



2024:HHC:3469

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No.3015 of 2024**
Reserved on : 28.5.2024
Decided on : 14.6.2024**Sh. Hoshyar Singh Chambyal and Ors.****.....Petitioners****Versus****Hon'ble Speaker and Ors.****.....Respondents****Coram****Hon'ble Mr. Justice Sandeep Sharma, Judge.****Whether approved for reporting?****For the Petitioners:** Mr. Maninder Singh Senior Advocate with Mr. Anshul Bansal, Mr. Ajay Vaidya, Mr. Prabhas Bajaj, Mr. Shriyek Sharda and Mr. Rangasaran Mohan, Advocates.**For the respondents:** Mr. Kapil Sibal, Senior Advocate (through Video Conferencing) and Mr. K.S. Banyal, Senior Advocate with M/s Rohit Sharma, Udaya Singh Banyal, Aprajita Jamwal, Nikhil Purohit, Jatin Lalwani and Rishabh Parikh, Advocates, for respondents No.1 and 3.

Mr. Ankush Dass Sood, Senior Advocate with Mr. Arjun Lal, Advocate, for respondent No.4- Election Commission of India.

Sandeep Sharma, J.

Above captioned writ petition was heard and decided by the Hon'ble Division Bench of this Court, comprising of Hon'ble Mr. Justice M.S. Ramachandra Rao, the Chief Justice and Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge. Since members of the Hon'ble Division Bench have expressed difference of opinion vide two separate

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judgments delivered on 8.5.2024, case at hand has been placed before this Court pursuant to separate order dated 8.5.2024, which reads as under:

“Both Members constituting the Bench vide their separate orders have unanimously held that the relief sought in the Writ petition cannot be granted.

But one of us (Justice Jyotsna Rewal Dua, Judge) has held that, in the facts and circumstances of the case, a direction can be given to the Speaker to decide the issue of voluntariness/genuineness of the resignation submitted by the petitioners within a period of two weeks and has issued such a direction.

However the other member of the Bench (Justice M.S. Ramachandra Rao, C.J.) has not agreed to the same.

In view of difference of opinion on this aspect the matter be placed before the Chief Justice on administrative side for reference to a 3rd Judge for resolving the difference of opinion.”

2. Though careful perusal of judgments passed by both the esteemed members of the Hon'ble Division Bench clearly reveals that they are in agreement that relief prayed for cannot be granted, but only difference of opinion is whether timeframe, if any, can be issued to the Speaker of Legislative Assembly, to decide the issue of voluntariness/genuineness of resignations of the petitioners or not? The Hon'ble Chief Justice, in his judgment, has categorically held that no direction can be issued to the Speaker to take a decision on the resignation letter within fixed timeframe, whereas Hon'ble Ms. Justice

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Jyotsna Rewal Dua, Judge, has directed the Speaker to decide the issue of resignation within a period of two weeks.

3. In the aforesaid background, precisely, the issue, which has fallen for determination before this Court is *“whether High Court while exercising power under Article 226 of the Constitution of India, can direct speaker of Legislative Assembly/Vidhan Sabha, to decide issue of voluntariness or genuineness of the resignation submitted by the petitioners in time bound manner”*, which is two weeks in the instant petition.

4. Though having taken note of the fact that both the esteemed Judges, while writing separate judgments, have already taken note of the facts in detail, there appears to be no reason and justification for this court to take note of the same, as it would unnecessarily burden the judgment, but with a view to understand the controversy and for having bird’s eye view of the matter, facts, relevant for adjudication of the question formulated herein above, are that petitioners herein, who were elected to Himachal Pradesh Legislative Assembly as independent candidates in the month of December, 2022, submitted their resignation letters to the Speaker, Himachal Pradesh Legislative Assembly (*in short “the Speaker”*) on 22.3.2024 (Annexure P-1 Colly.), thereby resigning from the membership of Legislative Assembly with effect from 22.3.2024 in terms of provisions contained under Article 190(3)(b) of the Constitution of India read with Rule 287

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of the Rules of Procedure and Conduct of Business in Himachal Pradesh Legislative Assembly (*in short "the Rules"*). Resignation letters, as detailed herein above, were personally handed over by the petitioners to the Speaker on 22.3.2024 and thereafter, on 23.3.2024, they also joined Bhartiya Janta Party (BJP). Since petitioners had resigned voluntarily, without there being any coercion and out of their own free will, they were expecting the Speaker to accept their resignations immediately in terms of Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules, however, when such prayer of them was not accepted immediately, they were compelled to send communications to his Excellency, the Governor of Himachal Pradesh (Annexure R-1 and R-4), complaining therein that the Speaker had not accepted their resignation letters for political and malafide reasons and he was acting in contravention of the constitutional mandate.

5. Simultaneously, on 26.3.2024, petitioner No.2 sent a reminder to the Speaker, requesting him to accept his resignation immediately. Similar letters were also written by other petitioners, including petitioner No.2, on 27.3.2024 (Annexure P-2 colly.). After receipt of the aforesaid reminders, the Speaker issued Show Cause Notices dated 27.3.2024 (Annexure P-8. colly) to the petitioners through Secretary of the Himachal Pradesh Legislative Assembly, stating *inter alia* that

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the petitioners had come to the residence of the Speaker at about 3.30 p.m. on 22.3.2024 alongwith BJP MLAs namely Sh. Balbir Singh Verma and Dr. Janak Raj and had handed over their resignation letters. Thereafter, petitioners also submitted copies of their resignation letters to the Secretary of the Himachal Pradesh Legislative Assembly accompanied by Mr. Jai Ram Thakur, Leader of the Opposition Party and that on 23.3.2024, the Secretary of the Assembly had received a complaint from some ministers and congress party MLAs about the petitioners' conduct since 27.2.2024, claiming therein that their resignations cannot be termed as voluntary in terms of reasons contained Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules. Vide aforesaid Show Cause Notice, the Speaker called upon the petitioners to appear before him for inquiry on 10.4.2024. Before decision, if any, by the petitioners to appear before the Speaker in terms of the Show Cause Notices, as detailed herein above, could be taken, they approached this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein for following reliefs:

“(i) Issue an appropriate write, order or direction to the Respondent No. 1/Respondent No. 2 to forthwith accept the resignation of the petitioners dated 22.03.2024 w.e.f.

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22.03.2024 and issue appropriate communication to that effect forthwith; and

(ii) Issue an appropriate writ, order or direction quashing the Show Cause Notice dated 27.03.2024 and all consequent proceedings arising out of it; and

(iii) Consequently issue an appropriate write, order or direction to the respondent No. 4 to notify the three vacancies in the Assembly Constituencies.”

6. On 10.4.2024, Hon'ble Division Bench issued notice to respondent No.1 Speaker, Himachal Pradesh Legislative Assembly, respondent No.3 Secretary, Himachal Pradesh Legislative Assembly, and respondent No.4 Election Commission of India with direction to file reply on or before 24.4.2024. On 24.4.2024, petitioners submitted their replies to the show cause notices, stating therein that the Speaker was obliged to take action by issuing communication to accept the resignations dated 22.3.2024 w.e.f. 22.3.2024 immediately. They also submitted in their reply that since they had voluntarily, without there being any coercion and of their own free will, had submitted their resignations, the Speaker had no option, but to accept the same. Petitioners also submitted that Show Cause Notices issued to them are contrary to the constitutional schemes and principles of law laid down by the courts of law. Vide aforesaid reply, they also apprised the Speaker that on account of impermissible delay in accepting the resignations by the Speaker, they were compelled to file the writ petition. They also denied the allegations and contents of

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complaint dated 22.3.2024 received by the office of Speaker from some Ministers and Congress Party MLAs annexed with the show cause notices dated 27.3.2024.

