction was subjective, it was a condition precedent to the exercise of power and therefore the order was open to a challenge that it was not in conformity with the power. In appeal this view was endorsed by the Privy Council (*King Emperor* v. *Sibnath* [72 IA 241 at p. 268 : AIR 1945 PC 156 at p. 164]). In *Machindar* v. *King* [1949 FCR 827 : (AIR 1950 FC 129)] the Federal Court dealing with similar words in Section 2 of the Central Provinces and Berar Public Safety Act, 1948 again held that the Court can examine the grounds disclosed by the government to see if they are relevant to the object which the legislature had in view viz. the prevention of acts prejudicial to public safety and tranquillity, for, satisfaction in this connection must be grounded on materials which are of rationally probative value. In this case, the statute no doubt required that the grounds should be disclosed but that makes no difference to the principle that though the satisfaction was exclusively of the executive authority, it was nonetheless, a condition precedent to the exercise of the power. In *Atmaram Vaidya case* [(1951) SCR 167 : (AIR 1951 SC 157)] , this court while dealing with Section 3 of the Preventive Detention Act, 1950 observed that though the satisfaction necessary thereunder was that of the Central or the State Government and the question of satisfaction could not be challenged except on the ground of mala fides, the grounds on which it was founded must have a rational connection with the objects which were to be prevented from being attained. At p. 176 it is stated:

> "If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala fides cannot be challenged in a court."

This view was again emphasised in *Shibban Lal Saksena case* [(1954) SCR 418 : AIR 1954 SC 179] where it was said that the power of detention being entirely dependent on the satisfaction of the appropriate authority, the question of sufficiency of the grounds on which such satisfaction is based cannot be gone into provided they have a rational probative value and are not extraneous to the scope and purpose of the statute. This principle is not exclusively applicable to cases under such measures as the Defence of India Act or the Preventive Detention Act and has been applied also in the case of other statutes. Thus in the *State of Bombay* v. *K.P.*

Krishnan [(1961) 1 SCR 227 : AIR 1960 SC 1223] while dealing with the discretion of the State Government to make or refuse to make a reference under Section 10(1) of the Industrial Disputes Act, 1947, Gajendragadkar, J. (as he then was) spoke for the court in these words:

> "The order passed by the Government under Section 12(5) may be an administrative order and the reasons recorded by it may not be justiciable in the sense that their propriety, adequacy or satisfactory character may not be open to judicial scrutiny; … nevertheless if the court is satisfied that the reasons given by the Government for refusing to make a reference are extraneous and not germane, then the court can issue and would be justified in issuing a writ of mandamus even in respect of such an administrative order."

In *Dr Akshaibar Lal* v. *Vice-Chancellor* [(1961) 3 SCR 386 : AIR 1961 SC 19] the question was with reference to termination of services of some of its employees by the University. The University in exercise of its power to terminate the services of its employees under Ordinance 6 passed the impugned order notwithstanding its having already taken action under Statute 30 under which the cases of the appellant and others were referred to the Solicitor-General who made his report to the Reviewing Committee on his finding that there was a prima facie case. The contention was that the resolution of the University lacked bona fides and was therefore invalid. The University contended that its powers were cumulative and that it could resort to either of the two remedies open to it. The action adopted by the University was executive. Yet, this Court held that though the University possessed both the powers and could exercise one or the other of them, the action as held in the *State of Kerala* v. *G.M. Francis & Co.* [(1961) 3 SCR 181 : AIR 1961 SC 617] could still be challenged on the ground of its being ultra vires. Hidayatullah, J. said that proof of alien or irrelevent motive is only an example of the ultra vires character of the action. The University having adopted action under Statute 30 it was not possible to undo everything and rely upon other powers which were not available in the special circumstances which led to action under the statute and that though the University had the discretion to adopt either of the two courses, the discretion could not be read in the abstract but had to be read within the four corners of Statute 30 and not outside it. In these sense action on matters extraneous to the statute conferring power is a specie of the vice of ultra vires. These two are sometimes interrelated and slide into each other. When a power is exercised for a purpose or with an intention beyond the scope of or is not justified by the instrument creating it, it would be a case of fraud on power, though no corrupt motive or bargain is imputed. In

