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ADJUDICATION OF CASES OF DISQUALIFICATION BY AN INDEPENDENT QUASI-JUDICIAL AUTHORITY

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ABSTRACT

The Supreme Court had, once, opined that the office of the Speaker which was attached with great dignity should not be made the target of bias since his tenure is dependent on the will of the majority of the House. This view has still not changed, even today, and the Supreme Court, in a recent case, went to the extent of suggesting the Parliament to amend the Constitution to constitute a quasi-judicial authority, like a Tribunal, to adjudicate disqualification cases under Tenth Schedule and substitute the relevant powers of the Speaker on the Tribunal as the Speaker continues to belong to a particular political party, either de jure or de facto. The settlement of disqualification disputes should be made by an independent mechanism outside the House to ensure that it is decided both swiftly and impartially. This paper has discussed the Constitutional powers of the Speaker and the sharp contrast manifested in practice. The recent disastrous and unprecedented instances of bias of Speaker that has made the Supreme Court reiterate the constitutional values, dignity and impartiality of the Office of the Speaker, which are, unfortunately, either lacking or diminishing and the conspicuous bias and abuse of powers by the Speaker for his personal or party gains are also explained in detail in this paper. The suggestions for a possible set up of the Tribunal including its composition, jurisdiction, locus standi, time for settling disputes and appeals are also discussed in this paper. This is a welcoming and necessary approach which upholds the constitutional impartiality of the Speaker and gives real teeth to the provisions contained in the Tenth Schedule, which are so vital in the proper functioning of our democracy.

Keywords: Tenth Schedule, disqualification, defection, Model Speaker, Quasi-Judicial Authority, Tribunal

INTRODUCTION

In the contemporary democratic world, almost all parliamentary democracies have faced the threat of defection. It is an act of changing the allegiance from party on whose ticket they have been elected to another party or voting against the direction of the existing party. It poses a serious threat to democracy by creating a chaotic political environment. Defection is not a new phenomenon to India as it had faced numerous cases of elected representatives shifting from one party to another. This became a common menace across party lines, which necessitated the government to add the Tenth Schedule to the Constitution through the 52nd Constitutional Amendment to prevent the breach of trust of the electorate and ensure stable governance and a healthy political environment. It gives powers to Speaker or Chairman of the House to decide on the cases of disqualification of members on the ground of defection and makes him an ultimate arbitrator whose decision is final, binding and usually non-justiciable. This makes us question the impartiality of the Speaker and the purpose of conferring unlimited powers on him. The effectiveness of anti-defection law in serving its purpose or, on the contrary, posing a threat to democracy is also questionable. This warranted an analysis on the Constitutional powers vested on the Speaker regarding

disqualification of members of the legislature due to defection and the position of the Speaker as an impartial arbitrator on deciding it from case to case.

CONSTITUTIONAL POWERS OF THE SPEAKER

The Speaker/Chairman of the House is a constitutional office holder. The Constitution, Conventions and Procedure and Conduct of Business Rules of the respective Houses have provided the Speaker with adequate powers to ensure the efficient conduct of Parliamentary proceedings.

Tenth Schedule to the Constitution provides certain powers to the Speaker to curb the evil of political defection:

- Except when the Speaker is subject matter of disqualification, he shall decide on the cases of disqualification of members on the ground defection and his decision is final.
- The Speaker is empowered to make rules relating to the implementation of the provisions of the Tenth Schedule including the procedure in which the cases of disqualification on the grounds of defection are to be decided.
- The Speaker can order that any wilful contravention of the rules of the House by any person, as a breach of privilege of the House.
- All proceedings relating to disqualification of member on the grounds of defection are considered as the proceedings of the House and cannot be questioned in a court of law. Furthermore, Tenth Schedule explicitly provides for the bar of jurisdiction of courts in this regard.
- The Speaker is exempted from the definition of defection, when he has to withdraw his membership in the party by the reason of being elected to such office and rejoins when he ceases to hold the office.