7. Before afore Show Cause Notices dated 27.3.2024, could be taken to its logical end by the Speaker, another Show Cause Notice dated 24.4.2024, came to be issued to the petitioners for their disqualification under para-2 sub clause 2 of the Tenth Schedule, stating therein that being independent members of the assembly and having got elected otherwise as a candidate set up by any political party, they incurred disqualification by joining the Bhartiya Janta Party on 23.3.2024, however, aforesaid Show Cause Notice never came to be made as a subject matter of the petition. On 24.4.2024, Hon'ble Division Bench after having heard learned Senior counsel for the parties reserved the judgment and finally vide separate judgments dated 8.5.2024, both the esteemed members of the bench though categorically ruled that relief prayed for in the instant petition cannot be granted, but one of the member (Hon'ble Ms. Justice Dua), while placing reliance upon the judgments passed by the Hon'ble Apex Court in certain cases, held that though petitioners may not be entitled to specific relief claimed by them but such fact may not preclude the writ court to grant such other reliefs to which they are otherwise entitled. Hon'ble Ms. Justice Dua, directed the Speaker to take decision on the resignation of the petitioners within a timeframe

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of two weeks. Pursuant to order dated 8.5.2024, whereby reference came to be made to this Court, matter at the first instance was placed before this Court on 10.5.2024, on which date, on account of non-availability of learned Senior counsel representing respondents No. 1 and 3, matter on the joint request of the parties, was adjourned to 28.5.2024. On 28.5.2024, this Court after having heard rival submissions made by the learned Senior counsel representing the parties reserved the judgment. Before judgment could be delivered on the point of reference, the Speaker, vide order dated 3.6.2024, which has come to the notice of this Court from the Newspaper, has accepted the resignations. Though on account of acceptance of the resignations, relief, as prayed for, stands granted, but still this court is obliged to answer the reference as taken note hereinabove.

8. Precisely, the grouse of the petitioners, as has been highlighted in the petition and further canvassed by Mr. Maninder Singh, learned Senior Counsel appearing for the petitioners, is that petitioners herein were constrained to file the petition owing to the refusal of the Speaker to accept the resignation letters tendered by them. While referring to the provisions contained under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules, Mr. Singh, vehemently argued that since there is a mandate to accept the resignations, if any, tendered by the members of the Legislative Assembly, immediately, the Speaker had no option, but to accept the

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same on the day such resignation letters were tendered. He submitted that the Speaker has failed to discharge his constitutional obligation under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules and as such, this court has plenty of power under Article 226 of the Constitution of India to issue direction to the Speaker to act in accordance with the provisions contained under Article 226 of the Constitution of India in a time bound manner. While referring to Rule 287 of the Rules, Mr. Singh, argued that members shall not give any reason for their resignation, rather resignation shall state the date from which it shall come into effect, which, in the case at hand, was duly complied with upon submitting resignation letters. While referring to number of judgments, which have been otherwise taken note by both the esteemed Judges of Hon'ble Division Bench, Mr. Singh, attempted to persuade this Court to agree with his contention that once resignation letters were handed in person to the Speaker on 22.3.2024, he had no option, but to accept the same and there was no scope left, if any, for inquiry to be conducted. While making this Court peruse resignation letters submitted by the petitioners, Mr. Singh submitted that resignation letters were tendered voluntarily and were genuine, if it is so, same ought to have been accepted by the Speaker immediately, once he failed to discharge his duty, writ court while exercising power under Article 226 of the Constitution of India, can always issue positive directions to do the needful within stipulated

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time. While referring to Rule 287 of the Rules, proviso 2 whereof though suggests that in case the Speaker has any information or knowledge that resignation tendered by the member of Assembly is not voluntarily, he may not accept the resignation immediately, Mr. Singh strenuously argued that material available on record clearly reveals that there was no doubt regarding genuineness of resignation being voluntary, and without there being any coercion. He submitted that repeatedly, the petitioners apprised the Speaker that they of their own volition have tendered resignations and such fact repeatedly came to the notice of the Speaker through print media and electronic media, but yet no action was being taken by the Speaker, that means that there is a clear cut attempt on his behalf to defeat the mandate given in the Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules.

9. While placing reliance upon judgment titled **Vikram Singh v. Ram Ballabhji Kasat, 1994 SCC OnLine MP 83**, Mr. Singh submitted that every elected member of the Legislative Assembly possesses indefeasible right to resign and any violation of such right would be contrary to the fundamental principle of democracy. He submitted that having regard to the fact that each member of the Legislative Assembly has an indefeasible right to resign, there is a corresponding obligation imposed by the provisions of Article 190, Sub Clause 3 of the Constitution of India upon the Speaker as well, to take

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action upon the resignation immediately. Rules in this behalf are made under provision of constitution, whereby the Speaker has been obliged to take action immediately. In support of aforesaid contentions, Mr. Singh specifically placed reliance upon judgment passed by the Hon'ble Apex Court in **Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly and Ors. alongwith connected matters (2020) 2 SCC 595**, wherein Hon'ble Apex Court emphasized that the decision by the Hon'ble Speaker on the resignation letters must be taken immediately and the Speaker must decide in accordance with the provisions of the Constitution and the applicable rules. Lastly, Mr. Singh, submitted that while discharging the obligation under Article 190(3)(b) of the Constitution of India, the Speaker is not acting like a Constitutional Tribunal, rather as an officer of Legislative Assembly, thereby the scope and width of judicial review is wider. He submitted that since there is ample material available on record suggestive of the fact that petitioners herein of their own volition tendered the resignations, there was no occasion, if any, for the Tribunal to conduct inquiry, rather after having noticed voluntariness or genuineness, which is otherwise borne out from the fact that petitioners personally presented themselves before the Speaker with resignation letters, the Speaker ought to have accepted the resignations immediately. However, in the instant case, the Speaker by constituting an inquiry has attempted to defeat the

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mandate contained in Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules, which clearly provides for acceptance of resignations in case same are submitted voluntarily and found to be genuine. He submitted that postponing the decision of the Speaker amounts to "failure to decide", constituting a jurisdictional illegality, requiring interference of the courts in exercise of judicial review under Article 226 of the Constitution of India. In this regard, Mr. Singh also placed reliance upon pronouncement of Hon'ble Apex Court made in **Rajinder Singh Rana v. Swami Prasad Maurya (2007) 4 SCC 270**. He also placed reliance upon judgment passed by the Hon'ble Apex Court in **Comptroller and Auditor General v. K.S. Jagannathan (1986) 2 SCC 679**, to state that High Courts in India, exercising their jurisdiction under Article 226 of the Constitution of India, have power to issue a writ of Mandamus or to pass orders and give necessary directions where the government or public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government. He submitted that since in the case at hand, the Speaker has failed to take decision on the resignation letters immediately in terms of provisions contained under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules, writ court can always issue direction to do the needful within stipulated time.

10. During proceedings of the case, Mr. Singh also filed an application, seeking therein permission to place on record additional facts. As per averments contained in the aforesaid application, the Speaker made a public speech on 11.5.2024, wherein he made certain uncalled for comments, suggestive of the fact that he is hell-bent in causing damage to the petitioners. Since aforesaid application has been filed after disposal of the writ petition by the Hon'ble Division Bench of this Court, coupled with the fact that this court has been called upon to specifically answer the reference with regard to issue of timeframe, if any, can be fixed by the court, this Court sees no reason to look into the contents of the same, however, Mr. Singh, while referring to the speech made by the Speaker on 11.5.2024, has vehemently argued that conduct of the Speaker clearly establishes deliberate malafides and he is not acting neutrally while performing his constitutional obligations. He submitted that all essentials regarding resignation of the petitioners being voluntary or genuine stood fulfilled on 27.3.2024, itself and by that time, no complaint, if any, was ever filed by the Ministers and Congress Party MLAs and as such, there was no occasion, if any, for the Speaker, not to accept the resignation immediately, but yet he continuously refused to discharge his constitutional obligation under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules for extraneous reasons, and therefore, one of the member of the Division Bench of this Court

rightly directed the Speaker to decide the issue of voluntariness or genuineness of resignation well within the stipulated time of two weeks.