this sense, if it could be shown that an authority exercising power has taken into account, it may even be bona fide and with the best of intentions, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. (See *Pratap Singh* v. *State of Punjab*) Thus apart from an authority acting in bad faith or from corrupt motives it may also be possible to show that "an act of the public body, though performed in good faith and without any taint of corruption, was so clearly founded on alien and irrelevant grounds as to be outside the authority conferred upon that body and therefore inoperative. It is difficult to suggest any act which would be ultra vires under this head though performed bona fide, per Warrington, L.J. In *Short* v. *Poole Corporation* [1962 Ch. 66 at p. 90] . Similar observations are also to be found in *Rameshwar* v. *District Magistrate* [AIR (1964) SC 334] a case under the Preventive Detention Act, 1950, where this Court held that though the satisfaction of the relevant authority was subjective, a detenu would be entitled to challenge the validity of his detention on the ground of mala fides and in support of his plea urge that along with other facts which show mala fides the court should also consider his grievance that the grounds served on him cannot possibly or rationally support the other. The challenge would be that the order was beyond the scope of the power as its exercise was on grounds irrelevant to the purpose and intention of the power. In *Estate and Trust Agencies Ltd.* v. *Singapore Improvement Trust* [1937 AC 898 : AIR 1937 PC 265] a declaration made by the Improvement Trust under Section 57 of the Singapore Improvement Ordinance 1927 that the appellants', property was in an insanitary condition and therefore liable to be demolished was challenged. The Privy Council set aside the declaration on two grounds; (*1*) that though it was made in exercise of an administrative function and in good faith, the power was limited by the terms of the said Ordinance and therefore the declaration was liable to a challenge if the authority stepped beyond those terms, and (*2*) that the ground on which it was made was other than the one set out in the Ordinance. In *Ross Clunis* v. *Papadopoullos* [(1958) 1 WLR 546] the challenge was to an order of collective fine passed under Regulation 3 of the Cyprus Emergency Powers (Collective Punishment) Regulations, 1955 which provided that if an offence was committed within any area of the colony and the Commissioner "has reason to believe" that all or any of the inhabitants of that area failed to take reasonable steps to prevent it to render assistance to discover the offender or offenders it would be lawful for the Commissioner with the approval of the Governor to levy a collective fine after holding an inquiry in such manner as he thinks proper subject to satisfying himself that the inhabitants of the area had been given an adequate opportunity of understanding the subject-matter of the inquiry and making representations thereon. The contention was that the only duty cast on the Commissioner was to satisfy himself of the facts set out in

the Regulation, that the test was a subjective one and that the statement as to that satisfaction in his affidavit was a complete answer to the contention of the respondents. Rejecting the contention the Privy Council observed:

> "Their Lordships feel the force of the argument, but they think if it could be shown that there were no grounds upon which the Commissioner could be so satisfied, a court might infer either that he did not honestly form that view or that in forming it he could not have applied his mind to the relevant facts."

Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

(xxxix)***Ram Manohar Lohia*** case also (set out supra) which is another Constitution Bench of Hon'ble Supreme Court held that when power is not used in good faith, it is one of the vitiating circumstances for dislodging an order.

(xl)In ***Narayanaswami Naidu*** case, a Full Bench of this Court addressed itself to the question as to whether an order which is legal on the face of it and is presumed to be legally made be dislodged if it lacks bona fides and answered the question in the affirmative.

(xli)In ***Gurdial Singh*** case, Hon'ble Supreme Court speaking through Justice Krishna Iyer, as His Lordship then was, held that an order if it is not exercised bona fide for the end designed, voids the order and went on to hold

that when exercise of power by the custodian of the power is for reasons outside the scope and purpose of the vesting of the power, the order deserves to be dislodged.

(xlii)After a careful examination of the sum totality of the principles in the aforesaid case laws, there is no doubt in the mind of this court that on an extreme demurrer, even if the impugned order is legally correct, it deserves to be set aside if it is hit by mala fides. To be noted, mala fides is one of the grounds available for judicial review qua Speaker's order vide constitutional determination in ***Kihoto***.

(xliii) ***Narsingrao case*** arises from Bombay High Court under Article 226 of the COI and it pertains to disqualification under the Tenth Schedule. In High Court, a challenge was made to a disqualification order passed by the Speaker. This case law was pressed into service to say that the Bombay High Court held that the Evidence Act shall not ipso facto apply in disqualification proceedings and Speaker can rely on newspaper clippings, even though certain averments were made in the written statement by the MLA. Bombay High Court upheld the Speaker's order and dismissed the writ proceedings.