In **Kihoto Hollohan v. Zachillhu**[1], the Supreme Court, while upholding the constitutional validity of the Tenth Schedule, has observed that it is an experimental legislation where line of constitutionality cannot be drawn so easily to differentiate which is constitutional and which is not. The Speaker's authority is similar to that of a tribunal and the finality clause does not oust the jurisdiction of the courts. However, it is limited to those proceedings tainted by illegality or perversity. It doesn't absolutely bar the jurisdiction of courts and the power of the Speaker under the Tenth Schedule is a judicial power which is subject to judicial review.

A BITTER REALITY OF NORMS

The Speaker occupies a paramount position in parliamentary democracy. The conventional prerequisite for a person holding the office of Speaker is to be an honourable, impartial and independent person, stepping out of party politics once he assumes office. Though the Speaker is elected mainly by the ruling party, there is a healthy convention where an informal consultation of other parties is taken to ensure that he enjoys respect and be impartial towards all the sections of the House. The powers of the Speaker are expected to be exercised only to uphold the constitutional values of the House. But the bitter truth is such powers are used only to the advantage of the party which elected him. The worst of all is the defection laws being unscrupulously taken advantage by the Speaker to help the

[1]Kihoto Hollohan v. Zachillhu, A.I.R. 1993 S.C. 412

ruling party in maintaining their majority. These depraved acts of the Speakers are often condemned by the courts.

CONTRARIES AND JUXTAPOSITIONS OF THE SPEAKER – SOME INSTANCES

In the decades-old rich history of the Constitution of India, Speaker holds a significant position both in terms of parliamentary spirit and structure of federalism. It is said that the Speaker is, and should be, an impartial arbitrator in all cases concerning the membership of MLAs in the House. However, as stated earlier, the real practice is in sharp contrast to those motives expressed and procedures mentioned in paper. The Speaker had misused his constitutional authority for his party's benefits and, at times, been warned by the Supreme Court about the wrong implications it would have on the constitutional functioning and dignity of the Office of the Speaker. The country has witnessed and experienced disastrous instances where a Speaker vehemently exploits his Constitutional authority and powers either for personal or party benefits and makes the whole exercise of deciding on disqualification petitions a mockery of the Constitution.

ARUNACHAL PRADESH CONSTITUTIONAL CRISIS

The first and the most recent instance of such malfeasance happened in Arunachal Pradesh in 2015. Supreme Court had to adjudicate such a constitutional crisis not only in light of constitutional provisions and also on the basis of the real object of such provisions and the real intentions of the concerned parties behind such decisions. All these were necessary to be considered in **Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly**[2], in which, even the apex court had felt that the impression given out in the case was that the sequence of facts relating to the affairs of the House and the MLAs, by itself, would be sufficient to establish that constitutional responsibilities were exercised in such manner as would be sufficient for the Court to strike down the same. Any layman could have had the same view if he had witnessed or made aware of the events that unfolded rightly and chronologically[3].

The crisis began to crop up when a notice of resolution to remove the Speaker, Mr. Nabam Rebia, was moved by the Opposition Party, BJP, under Article 179(c) read with Article 181 and Rules 151 and 154 of the Rules of Procedure and Conduct of Business of Arunachal Pradesh Legislative Assembly. On the other hand, a notice of resolution to remove Deputy Speaker, Mr. Tenzing Norbu Thongdok, was moved by the Congress Party, which was also the ruling party. The Chief Government Whip filed disqualification petitions against 14 MLAs of his party, on which the Speaker gave them a notice period of 14 days to reply for it. Taking the above events into account, the Governor of Arunachal Pradesh, in exercise of powers conferred upon him under Article 174 (1), issued an order preponing the session and also sent a message stating that the resolution for removal of Speaker shall be the first item

[2] Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 S.C.C. 1

[3] https://www.thehindu.com/news/national/other-states/Arunachal-political-crisis-A-timeline/article14983750.ece

on its agenda and the Deputy Speaker shall preside over the House on that resolution, according to Article 181(1). He further stated that until the session is prorogued, no Presiding Officer shall alter the party composition in the House.

Amidst this predicament brewing within the precincts of the House, the Speaker went on to disqualify those 14 MLAs by the constitutional powers vested on him when a resolution against him was in consideration. Stating the unconstitutionality of such an order, the Deputy Speaker had quashed the disqualification order, even though he himself had been unseated through it, for not only infracting the constitutional and legal procedures but also for lack of competence to do so since a notice of resolution for removal of Speaker was pending. He also mentioned the order of the Governor not to change the composition of the House until the session is prorogued which provided him cogent reasons to revoke the disqualification order.