11. Mr. Singh further submitted that case of the petitioners is also covered by the principle/maxim-*ubi jus ibi remedium*, which means that wherever there is a right, the law provides a remedy to the person possessing that right. In support of his aforesaid contention, he also placed reliance upon judgment passed by Hon'ble Apex Court in **Dhannala v. Kalawatibai (2002) 6 SCC 16**. He submitted that contention of the respondents that this Court has no jurisdiction to issue a writ to the office of the Speaker is also completely misconceived and unsustainable in the teeth of the principles laid down by the Hon'ble Apex Court in the long line of judgments from **Raja Ram Pal v. Lok Sabha, (2007) 3 SCC 184** to **Subhash Desai v. State of Maharashtra, (2024) 2 SCC 719**. Mr. Singh submitted that it is quite apparent before this court that an indefeasible right possessed by the petitioners has been violated and there is a complete inaction on the part of the authority concerned, the court would be obliged to step in for removing every prejudice/violation of right and injustice to the petitioners. It has been further submitted on behalf of the petitioners that under Article 226 of Constitution of India, writ court can never express inability or show that it does not possess jurisdiction and, similarly, the petitioners should not be left in a

situation where the petitioners have an indefeasible right in their favour, but the law does not provide any remedy for redressal of grievance in relation to that indefeasible right to resign.

12. To the contrary, Mr. Kapil Sibal, learned Senior counsel, appearing for respondents No. 1 and 3, supported the view taken by the Hon'ble Chief Justice, wherein he has held that no direction can be issued to the Speaker to decide the issue of resignation within a time bound manner. While making this Court peruse prayer clause, Mr. Sibal, learned Senior Counsel, submitted that petitioners at no point of time prayed for direction to the Speaker to decide the issue of voluntariness or genuineness of the resignations and therefore, direction issued by the Hon'ble Ms. Justice Dua, is unwarranted. He further submitted that it is constitutionally impermissible for the High Court to issue direction to the Speaker for taking decision within a particular timeframe in respect of the discretion exclusively conferred upon him under Article 190(3) (b) of the Constitution of India as an officer of the State Legislature. Mr. Sibal, further argued that petitioners neither pleaded nor argued for issuance of any direction to the Speaker to decide the question of voluntariness or genuineness of their resignation within a particular timeframe and as such, there was no occasion, if any, for Hon'ble Ms. Justice Dua, Judge, to issue direction to the Speaker to decide the issue of voluntariness or genuineness within a time bound manner. In support of his aforesaid

submissions, Mr. Sibal, placed reliance upon judgment passed by the Hon'ble Apex Court in case titled **Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd., and connected matter (1983) 1 SCC 147**, wherein it has been held that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords. He also placed reliance upon the judgment passed in **Loknath Padhan v. Birendra Kumar Sahu (1974) 1 SCC 526**, wherein Hon'ble Apex Court has held that court should not undertake to decide an issue which is purely academic in nature and that it is not a proper exercise of authority for the court to engage and decide it.

13. While referring to the provisions contained under Article 190(3)(b) of the Constitution of India, Mr. Sibal strenuously argued that resignation by member of a House of the Legislature of a State takes effect only when it is accepted by the Speaker, which position has been further affirmed by the Hon'ble Apex Court in **Shrimanth Balasaheb Patil (supra)**, wherein Hon'ble Apex Court has held that the Speaker has to accept such resignation for the seat to become vacant, but he has limited discretion for rejecting the resignation. If the resignation is voluntary or genuine, the Speaker has to accept the resignation and communicate the same. Mr. Sibal, learned Senior Counsel, further argued that the constitutional requirement of acceptance inheres in it an element of discretion to be exercised by the

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Speaker. The acceptance or non-acceptance of the resignation of a member is based on a satisfaction to be arrived at by the Speaker, depending on whether or not the resignation is voluntary or genuine. He submitted that in terms of provisions contained under Article 190(3)(b) of the Constitution of India, the Speaker is duty bound not to accept such resignation if he is satisfied that the resignation is not voluntary or genuine. While referring to provisions contained under Rule 287 of the Rules, Mr. Sibal, submitted that though in the case at hand, petitioners submitted written resignation to the Speaker personally, but once the Speaker had information or knowledge that resignations submitted by the petitioners were not voluntary, he rightly proceeded to hold inquiry. He submitted that once the Speaker has decided to conduct inquiry, he is required to record satisfaction regarding voluntariness or genuineness of resignation, which he may arrive on the basis of information received or otherwise. Mr. Sibal, submitted that constitutional courts respect the domain of other constitutional authorities with regard to the role specifically assigned to them under the Constitution. They refrain from taking upon themselves the constitutional burden of other authorities, which position has been otherwise accepted by both the Hon'ble Judge, including Hon'ble Ms. Justice Jyotsna Rewal Dua, while delivering judgment dated 8.5.2024. Mr. Sibal submitted that this court would be circumspect in issuing any direction prescribing the timeframe for

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performance of the role expressly assigned to the Speaker under the Constitution because such direction would amount to usurping the power of the Speaker otherwise provided to him under Article 190(3)(b) of the Constitution of India. He submitted that the Speaker has been assigned a dual role under the Constitution. The Speaker acts as an officer of the State Legislature while he considers the prayer made, if any, by a member to accept his/her resignation, whereas under Tenth Schedule, the Speaker acts as a Tribunal tasked with a duty to adjudicate questions relating to disqualification of members of the House. Power to decide on the acceptance or rejection of a resignation letter submitted by a member of a House of the Legislature of a State has been conferred upon the Speaker in his capacity as an officer of the State Legislature and in that capacity, he is co-equal to the constitutional courts as a constitutional authority, whereas while deciding the question of disqualification of legislature under Tenth Schedule, he acts as a Tribunal and decision rendered in the capacity of the Tribunal is always subject to the judicial review. While referring to the judgment passed by the Hon'ble Apex Court in **Pratap Gouda Patil v. State of Karnataka 2019 7 SCC 463**, Mr. Sibal submitted that Hon'ble Apex Court refused to fix a time-frame or to issue any directions or observations to the Hon'ble Speaker which may have the effect of fettering his discretion in respect of the exercise contemplated under Article 190 of the Constitution.

14. While referring to the judgment passed by the Hon'ble Apex Court in **Shivraj Singh Chauhan v. M.M. Legislative Assembly** (2020) 17 SCC 1, Mr. Sibal, learned Senior Counsel, further submitted that the Governor does not decide whether resignations submitted by the Members were genuine and voluntary, rather it is an exclusive domain of the Speaker. While referring to the aforesaid judgment, he submitted that neither Governor nor for that matter court can entrench upon the power of the Speaker and the pendency of the proceedings before the Speaker cannot be a valid basis to issue direction to the Speaker to take decision upon the resignation, if any, submitted by the members in a time bound manner.

15. While referring to the judgment passed by the Hon'ble Apex Court in **Kihoto Hollohan v. Zachillhu (1992) Supp. (2) SCC 651**, Mr. Sibal, submitted that position of a Speaker as a Tribunal under the Tenth Schedule is slightly on different footing. He submitted that Speaker while discharging adjudicatory functions under the Tenth Schedule acts as a Tribunal and being a Tribunal, the functioning of the Speaker is subject to supervision, although limited, of the Constitutional courts. While referring to the judgment passed by Hon'ble Apex Court in **Keisham Meghachandra Singh Vs. Speaker, Manipur Legislative Assembly, 2020 SCC Online SC 55**, Mr. Sibal, submitted that in respect of the Speaker's capacity as a Tribunal under the Tenth Schedule, reasonable time was fixed as

three months barring exceptional circumstances, but such order cannot be passed in a routine manner. Mr. Sibal placed reliance upon the judgment passed by the Hon'ble Apex Court in case titled **Subhash Desai v. Principal Secretary, Governor of Maharashtra (2024) 2 SCC 719**, to argue that a constitutional court cannot direct the Speaker to exercise its power within a reasonable period. To argue that Constitutional courts cannot direct the Speaker to exercise power within a reasonable period, he submitted that in the aforesaid case, direction came to be issued to the Speaker to discharge his function as a Tribunal under Tenth Schedule and as such, principle of law laid down in this decision cannot have any application in respect of the powers conferred upon the Speaker as an officer of the State Legislature.