(xliv)In ***AIADMK case***, the writ petition filed by the petitioners alleged violence in local body elections and prayed the High Court to direct the State Election Commission to take action. High Court held that the Election Commission should not close its eyes to reality and should be alive to the ground situation. It was further held that the Election Commission can rely on newspaper clippings. This was relied on for saying that Speaker can rely on newspaper

clippings.

Defection :

(xlv) With regard to defection as a proposition per se, ***Ravi Naik case, G.Viswanathan case, Mahachandra Prasad Singh case, Jagjit Singh case, Rajendra Singh Rana case, Yeddyurappa case and Kihoto case*** were cited. This Court has already discussed these case laws supra under separate heads and that will apply herein too. To be noted, as already alluded to supra, only ***Nabam Rebia*** and ***Kihoto*** have been followed as a matter of judicial discipline, without going by / de hors ***Yeddyurappa***, which was heavily relied on by writ petitioners.

(xlvi) ***Ravi Naik*** case pertains to Goa Legislative Assembly. A writ petition challenging the order of the Speaker disqualifying the appellant and two other MLAs was dismissed by the Bombay High Court (Panaji Bench). In an appeal before Hon'ble Supreme Court, petition challenging the disqualification of Ravi S Naik was allowed and his disqualification was set aside. The Supreme Court held in para 11 that voluntarily giving up membership of a party under paragraph 2(1)(a) of Tenth schedule has a wide meaning and formal resignation is not the only criteria.

(xlvii)***G.Viswanathan case*** relates to Tamil Nadu Legislative assembly, where two MLAs expelled from AIADMK joined another party and were disqualified. High Court dismissed the writ petition challenging the disqualification. Hon'ble Supreme Court dismissed the appeal and held that the judgment of the High Court declining to interfere with the order of the

disqualification passed by the Speaker calls for no interference. However in this case where two expelled AIADMK MLAs joined another political party, the issue was whether this tantamounts to voluntarily giving up membership of a political party within the meaning of paragraph 2(1)(a) of Tenth Schedule. The proposition which fell for consideration is whether voluntarily giving up membership of a political party would apply to a MLA who has been expelled from the party also. This was pressed into service by writ petitioners to emphasize the meaning of the expression 'voluntarily given up his membership' as occurring in paragraph 2(1)(a) of Tenth Schedule. Though this judgment is relevant, from my research, it comes to light that this has been referred to a Larger Bench as late as 17.4.2017 as a similar scenario came up for consideration in ***Amar Singh Vs. Union of India*** vide W.P.(Civil)No.240 of 2017 dated 17.04.2017.

(xlviii)***Mahachandra Prasad Singh*** case relates to disqualification order of Chairman of Bihar Legislative council. The Chairman was disqualified under para 2(1)(a) of Tenth Schedule. A writ petition filed against the aforesaid order was dismissed by the High Court. In an appeal before Hon'ble Supreme Court, the Supreme Court upheld the disqualification and held that Speaker is the final authority to decide the disqualification petition before him and if his conclusion is reasonable or plausible, the court shall not interfere. It was further held that the disqualification rules framed by the Speaker under paragraph 8 of the Tenth Schedule is subordinate legislation and any violation thereof will only amount to procedural lapse and will not come under the ambit of judicial review. However,

to be noted, there is no dispute or disagreement before this Court regarding scope of judicial review qua Speaker's order and this case does not turn solely on violation of TN Defection rules made by Speaker in exercise of powers under Paragraph 8 of Tenth Schedule.

(xlix) ***Jagjit Singh*** case pertains to an order passed by the Speaker of Haryana Legislative Assembly disqualifying petitioner from being member of the assembly. The Supreme Court held that there is no violation of principles of natural justice and there is no mala fides and dismissed the writ petitions. Supreme Court held that proceedings under Tenth Schedule are not mere departmental proceedings and Speaker can draw logical inferences. The object of the Tenth Schedule is to stop defection and the defected MLA cannot get away on mere technical grounds. However, to be noted, there is no dispute or disagreement before this Court regarding scope of judicial review qua Speaker's order.