As this power tussle came before the Supreme Court, it had held, inter alia, that it would be constitutionally impermissible for a Speaker to adjudicate upon disqualification petitions under the Tenth Schedule, while a notice of resolution for his own removal from the office of Speaker is pending. This is because such an exercise would conflict with the express mandate of Article 179(c) which contains the words "all the then members of the Assembly". It prohibits the Speaker to disqualify members as the same would negate the effect of those words. It expressed definiteness and any change in the strength and composition of the Assembly when the resolution for removal is pending, is against the constitutional objective of that article. The purpose of Tenth Schedule is clear and distinct from that of Article 179(c).

The Supreme Court went on to interpret that it could seriously prejudice MLAs facing disqualification if that is dealt with by the Speaker before his own removal. If the Speaker faces the motion first, both constitutional provisions would have their independent operational space preserved as neither of them would interfere with the free functionality of the other.

Finally, the apex Court opined that the constitutional purpose and harmony would be maintained if a Speaker refrains from adjudication of disqualification petitions whilst his own position as Speaker is under challenge.

This had clearly manifested the partisan attitude of the Speaker and the political vendetta undertaken by the Speaker for the benefit of his personal incumbency by exploiting the powers vested on him by the Constitution.

POLITICAL CRISIS IN KARNATAKA

The Supreme Court had noticed another such delinquency very recently from the Office of the Speaker in 2019, but this time, it is from the Speaker of Karnataka Legislative Assembly, where the incident still stays fresh and lingers in the minds of all MLAs, politicians and people of the State. There was high-voltage political drama revolving around Raj Bhavan and Vidhana Soudha which had shown not only the massive exodus of MLAs resigning from the Assembly but also the Speaker's abuse of power to pass disqualification orders that are ultra vires to his authority and jurisdiction. Supreme Court was adjudicating a case based

on these circumstances in **Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly**[4], where it had reiterated the virtues of a Speaker and his role in upholding the constitutional functions and values of his Office without letting his mind favour the position of his party in the House.

It all started when the results of the 15th Karnataka Legislative Assembly Elections were declared. Though the BJP was the single largest party, its attempt to form the Government was not successful, resulting in a coalition government of Congress and JD(S). The resignation letters submitted by 15 MLAs to the Speaker had started the controversy posing a threat to the majority support of the government led by Mr. H.D. Kumaraswamy. However, the Speaker did not decide on accepting those letters. Having submitted the resignations, they did not attend the session, leading to the defeat of trust vote and resignation of Mr. Kumaraswamy from the post of Chief Minister of Karnataka. The Government had a short life of about 14 months. After having successfully conducted the trust vote, the Speaker, after giving sufficient notice period and due inquiry, passed an order rejecting the resignations and disqualifying 17 MLAs till the end of the term of the House.

When the Supreme Court was approached, the Court, though validating the disqualification order, had held, inter alia, that that the Speaker, in exercise of his powers under the Tenth Schedule, does not have the power to either indicate the period of disqualification, nor to bar a disqualified member from contesting elections until the end of the term of the House. This is because both Article 191(2) and the Tenth Schedule of the Constitution do not specify the consequences or period of disqualification. Similarly, Articles 164(1B) and 361B also show that disqualification under the Tenth Schedule does not bar a person from contesting elections. The phrase "for being a member" used in Article 191(2) and the disqualification under the Tenth Schedule are constitutionally different and, thus, implies that a bar for contesting re-elections is neither contemplated under the Constitution nor under the statutory scheme. When the express provisions of the Constitution provide for a specific eventuality, it is not appropriate to read an "inherent" power to confer additional penal consequences, for it would be against the express provisions of the Constitution. In **N.S. Vardachari v. G. Vasantha Pai**[5]**,** it was held that a person cannot be barred from contesting elections if he is otherwise qualified to contest the same. Even in case of expulsion, the expelled candidate cannot be barred from contesting re-election[6].