16. Lastly, Mr. Sibal, submitted that issuance of any time bound direction to the Speaker to decide the issue of voluntariness or genuineness of resignation by a constitutional court can lead to absurd consequences, especially when apart from the question of resignation, disqualification petitions are pending adjudication before the Speaker against the writ petitioners.

17. Having heard learned counsel for the parties and perused material available on record, this Court finds that petitioners herein, who were elected as Members of the Legislative Assembly, submitted their resignations on 22.3.2024, to the Speaker, Himachal Pradesh

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Legislative Assembly, thereby resigning from the Assembly w.e.f. 22.3.2024, but since such request of them was not accepted immediately and they came to be served with Show Cause Notices dated 27.3.2024, they approached this Court by way of instant petition, seeking therein direction to the Speaker to forthwith accept the resignations of the petitioners dated 22.3.2024 w.e.f. 22.3.2024. Besides above, they also laid challenge to Show Cause Notices dated 27.3.2024 as well as to all consequential proceedings arising out of it. Hon'ble Division Bench though anonymously, may be through separate judgments, arrived at a definite conclusion that no direction can be issued to the Speaker to accept the resignation of the petitioners, rather in that regard, decision, if any, can only be taken by the Speaker, however one of the Member, Hon'ble Ms. Justice Dua, having taken note of the fact that readiness and willingness of the petitioners to submit their resignations coupled with the mandate contained in Rule 287 of the Rules, issued direction to the Speaker to decide issue of voluntariness or genuineness of resignations within a period of two weeks.

18. Hon'ble the Chief Justice, taking note of various judgments passed by the Hon'ble Apex Court, has held that Court cannot fetter the discretion of the Speaker to conduct an inquiry into whether a resignation is "voluntary" or "genuine". He ruled that once discretion lies with the Speaker to conduct an inquiry into the

voluntariness or genuineness of the resignations, no direction can be issued to the Speaker to take decision on the resignations within a fixed timeframe, especially when no such request was made by the learned counsel for the petitioners at all.

19. To the contrary, Hon'ble Ms. Justice Dua, though has agreed/concurred with Hon'ble the Chief Justice that taking decision on the resignations is within the domain of the Speaker and it is not for the Court to substitute Speaker's decision with its decision or to refrain the Speaker from taking the decision which is within his domain, but yet proceeded to issue direction to the Speaker to take decision on the resignation within a period of two weeks.

20. Though during arguments, learned Senior counsel for the parties, especially learned senior counsel appearing for the petitioners, vehemently made an attempt to persuade this court to agree with his submission that resignations tendered by the petitioners being voluntary and genuine ought to have been accepted by the Speaker immediately and there was no occasion, if any, for him to conduct inquiry, but this Court needs not go into the aforesaid aspect of the matter, especially when both the esteemed members of the bench have ruled in unison that question with regard to voluntariness and genuineness of the resignations can only be seen by the Speaker.

21. Similarly, majority of the judgments pressed into service by the counsel appearing for the parties have been already taken note

of by both the Hon'ble Judges while writing separate judgments and as such, same also need not to be referred to, save and except, those judgments which have been pressed into service by the counsel for the parties, for deciding the issue regarding writ court issuing direction to the Speaker to accept or reject the resignation that too within a stipulated time.

22. Judgment passed by the Hon'ble Chief Justice, if read in its entirety, clearly suggests that issue with regard to voluntariness or genuineness of the resignations submitted by the petitioners to the Speaker has not been dealt with, rather Hon'ble Chief Justice after having noticed factum with regard to submission of resignations and thereafter, consequent action taken thereupon by the Speaker, has proceeded to hold that in terms of provisions contained under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules, it is exclusive domain of the Speaker to take decision upon voluntariness or genuineness of the resignations submitted by the Members of the Legislative Assembly and in that regard, no direction can be issued to him by the Constitutional Court while exercising power under Article 226 of the Constitution of India.

23. To the contrary, perusal of judgment passed by the Hon'ble Ms. Justice Dua, though suggests that she has concurred with the findings returned by Hon'ble the Chief Justice that relief, prayed for, cannot be granted, but yet after having rendered positive

finding of the fact that there was no requirement, if any, to conduct inquiry by the Speaker pursuant to resignations submitted by the petitioners voluntarily out of their own free will, she has proceeded to issue direction to the Speaker to decide the issue of “voluntariness” or “genuineness” of the resignations submitted by the petitioners within two weeks.

24. Before exploring answer to the reference made to this Court, this Court deems it fit to take note of the provisions contained under Article 190(3) of the Constitution of India, which reads as under:

“190(3) If a member of a House of the legislature of a State-

(a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.”

25. Article 190(3)(b) is relevant in the given facts and circumstances of the case, which provides that if Member of a House of the legislature of a State resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and

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his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant. Proviso to the aforesaid provision is very relevant, which provides that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation. As per aforesaid provision, resignation, if any, submitted by a Member of the House of a State Legislature, cannot be accepted straightaway by the Speaker, rather on account of his having received information, if any, with regard to resignation being not “voluntary” or “genuine”, he can constitute an inquiry and may not accept such resignation.

26. Similarly, Rule 287 of the Rules, provides that if a member who desires to resign his seat in the house shall intimate in writing or online under his hand addressed to the Speaker his intention to resign his seat in the House on the prescribed format and he/she is not required to give any reason for his resignation. Rule 287(2) further provides that if a member hands-over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine, the Speaker may accept the resignation immediately, but aforesaid provision is subject to the a condition that Speaker should have no information or knowledge to the contrary, meaning thereby, in

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case, the Speaker has information or knowledge that resignation tendered by a Member of the Legislative Assembly is not voluntary or genuine, he may not accept the resignation immediately, rather in that eventuality, he may conduct an inquiry, as provided in the proviso to Article 190 (3)(b) of the Constitution of India. Rule 287 (3) provides that if the Speaker receives the letter of resignation either by post or through someone else, he can make such inquiry as he thinks fit to satisfy himself that the resignation is voluntary and genuine. Rule 287, if read in its entirety, clearly suggests that the Speaker, after receipt of resignation, may satisfy himself with regard to voluntariness or genuineness of the resignation, especially when, he has information or knowledge to the contrary.

27. In the cast at hand, it came to be vehemently argued on behalf of the petitioners that on 22.3.2024, they had personally submitted the resignation letters (Annexure P-1 Colly.) to the Speaker of Himachal Pradesh Legislative Assembly, thereby resigning from the Assembly w.e.f. 22.3.2024. It has been claimed by the petitioners that once they themselves apprised the Speaker with regard to their voluntariness to resign, he had no option but to accept the resignations immediately in terms of provisions contained in Rule 287.

Rule 287 of the Rules, reads as under:

“287. Resignation of seats in House.- (1) A member who desires to resign his seat in the House shall intimate in writing or online under his hand addressed to the Speaker his intention to

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resign his seat in the House, in the following form and **shall not give any reason for his resignation:-**

To

The Speaker,
Himachal Pradesh Legislative Assembly,
Shimla-4.

Sir,

I hereby tender my resignation of my seat in the House with effect from.....

Yours faithfully,
Member of the House:

Place.....

Date.....

Provided that where any member gives any reason or introduces any extraneous matter the Speaker may, in his discretion, omit such words, phrases or matter and the same shall not be read out in the House.