(L) ***Rajendra Singh Rana case*** relates to Uttar Pradesh legislative assembly, wherein the Speaker has passed a split and disqualification order, which was challenged before the High Court. Two views were taken by the High Court (To be noted, Hon'ble Chief Justice dismissed the writ petition and two other Hon'ble Judges quashed the Speaker's order, asking him to reconsider). In an appeal, Hon'ble Supreme Court dismissed the appeal by holding that Speaker cannot decide split before disqualification and had set aside the order of Speaker.

(Li)***Yeddyurappa*** and ***Kihoto*** cases which are stand alone cases have

been discussed / referred to elaborately supra.

(Lii)What can be inferred from these case laws is, there can be no hard and fast rule as to what is defection qua paragraph 2(1)(a) of Tenth Schedule. Defection cannot be precisely 'defined'. It can at best be 'described'. (I hasten to add that the position may be slightly different with regard to paragraph 2(1)(b) of Tenth Schedule). The issue has to be decided on a case to case basis depending on facts of each case and that is what I have done, in the instant 18 writ petitions.

Conviction on criminal charges :

(Liii)For the proposition that somebody who is convicted by the Court should not hold public office, Prabhakaran case was pressed into service. This judgment pertains to Section 8 of 1951 RP Act regarding disqualification on facing criminal charges. In my considered opinion, this does not really help the respondents in the instant case, because conviction of General Secretary of AIADMK was on 14.2.2017, whereas the core issues herein unfurled thereafter.

Mala fides :

(Liv)The next proposition is mala fides. This court has already discussed regarding high office of the Speaker / model Speaker and this court has also held that higher the stature, the rigor required in terms of impartiality and objectivity is also very high.

(Lv)Two judgments, namely, ***Prabodh Sagar v. Punjab State Electricity Board, (2000) 5 SCC 630*** and ***Ravi Yashwant Bhoir v. District Collector, Raigad (2012) 4 SCC 407*** are for the proposition on mala fides.

(Lvi)S.T.K.Jakkaiyan issue was highlighted for assailing the impugned order of the Speaker on grounds of mala fides. I am, therefore, of the view that it would be apposite to have clarity on what 'mala fides' is in law. For conceptual clarity on what is mala fides in law, I looked into ***Prabodh Sagar*** case and ***Ravi Yashwant Bhoir*** case.

(Lvii)***Prabodh Sagar*** is a case where an employee of electricity board was slapped with an order of premature retirement. This order was assailed by the employee in the High Court in Punjab and Haryana, alleging that the order has been passed out of mala fides. In other words, the order of premature retirement was assailed mainly on the ground of mala fides. High Court dismissed the writ petition. It was carried in appeal to Supreme Court. Hon'ble Supreme Court confirmed the order of High Court, but discussed what is 'mala fide'. It is articulated in paragraph 13 of the said judgment, which reads as follows :

> **"13.**As noted above, the High Court has not highlighted this aspect of the matter, though the same was brought to the notice of the High Court, we do not know for what reasons, neither do we intend to delve into it but the fact remains that the comment of the learned advocate appearing for the Board during the course of hearing before this Court that the litigatious spirit of the petitioner has, in fact, brought into effect the exercise of jurisdiction of the writ court to a ludicrous extent. We do find some justification in the criticism of the learned advocate for the Board vis-à-vis the conduct of the appellant-petitioner herein. The petitioner has been, as noted above, from 1989 onwards engaged himself in the law courts rather than exerting himself in an effort to improve his capability as the employee of the Board so that the Board and the State obtain maximum benefit from

out of the services of the appellant-petitioner but unfortunately his litigatious spirit prevailed upon him and as noticed above we do find some justification as regards the comment made by the learned advocate appearing for the Board. Mala fides have been alleged against the statutory Board (Punjab State Electricity Board) but the contextual facts negate such an allegation. Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner has become more of a liability than an asset and in the event of there being such a situation vis-à-vis an employee, the employer will be within his liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provide for voluntary (*sic* compulsory) retirement, a person of the nature of the petitioner, as more fully detailed hereinbefore, cannot possibly be given any redress against the order of the Board for voluntary retirement. There must be factual support pertaining to the allegations of mala fides, unfortunately there is none. Mere user of the word "mala fide" by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration has been noted in this judgment in extenso. Tampering of the annual confidential rolls has been alleged but there is no evidence in regard thereto or even to link up the two private respondents therewith. While it is true that the earlier relationship between an employer and employee or between the employees was that of mutual trust, confidence or welfare, presently the situation in general stands polluted and may be even one degree higher than the pollution of the environment, but that

does not however clothe the court to come to a conclusion of mala fide without there being any basic evidence being made available to the court."