The Supreme Court had also opined that there is a growing trend of the Speaker acting against the constitutional duty of being neutral. Being a constitutional functionary, the Constitution requires the Speaker and his actions to uphold constitutionalism and constitutional morality and is expected to imbibe Constitutional values in everyday functioning as merely taking the oath to protect and uphold the Constitution is not sufficient.

[4] Shrimanth Balasaheb Patil v. Hon'ble Speaker, Karnataka Legislative Assembly, 2019 SCCOnline S.C. 1454

[5] N.S. Vardachari v. G. Vasantha Pai, (1972) 2 S.C.C. 594

[6] Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, (2007) 3 S.C.C. 184

The apex Court opined further that constitutional morality should never be replaced by political morality in deciding what the Constitution mandates[7]. The constitutional responsibility endowed upon the Speaker has to be scrupulously followed and his political affiliations cannot come in the way of adjudication. If he cannot disassociate from his party and behaves contrary to the spirit of neutrality, he does not deserve to be reposed with public trust and confidence.

This clearly shows the Speaker's affiliation towards his party that made him to take decisions that are beyond his capacity and authority, rather than working as a constitutional functionary and protecting the dignity of the Office of the Speaker of the House.

UNPRECEDENTED POLITICAL TWISTS AND TURNS IN TAMIL NADU

The people of Tamil Nadu had witnessed a thrilling political stunt which was highly dynamic with minute-by-minute changes becoming conspicuous in its political environment. The changes were imminent and also became very indispensable, in the sense that, it had even casted a doubt on the existence of the Government. This time, it is for the Madras High Court to adjudicate on the order passed by the Speaker of Tamil Nadu Legislative Assembly to disqualify 18 MLAs of the House.

The issue started when Mr.O.Panneerselvam was elected as Legislative Party leader of AIADMK and also sworn in as Chief Minister of Tamil Nadu (hereinafter referred to as "CM"), after the death of former CM, Selvi J.Jayalalithaa. After his resignation, he was succeeded by Mr.Palaniswami. When he faced a floor test wherein 122 MLAs, including the 18 MLAs in question, voted in favour of him in line with the direction issued by Chief Government Whip (hereinafter referred to as "the Whip"), 11 other MLAs headed by Mr.O.Panneerselvam (hereinafter referred to as "11 MLAs"), voted against him, with one abstained member. However, Mr.Palaniswami won the floor test and some disqualification petitions were filed before the Speaker, Mr. Dhanabal, for disqualifying those 11 MLAs under Paragraph 2(1)(b) of the Tenth Schedule for having voted against the party directive.

Then, a dispute had arisen before the Election Commission of India on the true and genuine composition of AIADMK, claimed by both the O.Panneerselvam and T.T.V.Dhinakaran – Palaniswami factions, and the resultant allotment of "Two Leaves" party symbol. The Commission passed an order freezing party symbol, so that, neither of them could use it.

Later on, both factions reunited after burying their differences. Thereafter, those 18 MLAs met the Governor of Tamil Nadu and submitted written representations withdrawing their support to Mr.Palaniswami as CM due to their lack of confidence in the government. They also requested the Governor to intervene and institute the constitutional process as the Constitutional head of the State.

[7] Indra Sawhney v. Union of India, 1992 Supp. (3) S.C.C. 217

Consequently, the Whip moved a petition for initiation of proceedings under the Tenth Schedule read with Rule 6 of Disqualification Rules, 1986 for disqualifying 19 MLAs, initially, including those 18 MLAs, on which, the Speaker issued notice, calling upon them to reply within seven days. After such period, the Speaker was not satisfied with their reply and passed an order dismissing the petition against Mr.S.T.K.Jakkaiyan, who retracted his allegations by issuing letters to Speaker and Governor, and disqualifying the remaining 18 MLAs from their membership to the Tamil Nadu Legislative Assembly.