(2) If a member hands-over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, the Speaker may accept the resignation immediately.

(3) If the Speaker receives the letter of resignation either by post or through someone else, the Speaker may make such enquiry as he thinks fit to satisfy himself that the resignation is voluntary and genuine. If, the Speaker, after making a summary enquiry either himself or through the agency of Legislative Assembly Secretariat or through such other agency, as he may deem fit, is satisfied that the resignation is not voluntary and genuine, he shall not accept the resignation.

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(4) A member may withdraw his letter of resignation at any time before it is accepted by the Speaker.

(5) The Speaker shall, as soon as may be, after he has accepted the resignation of a member, inform the House that the member has resigned his seat in the House and he has accepted the resignation.

Explanation:- When the House is not in session, the Speaker shall inform the House immediately after the House reassembles.

(6) The Secretary shall, as soon as may be, after the Speaker has accepted the resignation of a member, cause the information to be published in writing or online in the Bulletin Part-II and the Gazette and forward a copy of the notification in writing or online to the Election Commission of India for taking steps to fill the vacancy thus caused:

Provided that where the resignation is to take effect from a future date, the information shall be published in the Bulletin Part-II and the Gazette not earlier than the date from which it is to take effect.”

28. It is not in dispute that on 23.3.2024 itself, petitioners, who initially were elected to Himachal Pradesh Legislative Assembly as independent candidates joined Bharatiya Janata Party (BJP). It is also not in dispute, rather apparent from the reply filed by respondents No. 2 and 3, that on 23.3.2024, Secretary of the Legislative Assembly received a complaint from some Ministers from Congress Party MLAs about the petitioners' conduct since 27.2.2024. Though Article 190(3)(b) nowhere talks about specific timeframe for the Speaker to take decision on the resignation, if any, submitted by a member of the

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Legislative Assembly, but certainly Rule 287(2)(b), provides that if a member personally hands over resignation letter to the Speaker and informs that his resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, he may accept the resignation immediately. Since on 22.3.2024, the Speaker had no information or knowledge to the contrary, as is being claimed by the petitioners, he ought to have accepted their resignation immediately. Though Black's Law Dictionary meaning of word 'immediately' is 'prompt', 'vigorous action' or 'without any delay' but once it is not in dispute that petitioners had come to the residence of the Speaker at 3:30pm on 22.3.2024, alongwith BJP MLAs Mr. Balbir Singh Verma and Dr. Janak Raj, and had handed over their resignation letters and besides that they had also submitted copy of the resignation letters to the Secretary of Legislative Assembly, accompanied by Mr. Jai Ram Thakur, Leader of Opposition, the Speaker, who have been though informed by the petitioners that they have tendered their resignations voluntarily, could not have straightaway accepted the resignations, rather in terms of provisions contained in Rule 287(2) read with Article 190(3) could also conduct inquiry to ascertain voluntariness or genuineness of the resignations. Had, on 22.3.2024, the petitioners not visited the office of the Speaker with BJP MLAs, petitioners would have been right in contending that the Speaker ought to have accepted their resignation letters immediately, but since very presence of BJP

MLAs created doubt in the mind of the Speaker with regard to voluntariness and genuineness of the resignations, there was no requirement, if any, for the Speaker to accept the resignations immediately.

29. Moreover word “may” has been used in Rule 287 (2) of the Rules, meaning thereby, the Speaker having taken note of the various facts and circumstances prevailing at that particular time, may or may not accept the resignations immediately. Though aforesaid Rule 287 (2) provides that if a member personally hands over resignation letter to the Speaker and informs him that his resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, he may accept the resignation immediately, but subject to the satisfaction of the Speaker that resignation is not being tendered under threat or coercion. Had Rule Makers used word “shall” in place of “may”, petitioners could have been right in contending that in the event of their having made themselves available in person to the Speaker, coupled with the statements made to him that they tendered their resignations voluntarily, without there being any coercion, the Speaker had no option but to accept the resignation letters immediately but since the word “may” has been used, the legislative intent of giving a discretion to the Speaker for accepting or rejecting the resignation letter is evident. Apart from above, it is also apparent from the record that on 23.3.2024, a complaint was received by the

Speaker with regard to conduct of the petitioners, detail whereof has already been given in earlier part of the judgment and in that eventuality, he rightly proceeded to conduct an inquiry. It is also not in dispute that on 27.3.2024, Show Cause Notices came to be issued to the petitioners, to which, they not only filed replies, but also presented themselves before the Speaker to reiterate that they themselves without there being any coercion have tendered resignation, however, before decision, if any, could be rendered by the Speaker on the issue, petitioners approached this Court.

30. At this stage, it would be apt to take note of judgment passed by the Hon'ble Apex Court in **Shrimanth Balasaheb Patil v. Speaker, Karnataka Legislative Assembly and Ors.** (2020) 2 SCC 595 (alongwith connected matters), relevant para whereof reads as under:

“78. *Second*, the 33rd Constitutional Amendment requires acceptance of resignation by the Speaker. Thus, merely addressing a resignation letter to the Speaker would not lead to the seat automatically falling vacant. The Speaker has to accept such resignation for the seat to become vacant. However, as discussed above, the Speaker has limited discretion for rejecting the resignation. If the resignation is voluntary or genuine, the Speaker has to accept the resignation and communicate the same.”

31. Bare perusal of aforesaid pronouncement clearly suggests that after 33rd Constitutional Amendment, it has become mandatory

for the Speaker to accept the resignation, meaning thereby, merely addressing resignation to the Speaker would not lead to the seat automatically falling vacant, rather specific decision is required to be taken by the Speaker to accept or reject the resignation. Though the Speaker has limited discretion for rejecting the resignation, but certainly, he is entitled to conduct inquiry to ascertain whether resignation is voluntary and genuine. If the resignation is voluntary or genuine, the Speaker has to accept the resignation and communicate the same.

32. The constitutional requirement of acceptance inheres in it an element of discretion to be exercised by the Speaker. The acceptance or non-acceptance of the resignation of a member is based on a satisfaction to be arrived at by the Speaker, depending on whether or not the resignation is voluntary and genuine. Satisfaction of the Speaker regarding voluntariness or genuineness is to be arrived after making such inquiry as he may think fit, whether same is based on information received or otherwise. Under the Constitution, the Speaker is an officer of the State Legislative Assembly, who performs the functions of presiding over the proceedings of the House and represents the House for all intents and purposes. Allegations of malafide and arbitrary action, if any, made against the Speaker cannot be straightaway accepted considering the high status of the said office in a parliamentary system of democracy.

33. Hon'ble Apex Court in case titled **Subhash Desai v. State of Maharashtra (2024) 2 SCC 719**, has categorically held that in a parliamentary democracy, the Speaker is an officer of the Assembly and performs the function of presiding over the proceedings of the House and representing the House for all intents and purposes.

34. While negating the finding given in its earlier judgment rendered in **Kihoto Hollohan** (Supra), wherein it was contended that the Speaker does not represent an independent adjudicatory machinery since they are elected by the majority of the Assembly, Hon'ble Apex Court in **Subhash Desai** (supra) emphasized that office of the Speaker is held in high respect in parliamentary tradition. The Hon'ble Apex Court held that the Speaker embodies propriety and impartiality and therefore it is inappropriate to express distrust in the office of the Speaker. In the aforesaid judgment, Hon'ble Apex Court further held that it is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found to have discharged their functions not in keeping with the great traditions of that high office. The robes of the Speaker do change and elevate the man inside. Since Hon'ble the Chief Justice while writing judgment has already taken note of the aforesaid judgment, this court sees no reason to reproduce the relevant paras of the same.