(Underlining made by court to supply emphasis and highlight)

I borrow the language of Supreme Court “incidentally, be it noted that the expression “mala fide” is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case.” From the above, two aspects that emerge with clarity are that there is no straight jacket formula for mala fides (it has to be decided on a case to case basis) and that it has to be seen from the records of a given case.

(Lviii)Court deems it appropriate to look at one more judgment of Hon'ble Supreme Court to get further clarity on mala fides as a concept and that is ***Ravi Yashwant Bhoir*** case. In this case, a President of a municipal council was disqualified by the Chief Minister of the State by exercising powers under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. This order of disqualification made by the Chief Minister was assailed by the disqualified President of the municipal council in Bombay High Court. Bombay High Court dismissed the writ petition confirming the disqualification. The matter was carried in appeal to Hon'ble Supreme Court. In the Supreme Court, the order of High Court was set aside and appeal of disqualified municipal President was allowed on the main ground that Chief Minister's order or removal / disqualification was hit by mala fides. In this case, what exactly would constitute mala fides or what is mala fides has been elucidatively articulated by

the Supreme Court in paragraph 48. Court deems it appropriate to extract that portion of paragraph 48, which reads as follows :

> "**48.**Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. ....."

(Lix)From the above, it emerges clearly that when some power is vested in a Tribunal or authority and when it is exercised for purposes 'foreign' to those for which it is intended, it is mala fides. Such exercise should be to the prejudice of some person is another parameter. In the instant case, the power of disqualification of a MLA is vested in the Speaker by Tenth Schedule. The purposes for which such powers are vested in the Speaker can be culled out from the Statement of Objects and Reasons '(SOR' for brevity) to the 52nd amendment to the COI. 52nd amendment to the COI was introduced by way of a Bill in 1985. A perusal of the SOR shows that the purpose for which such power of disqualification of MLA is vested with the Speaker is to ensure that actions which are undermining the very foundation of our democracy are combated. It is clear that it is intended to ensure that there is a healthy political system.

(Lx)A cursory reading of SOR to the 52nd amendment Bill to the COI will give an impression that it is aimed at eliminating the mischief of defection and to ensure political stability. It is no doubt not incorrect. However, a close, careful and detailed reading of SOR would reveal that the core objective of the 52nd

amendment to the COI is very profound and sanctus, i.e., to prevent breach of faith of the electorate. It is intended to make people / electorate the true sovereign. To be noted, this has also been articulated by Hon'ble Supreme Court of India in paragraph 45 of ***Kihoto***. Therefore, the objective for which disqualification powers are vested in the Speaker under Tenth Schedule is to ensure that faith of the people / electorate is not breached. To add complete clarity, this Court makes it clear that it is of the considered opinion that the salutary purpose and sublime philosophy behind vesting the high office of the Speaker with extreme powers such as disqualifying an MLA elected by a majority in an electorate running into lakhs is to ensure that an MLA does not manipulate the mandate given to him or her. In other words, it is to ensure that people / electorate are alone truly sovereign in a democracy. In the above context, when we see exercise of powers vested in the high office of the Speaker in the light of different yardsticks being applied to S.T.K.Jakkaiyan and to writ petitioners as well as critical questions ignoring ECI, being dealt with without adequate material by way of evidence, court is unable to brush aside the contentions of learned senior counsel for writ petitioners that powers have been exercised for purposes foreign to the salutary purpose and sublime philosophy behind Tenth Schedule. This Court has already noted that the salutary purpose and sublime philosophy behind Tenth Schedule is ensuring that the mandate of the electorate is not manipulated and citizens in a democracy are truly sovereign. 'Citizenry is the ultimate sovereign' – this is the pinnacle of the lofty principle and bedrock of the sublime philosophy behind the Tenth Schedule. Anti defection, giving up

voluntarily membership of a political party are all various dynamics that operate in this regard. Viewed in this context, I find considerable force in the emphatic submission of the writ petitioners that powers vested in the Speaker under Tenth Schedule have been used for political exigencies which is foreign to the very objective with which powers are so vested. Therefore, I am inclined to accept the submissions of writ petitioners that the impugned order is hit by mala fides. To be noted, 'mala fides' is one of the grounds of judicial review qua Speaker's order as per constitutional determination made by Supreme Court.