The High Court was approached to adjudicate the position of disqualification of 18 MLAs in **P.Vetrivel v. P. Dhanabal**[8], popularly known as the 18 MLAs case. While the Speaker had cited the cases of **Kihoto Hollohan v. Zachillhu**[9] and **Ravi S. Naik v. State of Maharashtra**[10], on implied and voluntary resignation of membership, and other similar authorities, the 18 MLAs heavily relied on the landmark case of **Balchandra L.Jarkiholi v. B.S.Yeddyurappa**[11], popularly known as the Yeddyurappa case, decided by the Supreme Court, to which the present case was squarely applicable, holding that submission of letters by MLAs to the Governor expressing lack of confidence in the governance of a particular person as CM does not amount to voluntary resignation of membership and, as such, fails to attract disqualification. The High Court criticized the action of the Speaker even though it had ultimately upheld the constitutional validity of the order of disqualification. The minority opinion is of vital importance, which mirrored the flagrant behaviour of the Speaker on account of malafide and political exigencies, by placing lone MLA Mr.S.T.K.Jakkaiyan on a different footing compared to other 18 MLAs, and also opined on the quintessential virtues of a Speaker through a specific term called "Model Speaker".

This has been done so by drawing inspiration from three cases:

1. In **Jagjit Singh v. State of Haryana**[12], Supreme Court had clearly laid down the nature of high office of the Speaker and the complete impartiality expected of him, though this judgment was cited for principles of natural justice.
2. In **Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly**[13], Supreme Court had held that the level of dispassionate approach and impartial dispensation required of a Speaker is very high. It is seen not only as a legal principle, but also as a code for a model speaker.
3. In **Dr. Wilfred A. De Souza v. Tomazinho Cardozo**[14], Bombay High Court held that confidence in the impartiality of the Speaker is an indispensable condition for successful working of a democratic system.

The High Court went on to opine that the Office of the Speaker is so high that the

[8] P. Vetrivel v. P. Dhanabal, AIROnline 2018 Mad. 1580
[9] Supra. Note 1
[10] Ravi S. Naik v. State of Maharashtra, 1994 Supp. (2) S.C.C. 641
[11] Balchandra L.Jarkiholi v. B.S.Yeddyurappa, (2011) 7 S.C.C. 1
[12] Jagjit Singh v. State of Haryana, (2006) 11 S.C.C. 1
[13] Supra. Note 3
[14] Dr. Wilfred A. De Souza v. Tomazinho Cardozo, 1998 SCCOnline Bom. 400

degree of neutrality required of the Speaker, particularly in disqualifications, must be high that it should not give scope for even a shred of doubt that the view has been taken owing to political exigencies.

This clearly shows the Speaker cannot be a person above pressures and he can also abuse his power for malafide purposes only for his party. Due to political exigencies, he fails to be a person of dignity and nobility and offends his Office of Speaker through his delinquent decisions.

WHIMS AND FANCIES OF THE SPEAKER OF THE HOUSE IN MANIPUR

The Supreme Court has yet again adjudicated on an issue of vital importance on the constitutional position of the Speaker as an impartial arbitrator. It also reiterated its own judgements on the requisite high virtues of a Speaker as a constitutional functionary and the nobility it should hold by taking non-partisan stands and not indulging in abusing the constitutional authority for existing political exigencies. This was the case in Manipur that led to the case of **Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly**[15].

The election for the 11th Manipur Legislative Assembly produced an inconclusive result as none of the political parties were able to secure majority in order to form the Government. The Congress Party emerged as the single largest party with 28 seats and BJP coming second with 21 seats. Respondent No.3 contested as a candidate nominated by the Congress Party and was duly elected as such. Immediately after the declaration of the results, he met the Governor of Manipur, along with various BJP members, in order to stake claim for forming Government. Then, the Governor invited BJP-led group to form Government and Respondent No.3, along with 7 other MLAs, was sworn in as a Minister.

The Speaker of Manipur Legislative Assembly received 13 applications for the disqualification of Respondent No.3 under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India, on which he sat and no action was taken even after a reasonable period for adjudication.

When it had appeared before the Supreme Court, it directed the Speaker to decide the pending disqualification petitions within a period of four weeks and allowed any party to the proceedings to apply for further directions if it is still left undecided. A disqualification under Tenth Schedule must first be decided exclusively by the Speaker and cannot be decided by this Court, given his inaction. Courts cannot interfere in a proceeding under Tenth Schedule before the Speaker gives a decision[16]. Even the directions of the High Court given while disqualification petition was pending before the Speaker were set aside[17]. Judicial review should not be interdicted in aid of the Speaker in deciding on disqualification under Tenth Schedule.