35. The Hon'ble Apex Court in **Shivraj Singh Chauhan v. M.P. Legislative Assembly** (2020) 17 SCC 1, again discussed the scope of power of the Speaker in relation to dealing with the acceptance of resignation of Members of the State Legislative Assembly quoting its earlier decision in **Shrimath Balasaheb Patil** (supra). Though in the aforesaid judgment, Hon'ble Apex Court held that a Member of the Legislature is vested with the sole prerogative to determine whether or not to continue in office and a member who seeks to resign cannot be compelled to continue in office, but Hon'ble Apex Court also held that resignation is required to be accepted by the Speaker or the Chairman, as the case may be. In the aforesaid judgment, Hon'ble Apex Court again reiterated that role of the Speaker is to determine whether resignation is voluntary or genuine and satisfaction of the Speaker should be based upon the information received or otherwise and upon making such inquiry as is considered to be fit. The Speaker can reject the resignation, if he is satisfied that resignation is not voluntary or genuine, but his satisfaction should be based upon the information received and after making such inquiry, as he thinks fit. No doubt, while arriving at satisfaction, as discussed herein above, the Speaker is not expected to do/conduct a roving inquiry, rather he is expected to conduct such inquiry as is necessary and pass an order. If a member appears before him and gives a letter in writing, the Speaker may conduct a limited inquiry to ascertain

whether resignation is voluntary or genuine, but certainly, if he receives information that a member tendered his resignation under coercion, he may commence a formal inquiry to ascertain if the resignation was voluntary or genuine. In **Shrimath Balasaheb Patil** (supra), Hon'ble Apex Court has categorically held that inquiry should be limited to ascertaining if the member intends to relinquish his membership out of his free will and once it is demonstrated that a member is willing to resign out of his free will, the speaker has no option but to accept the resignation. It is not permissible for the Speaker to take into account any other extraneous factors while considering the resignation, but certainly, he may not straightaway accept the resignation, if any, handed over in person by the members of the Legislative Assembly if he has information or knowledge that resignation tendered is not voluntary, rather on account of coercion.

36. Since provisions contained under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules specifically talks about the satisfaction of the Speaker with regard to voluntariness and genuineness of the resignation, the writ court cannot go into that aspect of the matter, rather decision, if any, given by the Speaker on the voluntariness and genuineness of the resignation submitted by the member is subject to judicial review.

37. In the case at hand, resignations were submitted by the petitioners on 22.3.2024. Though petitioners claimed that they had

gone to the Speaker in person, but there is no denial to the fact that they were accompanied by BJP MLAs and Leader of Opposition had accompanied the petitioners while they had submitted the resignation letters to the Secretary, Vidhan Sabha. Though, it repeatedly came to be claimed by the petitioners that once they themselves stated before the Speaker that they have tendered the resignation voluntarily, there was no reason to conduct inquiry, but certainly, they were unable to explain the presence of BJP MLAs. Once petitioners herein were elected as Independent candidates and they had no relation of any kind with BJP, presence of BJP MLAs at the time of their tendering resignation may have created certain doubt in the mind of the Speaker with regard to voluntariness or genuineness of the resignations. If it is so, the Speaker is/was well within his rights, in terms of provisions contained under Rule 287(2), for not accepting the resignations immediately, rather rightly called upon the petitioners by way of Show Cause Notices to explain their position.

38. Though learned senior counsel appearing for the petitioners argued that very factum of the petitioners' filing the petition is evidence of their having rendered resignations voluntarily, but such fact may not be of much relevance for the reason that question of voluntariness or genuineness otherwise cannot be considered and decided by the High Court while exercising power under Article 226 of the Constitution of India, rather question of

voluntariness or genuineness is to be decided by the Speaker, who after having noticed presence of BJP MLAs with the petitioners coupled with the complaint made by the opposite party, proceeded to issue Show Cause Notices.

39. Though petitioners besides filing reply to the Show Cause Notices approached this Court in the instant proceedings, but it is not in dispute that they after having received Show Cause Notices subjected themselves to the inquiry. If it is so, argument otherwise sought to be raised, as has been discussed in detail, may not be available to them.

40. In the instant petition, petitioners have sought direction to the Speaker to accept their resignations w.e.f. 22.3.2024, immediately, but in terms of provisions contained under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules, authority responsible for accepting resignation, at the first instance, is required to record satisfaction with regard to voluntariness or genuineness of the resignation proposed to be submitted. Since question with regard to voluntariness or genuineness of the resignation, in terms of aforesaid provision of law, can only be gone into by the Speaker, writ Court is otherwise estopped to look into the aspect as to whether the resignation given by the petitioners is genuine or voluntary. Needless to say, writ court cannot usurp the functions of the Speaker on the validity of resignations of the petitioners. Specific power has been

conferred upon the Speaker by the Constitution to take decision upon the resignation, if any, submitted by the member of the Legislative Assembly and as such, Court cannot impede the exercise of discretion of authority acting under statute by issuance of writ, as has been prayed for. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in **State of Kerala v. Kandath Distilleries (2013) 6 SCC 573**, which has been otherwise taken note by the Hon'ble Chief Justice in his judgment.

41. In case titled **Pratap Gouda Patil v. State of Karnataka (2019) 7 SCC 463**, Hon'ble Apex Court refused to fix a timeframe or issue directions to the Speaker. In the aforesaid case, it was held that whether resignations submitted by Members of the Legislative Assembly at a point of time earlier than petitions for their disqualification under the Tenth Schedule of the Constitution should have priority in the decision-making process or whether both sets of proceedings should be taken up simultaneously or the disqualification proceedings should have precedence over the requests for resignation.

42. In the aforesaid case, issue before the Hon'ble Apex Court, was that whether resignations submitted by Members of the Legislative Assembly at a point of time earlier than petitions for their disqualification under the Tenth Schedule of the Constitution should have priority in the decision-making process or whether both sets of proceedings should be taken up simultaneously or the disqualification

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proceedings should have precedence over the requests for resignation. Hon'ble Apex Court in the given facts and circumstances, held that the Speaker of the House to decide on the request for resignations by the 15 Members of the House within such timeframe as the Speaker may consider appropriate. Hon'ble Apex Court specifically held in the aforesaid judgment that while deciding the above issue, discretion of the Hon'ble Speaker should not be fettered by any direction or observation of the Court and he should be left free to decide the issue in accordance with Article 190 read with Rule 202 of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly framed in exercise of the powers under Article 208 of the Constitution, which is parametric to Rule 287 of the Rules. However, in the aforesaid case, Hon'ble Apex Court held that until further orders, the fifteen Members of the Assembly, who had actually tendered their resignations, may not be compelled to participate in the proceedings of the ongoing session of the House and an option should be given to them that they can take part in the said proceedings or to opt to remain out of the same. Heavy reliance came to be placed upon the judgment passed by the Hon'ble Apex Court in **Rajinder Singh Rana v. Swami Prasad Maurya (2007) 4 SCC 270**, wherein the Speaker had failed to exercise his jurisdiction for deciding the disqualification petition under Tenth Schedule of the Constitution of India and had postponed the same. Constitutional Bench of the Hon'ble Apex Court

held in afore case, that the conduct of the Speaker is not a mere procedural irregularity, but is in the nature of a jurisdictional illegality and the High Court's jurisdiction in judicial review was attracted, however, both the Hon'ble Judges of the Bench were in agreement that decision rendered by the Hon'ble Apex Court in the aforesaid judgment was rendered in respect of discharge of the Speaker's functions as a tribunal under the Tenth Schedule.