(Lxi)To be noted, the power of disqualification of a MLA vested in the Speaker is such a huge power that a MLA, who has been elected by an electorate of about 1 ½ to 2 lakhs people, can be disqualified by the Speaker acting as a Tribunal. In effect, the Speaker is the trustee of the electorate, i.e., mandate given by about 1 ½ to 2 lakhs citizens on an average in each of the assembly constituencies in a State like Tamil Nadu. Obviously, the size of electorate (numbers) will vary in other States depending on size and population.

(Lxii)With regard to mala fides, I have also noticed a Constitution Bench decision of Hon'ble Supreme Court in ***S.Pratap Singh v. State of Punjab [*****AIR 1964 SC 72*****]***. This is a case arising under service law where a civil surgeon working with the State Government had gone on leave on the eve of his retirement. This is a case where the leave was revoked and the Civil Surgeon was placed under suspension pending enquiry on the eve of his retirement. The allegation against him was misconduct. The delinquent moved the Punjab and Haryana High Court assailing the aforesaid order on the ground of mala fides.

High Court dismissed the writ petition. When it was carried to Hon'ble Supreme Court, Supreme Court set aside the judgment of High Court and held that the impugned order has been passed with ulterior motive as the State had an axe to grind qua the delinquent. In this context, a reference made by the Constitution Bench to mala fides is elucidatively articulated in paragraph 9. Court deems it appropriate to extract that portion of paragraph 9 of the Constitution Bench judgment, which reads as follows :

> "9..... The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, events or matters wholly extraneous to the purpose for which the power was vested, or whether the proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event the fact that the authority concerned denies the charge of mala fides, or asserts the absence of oblique motives or of its having taken into consideration improper or irrelevant matter does not preclude the Court from enquiring into the truth of the allegations made against the authority and affording appropriate reliefs to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out."

(Lxiii)From all that have been set out supra, this court has no hesitation in accepting the submissions of petitioners that in the instant case, the impugned order of the Speaker is hit by mala fides.

(Lxiv)This Court has already noticed that the sanctus objective behind Tenth Schedule is, people / entire citizenry (not just the electorate) are the ultimate sovereign in a Democracy / Republic, not just at the hustings, but in the

great hall of democracy post hustings and post polling too. In this perception, in the light of the discussion herein, it follows as an indisputable and inevitable sequitur that the impugned order of the Speaker is in violation of constitutional mandate also. In other words, conclusions arrived at herein regarding perversity, non conformity with principles of natural justice and mala fide (qua S.T.K.Jakkaiyan issue) as a sequitur tantamount to not adhering to the aforesaid sanctus objective behind / purpose of Tenth schedule, i.e., people (citizenry) being the ultimate sovereign in a Democracy / Republic not only at the hustings, but after they give their mandate at the hustings / post polling too. Therefore, in this view of the matter, it follows that the impugned order of the Speaker is a violation of constitutional mandate also. To be noted, violation of constitutional mandate is also one of the four grounds of judicial review qua Speaker's order / impugned order as culled out from ***Kihoto*** case. As alluded to supra, permitting a legislator to take a stand and thereafter, exonerating him of the consequences (disqualification) solely on the ground that the legislator has rescinded his position clearly militates against the aforementioned sanctus objective behind Tenth Schedule as if this is upheld, it would mean that there can be free floor crossing. To be noted, this is mentioned only as a principle and should not be construed as meaning that going to the Governor and giving a representation in the instant case entails disqualification. Therefore, the impugned order of Speaker deserves to be set aside not only on grounds of perversity, non compliance with principles of natural justice and mala fides (qua S.T.K. Jakkaiyan issue), but also on the ground of violation of constitutional mandate.

Unique feature of this case owing to ECI being in seizin of which faction is AIADMK political party :

(Lxv)Of the 55 judgments that have been catalogued supra, 11 judgments (10 Supreme Court judgments and 1 Bombay High Court judgment) are on Tenth Schedule.

(Lxvi)In addition to the aforesaid 11 judgments, there are two judgments of Hon'ble Supreme Court which deal with powers / role of the Speaker, powers/ role of the Governor and other related aspects, though the facts may not arise directly out of Tenth Schedule. These two judgments of Hon'ble Supreme Court are ***Nabam Rebia*** and ***Raja Ram Pal*** cases, both of which are Constitution Bench judgments.