[15] Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly, AIROnline 2020 S.C. 54: (2020) 2 SCALE 329

[16] Indian National Congress v. State of Goa, 2017 SCC Online (Bom.) 8817

[17] Speaker, Haryana Vidhan Sabha v. Kuldeep Bishonoi, (2015) 12 S.C.C. 381

The apex Court had expressed that, in the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such dispute with no provision for any appeal or revision against his decision to any independent outside authority. This is a reverse trend and violates the basic feature of the Constitution since the Speaker cannot be treated as an authority contemplated for being entrusted with the function of adjudicatory disposition by the Constitution, notwithstanding the great dignity attached to that office with the attribute of impartiality.

This vividly manifests the Speaker's partisan attitude by using his absolute constitutional authority as the ultimate arbiter in disqualification proceedings to take perverse and delinquent decisions to keep his rivals and naysayers in an incredulous and disadvantaged position. This yet again shows his biased actions to benefit his party, rather than functioning in an impartial way to preserve and uphold the dignity and integrity of the Office of the Speaker of Legislative Assembly.

QUASI-JUDICIAL AUTHORITY FOR DISQUALIFICATION CASES – A WELCOMING AND NECESSARY APPROACH

The need for a quasi-judicial authority for disqualification cases stems from the opinion rendered by Supreme Court in **Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly**[18], where it had suggested the Parliament to rethink whether disqualification petitions ought to be entrusted to the Speaker as a quasi-judicial authority under Tenth Schedule when he continues to be a partyman and should seriously consider amending the Constitution to substitute him with a permanent Tribunal headed by a retired Supreme Court Judge or some other independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the constitutional provisions. The same view was expressed in **Kihoto Hollohan v. Zachillhu**[19], by stating that the power conferred on the Speaker under the Tenth Schedule is enormous and therefore, it is necessary to sustain the elevated position the Speaker constitutionally enjoys and also have room for constitutional propriety. The logic behind such an opinion was also stated in the same case that when the final authority for removal of a Judge of the Supreme Court and High Court is outside the judiciary, i.e., in the Parliament under Article 124(4), then, on the same principle, the authority to decide the question of disqualifications should be outside the House as envisaged by Articles 103 and 192.

Some suggestions as to the composition and powers of such a Tribunal are as follows:

- **Composition of Tribunal:** As specified earlier, the Tribunal should adjudicate only those disqualification cases under Tenth Schedule. It should be headed by a retired Supreme Court Judge as its Chairman and its members should also be retired judges of Supreme Court. They should sit only in odd numbers in a Bench.
- **Appointment, Tenure and Salaries of Adjudicating Authorities:** The Central Government may appoint the adjudicating authorities in consultation with Chief Justice of India. They shall hold the office for a term of five years or until they attain the age of 70, whichever is earlier. The salaries and other

[18] Supra. Note 15

[19] Supra. Note 1

benefits should not be varied to their disadvantage during their tenure.

- **Resignation and removal of Adjudicating Authorities:** The Chairperson and other members of the Tribunal may, by notice in writing under their hand addressed to the Central Government, resign their office. The Central Government may, in consultation with the Chief Justice of India, remove from office of the Chairman or Member of the Tribunal only by an order made by the Central Government after an inquiry made by a Supreme Court Judge in which such Chairman or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The grounds for removal shall be the same as laid down in Section 417 of Companies Act, 2013 or in Section 10 of National Green Tribunal Act, 2010. The Central Government may suspend from office the Chairman or Member on whom a reference of conducting an inquiry has been made to the Supreme Court Judge until it passes an order on receipt of the inquiry report made by the Supreme Court Judge on such reference.
- **Jurisdiction of the Tribunal:** It should be a National level tribunal having jurisdiction all over the country, similar to National Company Law Tribunal or National Green Tribunal. It should have primary or original jurisdiction to hear disqualification cases of members of both Parliament and Legislative Assembly due to defection and its orders are binding on that particular member/members of the House.
- **Time of settling disputes:** The Tribunal should take a maximum time of 3 months to dispose cases before it, as interpreted by the Supreme Court in **Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly**[20].
- **Appeals:** All appeals to the orders of the Tribunal shall lie only on Supreme Court under Article 136, i.e., Special Leave to Appeal or any other appropriate statutory provision, within 90 days from the date of such order.
- **Locus Standi:** If any member of a party defects from his original political party