43. Hon'ble the Chief Justice taking note of the judgment passed in **Subhash Desai** (supra), wherein earlier judgment rendered by the Hon'ble Apex Court in **Kihoto Hollohan** and **Rajinder Singh Rana** cases (supra) came to be discussed, held that finding returned in **Rajinder Singh Rana** (supra) was in peculiar/extraordinary facts and circumstances of the case. In **Rajinder Singh Rana**, term of the Assembly was ending shortly and disqualification petition would have been rendered infructuous had Hon'ble Apex Court not proceeded to decide the disqualification petition of its own. In **Subhash Desai** (supra), Hon'ble Apex Court held that even in cases where the Speaker decides disqualification petitions without following the procedure established by law, Court normally remands the disqualification petitions to the Speaker, therefore, absent exceptional circumstances, the Speaker is the appropriate authority to adjudicate petitions for disqualification under the Tenth Schedule. Though Hon'ble the Chief Justice in his judgment, has taken note of the aforesaid judgment in

detail, but it would be apt to take note of following para of the aforesaid judgment:

“80. This Court should normally refrain from deciding disqualification petitions at the first instance, having due regard to constitutional intendment. The question of disqualification ought to be adjudicated by the constitutional authority concerned, namely, the Speaker of the Legislative Assembly, by following the procedure prescribed. Disqualification of a person for being a Member of the House has drastic consequences for the Member concerned and by extension, for the citizens of that constituency. Therefore, any question of disqualification ought to be decided by following the procedure established by law. In *Kshetrimayum Biren Singh* (2022) 2 SCC 759, a three-Judge Bench of this Court set aside the order of the Speaker disqualifying MLAs under Para 2(1)(a) for not granting an opportunity to them to lead evidence and present their case. The Speaker was directed to decide the disqualification petitions afresh by complying with the principles of natural justice. Even in cases where the Speaker decides disqualification petitions without following the procedure established by law, this Court normally remands the disqualification petitions to the Speaker. Therefore, absent exceptional circumstances, the Speaker is the appropriate authority to adjudicate petitions for disqualification under the Tenth Schedule. (emphasis supplied)”

44. Admittedly, in the case at hand, petitioners herein were elected to the Legislative Assembly, in November 2022 and term of the Assembly is to expire in November 2027, whereas in the case of **Rajinder Singh Rana** (supra), term of the Assembly was ending shortly and in the event of no decision was being taken by the

Speaker, their disqualification petition would have been rendered infructuous had the Hon'ble Apex Court not interfered, whereas in the case at hand, the Speaker after having received resignation letters on 22.3.2024, constituted an inquiry on 27.3.2024 by issuing Show Cause Notices and thereafter, after having afforded opportunity of hearing, reserved the order. Hence, this Court finds it difficult to agree with learned Senior counsel for the petitioners that repeatedly an attempt came to be made by the Speaker to defeat the mandate contained in the Constitution of India, which casts duty upon him to accept their resignations immediately if the same is found to be tendered voluntarily and without there being any coercion.

45. Since provisions contained in Rule 287(2) reserves liberty to the Speaker to not to accept the resignation immediately on account of his having received information/knowledge that resignation sought to be tendered is not voluntary or genuine, the Speaker is well within his right to conduct an inquiry, which may not be a roving one, but certainly limited to the extent that resignation tendered is voluntary and genuine.

46. A Division Bench of Andhra Pradesh High Court in **S.A. Sampath Kumar v. Kale Yadaiah, 2015 SCC OnLine Hyd 418**, which has been otherwise taken note by Hon'ble the Chief Justice in his judgment, while taking note of the judgment passed by the Hon'ble Apex Court in **Kihoto Hollohan** (supra) ruled that High Court cannot

in exercise of its powers under Article 226 of the Constitution of India issue a mandatory direction to the Speaker of a State Legislative Assembly to dispose of a disqualification petition within a fixed timeframe. Though aforesaid judgment rendered by the High Court of Andhra Pradesh, has been laid challenge by way of SLP in the Hon'ble Apex Court, but till date, Hon'ble Apex Court has not interfered with the same. Once the Hon'ble Apex Court in **Kihoto Hollohan** and **Subhash Desai** (supra) has categorically held that no direction can be issued to the Speaker to take decision on disqualification within a fixed timeframe, Hon'ble the Chief Justice has rightly held that no direction can be issued to the Speaker to issue direction within a fixed timeframe. Though, Hon'ble Ms. Justice Dua while concurring with the judgment of Hon'ble the Chief Justice has held that taking decision on the resignations of the petitioners is within the domain of the Speaker and it is only the Speaker who can determine the voluntariness or genuineness of the resignations tendered by the petitioners, but yet has arrived at a conclusion that writ court, while exercising power under Article 226 of the Constitution of India, can issue direction to the Speaker to decide issue of resignation in a time bound manner. Aforesaid direction has been primarily issued by Hon'ble Ms. Justice Dua, on the ground that repeatedly petitioners affirmed their decision of tendering resignation and they cried out loud that such resignations were voluntary & genuine and as such, there is

no need for the Speaker to determine the veracity of the allegations leveled by third parties or MLAs/Ministers of INC that the resignations were tendered under duress, however this court is of the view that once question with regard to voluntariness and genuineness is/was to be determined by the Speaker in exercise of powers conferred in Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules, there was no requirement, if any, for Hon'ble Justice Dua to go into that aforesaid aspect of the matter.

47. While returning finding with regard to timeframe of inquiry, Ms. Justice Dua, has placed reliance upon the judgment passed by the **Shrimanth Balasaheb Patil**, wherein the Hon'ble Apex Court interpreted the Rule 202(2) of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly, which is parametria to Rule 287 of the Rules and held that the Speaker has to take 'immediate' call on the resignation letter. In the aforesaid judgment, Hon'ble Apex Court, held that satisfaction of the Speaker should be based upon the information received and after making such inquiry as he thinks fit, but inquiry cannot be roving one. Most importantly, in the aforesaid judgment, Hon'ble Apex Court, held that if a member appears before him and gives a letter in writing, the inquiry would be a limited one, but if the Speaker receives information that a member tendered his resignation under coercion, he may

choose to commence a formal inquiry to ascertain if the resignation was voluntary or genuine.

“79.

The rule states that the Speaker has to take a call on the resignation letter addressed to him immediately, having been satisfied of the voluntariness and genuineness. Reading the rule in consonance with Article 190(3)(b) of the Constitution and its proviso, it is clear that the Speaker's satisfaction should be based on the information received and after making such inquiry as he thinks fit. The aforesaid aspects do not require roving inquiry and with the experience of a Speaker, who is the head of the House, he is expected to conduct such inquiry as is necessary and pass an order. If a Member appears before him and gives a letter in writing, an inquiry may be a limited inquiry. But if he receives information that a Member tendered his resignation under coercion, he may choose to commence a formal inquiry to ascertain if the resignation was voluntary and genuine.”

48. Though Hon'ble Apex Court in the aforesaid judgment has held that language of Article 190(3)(b) of the Constitution does not permit the Speaker to inquire into the motives behind the resignation, but it nowhere ruled that the Speaker in the event of having received a resignation in person from the member concerned, cannot constitute inquiry to ascertain if the member intends to relinquish his membership out of his free will or not. Once the Speaker is satisfied that member is willing to resign out of his will, he has no option, but to accept the resignation, but once something contrary comes to the

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notice of the Speaker, he can always constitute an inquiry to ascertain whether resignation proposed to be tendered is voluntary and genuine or not. In the aforesaid judgment, at no point of time, direction came to be issued by the Hon'ble Apex Court to the Speaker to decide the issue in question within timeframe.

49. Subsequently, in **Shiv Raj Chauhan** (supra), Hon'ble Apex Court, having taken note of its earlier decision rendered in **Shrimanth Balasaheb Patil** though held that a member, who seeks to resign, cannot be compelled to continue his office, but categorically ruled that resignation is required to be accepted by the Speaker or the Chairman. Before accepting resignation, there should be a satisfaction of the Speaker that resignation tendered is voluntary and genuine and as such, satisfaction should be based upon the information received or otherwise and upon making such inquiry as is considered to be fit.

50. Leaving everything aside, finding returned by the Hon'ble Apex Court in **Shrimanth Balasaheb Patil**, was not prior to decision taken by the Speaker on the resignation submitted by a member, rather, same came to be returned while testing the legality of order passed by the Speaker on the prayer made by a member for accepting his resignation.