(Lxvii)As already alluded to supra, this court refrains from relying upon ***Yeddyurappa*** as the question of implied overruling and per incuriam are left open which has also been alluded to supra.

(Lxviii)As ***Yeddyurappa*** is excluded, there are at least two judgments of Hon'ble Supreme Court, namely, ***Ravi Naik*** and ***Kuldeep Bishnoi*** cases, wherein orders of disqualification made by the Speaker had been set aside. To be noted, in ***Kuldeep Bishnoi***, it was sent back to the Speaker for deciding disqualification issue afresh. Be that as it may, irrespective of the ultimate outcome, the principles in these two cases as well as other cases, i.e., ***Jagjit Singh, Rajendra Singh Rana*** and ***Mahachandra Prasad Singh*** cases definitely govern the field. ***Kihoto*** is a stand alone case law where the validity of Tenth Schedule was upheld. ***G.Viswanathan*** case which pertains to Tamil Nadu

Legislative Assembly also arose out of disqualification proceedings. However, as mentioned supra, in this case, there was reference to a Larger Bench.

(Lxix)To be noted, ***Mahachandra Prasad Singh*** case was an Article 32 writ petition.

(Lxx)A careful reading of the factual matrix of these case laws reveal that in none of the aforesaid cases, the question of 'political party' in whose ticket MLAs were elected and the question as to which faction is the 'political party' in whose ticket MLAs were elected was not before the ECI when the impugned order was made by the Speaker, unlike the instant cases. To be noted, there have been cases of split and merger. That is in a different realm altogether. There is no case law which deals with a situation where the Speaker is called upon to decide a defection issue under paragraph 2(1)(a) of Tenth Schedule when the question as to which of the factions is the 'political party' on which the MLAs concerned were elected was before the ECI. Therefore, it appears that this is one very unique factual feature of this case. Owing to this unique factual feature, an inquisitorial process assumes significance and in the opinion of this court, it becomes imperative to return a finding about whether MLAs concerned have 'voluntarily given up' their membership of the 'political party' in whose ticket they were elected. Therefore, the request of the writ petitioners herein for letting in oral evidence as well as their request for cross examination ought to have been granted as that would have thrown light on these aspects of the matter. The complainant Whip, EPS and for that matter, every MLA elected in AIADMK ticket including the 18 writ petitioners herein are all parties to the ECI

proceedings directly or indirectly. On a demurrer, even if there was an inquisitorial process, ECI being the ultimate authority with regard to which is the political party in the light of Article 324 of COI, the ECI being in seizin should be construed as a restraint.

(Lxxi)Hon'ble Supreme Court in ***Ravi Naik*** case (supra) held that principles of natural justice have a important place in modern Administrative Law and they have been defined to mean 'fair play in action'. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case. Relevant paragraphs in ***Ravi Naik*** case are paragraphs 20 and 26. This Court deems it appropriate to extract paragraphs 20 and 26 of the aforesaid judgment, which read as follows :

> "**20.**Principles of natural justice have an important place in modern Administrative Law. They have been defined to mean "fair play in action". (See: *Maneka Gandhi* v. *Union of India* [(1978) 1 SCC 248, 286 : (1978) 2 SCR 621, 676] , Bhagwati, J.) As laid down by this Court: "They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men" (*Union of India* v. *Tulsiram Patel* [(1985) 3 SCC 398, 470 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131, 225]). An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.
> **26.**The grievance that the appellants have been denied the opportunity to adduce the evidence is also without substance. The

> appellants were the best persons who could refute the allegations made in the petitions. In the impugned order the Speaker has mentioned that the appellants were present before him but they did not come forward to give evidence. Moreover, they could have sought permission to cross-examine Dr Jhalmi in respect of the statement made by him before the Speaker that the appellants had given up their membership of their political party and had said so openly to him and to others, in order to refute the correctness of the said statement. They, however, failed to do so. "

(Lxxii)Hon'ble Supreme Court in ***Jagjit Singh*** case (supra) held that the principles of natural justice are flexible and have to be examined in each case. Relevant paragraph in the aforesaid case is paragraph 26 which reads as follows :

> **"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 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. "