a) The Prime Minister or Chief Minister from the ruling party or the Legislative Party Leader or the Chief Government Whip from the ruling party or even the leader of the ruling party outside the House can file petition against that member, if such member is a member of the ruling party, as such disqualification proceedings are now outside the House.

b) The Legislative Party Leader or the Whip of the party or even the leader of the party outside the House can file petition against that member, if such member is a member of a party other than the ruling party.

c) If such member 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 a State or the Speaker or the Deputy Speaker of the Legislative Assembly and if he voluntarily gives up his membership from the party during his tenure or in the middle of his term as the Deputy Speaker/Deputy Chairman, the petition can be filed only by the Legislative Party Leader or the Whip of the party in which he was a member.

d) No Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or

[20] Supra. Note 15

the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly shall be disqualified if he, by reason of his election to such office, voluntarily gives up his membership and rejoins such political party or any other party after he ceases to hold such office and no action would lie against him in the Tribunal.

- **Powers:** All such powers of the Speaker or Chairman of the House under Tenth Schedule, both express and implied, for effective adjudication of disqualification petitions should be vested on the Tribunal and other appropriate rules shall also be laid down by the Tribunal as per its will.
- **Definitions:** All definitions defined in Paragraph 1 of Tenth Schedule should be construed by the Tribunal accordingly. 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'[21]. Therefore, the term ‘defection’ should be clearly defined.

All these structural and procedural changes should be done by the Parliament through an appropriate Amendment to the Constitution and to other relevant and necessary Acts and Rules. It can even introduce and pass a new Act to name, constitute and appoint the members of the Tribunal and regulate its functions, if required.

CONCLUSION

The Constitution acquires life because of the men who control and operate it and India needs today nothing more than a set of honest men who will have the interest of the country before them[22]. As the Speaker becomes the symbol of the nation's freedom and liberty, in a particular way, it is an honoured position and should be occupied always by persons of outstanding ability and impartiality[23]. In short, higher the office, more the rigor and degree of impartiality required[24]. Some of the world democracies have necessary conventions on appointment of Speaker to manifest its impartiality. The Speaker of the House of Commons is a representative of the House itself, in its power, proceedings and dignity. There is also a general practice and Democracies-Labour-Conservative pact 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[25]. In Australia, it has been long regarded as a rule that, 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 Speaker, being a neutral person, is expected to act independently while conducting the proceedings or adjudicating any petitions. He is expected to not be vacillated by the prevailing political pressures[26]. But the reality is completely different. It can be said that a person can be taken out of the party but the party cannot be taken out of that person. The above stated instances are the transparent examples of such flagrant behaviour and partisan attitude of the Speaker. From these many years’

[21] Supra. Note 8

[22] Speech by Dr. Rajendra Prasad, Constituent Assembly Debates

[23] Speech by Pandit Jawaharlal Nehru, Report of Speakers and Deputy Speakers, Kerala Legislative Assembly

[24] Id. At 21

[25] Eriskine May, Parliamentary Practice 20th and 24th Editions

[26] Supra. Note 4

experience of parliamentary democracy and proceedings of the legislatures in India, it is crystal clear that the Speaker cannot hold the Office according to the values enshrined in the Constitution. This demands the set up of a quasi judicial authority, at least to adjudicate the disqualification petitions on which the Speaker cannot do so with the disposition of rule of law containing the principles of natural justice and absence of bias. The same was reiterated long back by the Supreme Court during the advent of Tenth Schedule[27]. Therefore, such an exercise is most welcome and absolutely necessary to make the Speaker devoid of bias and partiality and also to uphold the spirit of constitutionalism of the Office of Speaker/Chairman enshrined in the Constitution of India.

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[27] Supra. Note 1(Minority Judgement)