51. Hon'ble Ms. Justice Dua, while taking note of judgment rendered by the Hon'ble Apex Court in **Kihoto Hollohan** (supra), wherein allegations were of inaction or indecision, at pre-decisional

stages, by Speaker in deciding the petitions under the Tenth Schedule, held that indecision or inaction of the Speaker in taking the decision and sitting over the resignations tendered by the member of the Legislative Assembly would also be subject to limited judicial review on same parameters as laid down by the Hon'ble Apex Court in above precedent, meaning thereby that decision, if any, does not interdict judicial review in aid of Speaker arriving at a prompt decision under the Tenth Schedule. However, I am not persuaded to agree with the reasoning and logic given by Hon'ble Ms. Justice Dua for the reason that the Hon'ble Apex Court, subsequently, in **Subhash Desai** (supra) has vehemently held that judicial review is not available at a stage prior to the decision of the Speaker or Chairman, save in certain exceptional circumstances as detailed in that case. In case of **Subash Desai** (supra), the Hon'ble Apex Court specifically took note of the judgments rendered in **Kihoto Hollohan** and **Rajinder Singh Rana** cases (supra) and held that court should normally refrain from deciding disqualification petitions at the first instance, having due regard to constitutional intendment, rather question of disqualification ought to be adjudicated by the constitutional authority concerned i.e. the Speaker of the Legislative Assembly, by following the prescribed procedure.

52. Hon'ble Apex Court in the aforesaid judgment has held that normally, Court would remit the matter to the Speaker or

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Chairman to take a proper decision in accordance with law. However, in peculiar facts and circumstances, Court itself decided to adjudicate the disqualification petitions. In the case before the Hon'ble Apex Court, the Speaker of the Legislative Assembly had failed to decide the question of disqualification in a time-bound manner, rather the Speaker decided the issue of whether there was a split in the party without deciding whether the MLAs in question were disqualified. Hon'ble Apex Court having taking note of the necessity of an expeditious decision in view of the fact that the disqualification petitions were not decided by the Speaker for more than three years and the term of the Assembly was coming to an end, itself decided to decide the issue of disqualification, however, in **Subhash Desai** (supra), Hon'ble Apex Court categorically held that even in cases where the Speaker decides disqualification petitions without following the procedure established by law, Court would normally remand the disqualification petitions to the Speaker, therefore, absent exceptional circumstances, the Speaker is the appropriate authority to adjudicate petitions for disqualification under the Tenth Schedule. In nutshell, Hon'ble Apex Court in the aforesaid judgment held that save and except in exceptional circumstances, the Speaker is the appropriate authority to adjudicate the petitions for disqualification under the 10th Schedule. If it is so, Hon'ble the Chief Justice rightly applying the aforesaid analogy, held that no direction can be issued to the Speaker

to take decision on the resignation letter within a fixed timeframe. Moreover, this Court finds that when both the Hon'ble Judges were in agreement that relief, as sought for, cannot be granted, rather issue with regard to voluntariness or genuineness of the resignations can only be decided by the Speaker coupled with the fact that no prayer was ever made by the petitioners to direct the Speaker to decide their prayer for resignations in a time bound manner, there was no occasion for the Hon'ble Ms. Justice Dua, to fix timeframe, which was otherwise not permissible.

53. Moreover, this Court is of the view that position of the Speaker as Tribunal under 10th Schedule is slightly on different footing. While discharging adjudicatory function under 10th Schedule, Speaker acts as a Tribunal as has been held by the Hon'ble Apex Court in **Kihoto Hollohan**. Being a Tribunal, function of the Speaker is supervision of the Constitutional Courts. Hence direction given by the Hon'ble Apex Court in such like cases to the Speaker to do the needful well within timeframe cannot be a ground for the petitioners to claim that such direction can also be issued to the Speaker, who admittedly, has been assigned dual role under the Constitution. The Speaker acts as an officer of the State legislator while he accepts or rejects the resignation, if any, tendered by a member of the assembly, whereas under 10th schedule, he acts as a Tribunal tasked with duty to adjudicate questions relating to disqualification of the legislatures.

Power to decide the acceptance or rejection of a letter of resignation submitted by a member of the House of the Legislature of a State is in his capacity as an officer of the state legislator.

54. While accepting prayer, if any, made by the member of assembly for accepting the resignation, the Speaker acts as an officer of the State Legislator. In this capacity, the Speaker is coequal to the constitutional court as a constitutional authority. In such like situations, constitutional courts respect the domain of other constitutional authorities as regards the roles specifically assigned to them under the constitution, which position has been already accepted by both the Hon'ble Judges while writing the separate judgments.

55. At this stage, Mr. Maninder Singh, learned Senior counsel appearing for the petitioners vehemently argued that judgment rendered by the Hon'ble Ms. Justice Dua, has correctly taken into consideration the fact that it was admitted position on behalf of the respondents that while taking action under Article 190(3) of the Constitution of India, the Speaker does not act as a constitutional Tribunal, but acts as an officer of the Legislative Assembly and therefore cannot be held to be above the Constitution and the allegations/inactions on the part of the speaker would fall within the jurisdiction of judicial review possessed by the constitutional court i.e. High Court. However, aforesaid plea may not be otherwise available on

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account of the fact that Hon'ble Ms. Justice Dua, in her judgment, has already held that taking decision on the resignations of the petitioners is within the domain of the Speaker and court cannot substitute Speaker's decision with its decision or to refrain the Speaker from taking the decision that is within his domain. Once Hon'ble Ms. Justice Dua, has agreed with the finding given by the Hon'ble Chief Justice that decision, if any, with regard to voluntariness or genuineness is to be taken by the Speaker in discharge of his duty, where no timeframe has been fixed, she ought not have fixed timeframe for the Speaker to decide the issue. Moreover, Hon'ble Apex Court has already clarified in **Subhash Desi** (supra) that under what circumstances, directions in earlier case were given to the Speaker to decide the issue of disqualification under the 10th Schedule and ultimate power to decide such issue lies with the Speaker and further, in that regard, no timeframe can be fixed.

56. Though Mr. Maninder Singh, learned Senior Counsel appearing for the petitioners, placed heavy reliance upon judgment passed in **Krishan Yadav v. State of Haryana (1994) 4 SCC 165**, to state that High Court, for removing every act or event of justice, should never feel helpless, rather it should enable itself to take all such steps for dealing with any act of injustice brought before it, however this Court having perused aforesaid judgment is not persuaded to agree with Mr. Singh, especially in view of the given facts

and circumstances of the case, wherein constitution specifically provides mechanism for accepting resignations and in that regard, procedure has been prescribed under the Constitution as well as Rules coupled with the fact that repeatedly, it has been held by the Hon'ble Apex Court that no interference is called for at pre-decisional stage. High Court while exercising power under Article 226 of the Constitution of India cannot direct the Speaker to do the needful in terms of provisions contained under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules, within a time bound manner. Similarly, this court finds no quarrel with the proposition of law, which is otherwise covered by the long-settled legal maxim—*ubi jus ibi remedium*, i.e. wherever there is a right, the law provides a remedy to the person possessing that right. Aforesaid principle of law may not have application in the present case because petitioners cannot be said to be remediless, rather they of their own volition are always at liberty to tender their resignation before the Speaker, which prayer, he is otherwise bound to accept or reject in terms of provisions contained under 190(3)(b) of the Constitution of India read with Rule 287 of the Rules. Once decision is rendered by the Speaker, petitioners being aggrieved if any, of the same, can always approach the constitutional court under Article 226 of the Constitution of India.

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57. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court is persuaded to agree with view taken by the Hon'ble Chief Justice that no timeframe can be fixed by the Constitutional Court for the Speaker to decide the issue of resignation tendered by members of the Legislative Assembly/Vidhan Sabha, if any, brought before him. Reference is answered accordingly.

14th June, 2024

manjit

**(Sandeep Sharma),
Judge**

High Court