(Lxxiii)In ***Mohanraj*** case (supra), an action had been initiated against six MLAs for the breach of privilege on the basis of the recommendation made by the Privileges Committee. The Privileges Committee relied upon certain video recordings for arriving at the conclusion that the petitioners are guilty of conduct which is in breach of the privileges of the House, but a copy of the video

recording was not provided to the petitioners. Supreme Court held that failure to supply a copy of the video recording or affording an opportunity to the petitioners to view the video recording relied on by the Committee clearly resulted in violation of principles of natural justice. Relevant paragraph of the said judgment is paragraph 45. This Court deems it appropriate to extract the said paragraph 45, which reads as follows :

> **"45.**The Privileges Committee should have *necessarily offered this opportunity*, in order to make the *process* adopted by it compliant with the requirements of Article 14. Petitioner 1 in his reply letter to the notice issued by the Privileges Committee seeks permission to give further explanation when the video recording is provided to him. Petitioner 3 in his reply letter states that he believes his version of his conduct will be proven by the video recording. The other petitioners do not mention the video recording in their reply letters. However, it is not the petitioners' burden to request for a copy of the video recording. It is the legal obligation of the Privileges Committee to ensure that a copy of the video recording is supplied to the petitioners in order to satisfy the requirements of the principles of natural justice The failure to supply a copy of the video recording or affording an opportunity to the petitioners to view the video recording relied upon by the Committee in our view clearly resulted in the violation of the principles of natural justice i.e. a denial of a reasonable opportunity to meet the case. We, therefore, have no option but to set aside the impugned Resolution dated 31-3-2015 passed in the Tamil Nadu Legislative Assembly. The same is accordingly set aside."

15 **CONCLUSION** :

15(a) Sum totality of discussion supra leads this Court to inevitably conclude that the impugned order of the Speaker disqualifying 18 writ petitioners herein deserves to be set aside.

15(b) Owing to all that have been set out supra, the order of Speaker

dated 18.09.2017 which is the impugned order, is set aside with regard to the 18 writ petitioners herein as being hit by all four grounds of judicial review qua Speaker's order as laid down by the Supreme Court in ***Kihoto*** case, i.e., hit by perversity, non compliance with the principles of natural justice, mala fides (qua S.T.K.Jakkaiyan issue) and violation of constitutional mandate.

15(c)It is made clear that this order is being passed without relying on ***Yeddyurappa*** case owing to the controversy regarding implied overruling / per incuriam qua ***Nabam Rebia*** which has been left open.

16 **DECISION** :

16(a) To be noted, writ petitioners have referred to ***Yeddyurappa*** judgment in the prayer. As the Court has left open the question as to whether ***Yeddyurappa*** was impliedly overruled by ***Nabam Rebia***, the Court allowing these writ petitions would only mean that the impugned order of Speaker is set aside for reasons set out supra in this order as this Court expresses no opinion on whether ***Yeddyurappa*** case has been impliedly overruled by ***Nabam Rebia***. Allowing of these writ petitions would not mean that the Court has applied ***Yeddyurappa*** and dislodged the impugned order. It has become necessary to make this clarification owing to the language in which the prayers in the writ petitions are couched.

16(b) Impugned order is set aside insofar as 18 writ petitioners are concerned. All the writ petitions are allowed. Considering the facts and circumstances of the case and the trajectory the litigation has taken, there shall be no order as to costs. Consequently all connected miscellaneous petitions are

closed.

(M.S.,J.)
14.06.2018

Index : Yes

gpa/vvk

To

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

W.P.Nos.25260 to 25267 and
25393 to 25402 of 2017

Dated: 14th June, 2018

THE HON'BLE CHIEF JUSTICE
AND
M.SUNDAR,J.

Since there has been disagreement between the two of us, the writ petitions be referred to a third Judge. The difference of opinion being between the Chief Justice and Justice Sundar, the Chief Justice is of the view that it would not be appropriate for the Chief Justice to nominate the third Judge. The writ petitions be referred to the next Senior-most Judge available for nomination of a third Judge.

Mr.Raman appearing on behalf of some of the writ petitioners submits that the interim order earlier passed by this Court should continue till the decision by the third Judge. The prayer is allowed.

(I.B., CJ.) (M.S., J.)

sasi

THE HON'BLE CHIEF JUSTICE
AND
M.SUNDAR,J.

(vvk/bbr/sasi)

W.P.Nos.25260 to 25267 and
25393 to 25402 of 2017

14.06.2018