

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No. 10456 of 2020

(Arising against Final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur.)

(WITH PRAYER FOR INTERIM RELIEF)

IN THE MATTER OF :-

Bahujan Samaj Party & Anr.Petitioners

Versus

Hon'ble Speaker,
Rajasthan Legislative Assembly & Ors. ...Respondents

WITH

I.A. No. /2020: Application for exemption from filing official translation.

AND WITH

I.A. No. /2020: Application for exemption from filing certified copy of impugned judgment.

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

COUNSEL FOR PETITIONER :: SHAIL KUMAR DWIVEDI.

Diary No. 18548/2020

DECLARATION

All defects have been duly cured whatever has been added/deleted/modified in the petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.

Signature:  _____

Advocate--Record/

Petitioner(s) in -person _____

Date: 03/09/2020 _____

Contact No: 9811027517, 7838642677

AG

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A

SPECIAL LEAVE PETITION (C) No. OF 2020

IN THE MATTER OF :-

Bahujan Samaj Party & Anr.

...Petitioners

Versus

Hon'ble Speaker,
Rajasthan Legislative Assembly & Ors.

...Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is / are within time.
2. The Petition is barred by time and there is delay of _____ days in filing the same against order dt. _____ and petition for Condonation of _____ days delay has been filed.
3. There is delay of _____ days in refiling the petition and petition for Condonation of _____ days delay in re-filing has been filed.

New Delhi

BRANCH OFFICER

Dated: 01.08.2020

PROFORMA FOR FIRST LISTING

SECTION –XV

The case pertains to (Please tick/check the correct box):

Central Act : (Title) 10 Schedule to the Constitution
of India.

- Section : Para 4
- Central Rule: (Title) N.A.
- Rule No(s) : N.A.
- State Act : (Title) N.A.
- Sections : N.A.
- State Rule : N.A.
- Rule No(s) : N.A.
- Impugned ~~Interim~~ Orders dated : N.A.
- Impugned Final Judgment and Order dated : 24.08.2020
- High Court: (Name) High Court of Judicature for Rajasthan Jaipur
Bench at Jaipur.
- Name of Judges : Hon'ble Shri Mahendra Kumar Goyal, J.
- Tribunal/Authority: N.A.

1. Nature of matter : Civil Criminal
2. (a) Petitioner/appellant No. 1 : Bahujan Samaj Party & Anr.
 (b) e-mail ID : N.A.
 (c) Mobile phone number : N.A.
3. (a) Respondents No 1 : Hon'ble Speaker, Rajasthan Legislative
Assembly & Ors.
 (b) e-mail ID : N.A.
 (c) Mobile phone number : N.A.
4. (a) Main category classification : 18 – Ordinary Civil Matters
 (b) Sub classification :
5. Not to be listed before : N.A.

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6. (a) Similar / disposed of matter
with citation, if any & case details : No similar disposed of matter
- (b) similar pending matter: Madan Dilawar VS The Hon'ble Speaker
Rajasthan Legislative Assembly, Diary No.
18623- 2020.
7. Criminal Matters:
(a) Whether accused /convict has surrendered : Yes No
(b) FIR No. N.A. Date: N.A.
(c) Police Station : N.A.
(d) Sentence Awarded : N.A.
(e) Period of sentence undergone including period of detention / custody
undergone : N.A.
8. Land Acquisition Matters:
(a) Date of Section 4 notification : N.A.
(b) Date of Section 6 notification : N.A.
(c) Date of Section 17 notification : N.A.
9. Tax Matters: State the tax effect : N.A.
10. Special Category (first petitioner/appellant only) : N.A.
 Senior Citizen > 65 years SC/ST Woman / child
 Disabled Legal Aid Case In custody
11. Vehicle Number (in case of Motor Accident Claim matters): N.A.

Date: 01 .09 .2020



Shail Kumar Dwivedi

AOR for Petitioners

Registration No. 1230

Email ID: shailkumardwivedi@gmail.com

Mobile No. 9811027517

SYNOPSIS

B

This Special Leave Petition is directed against final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur and the order of merger dated 18.09.2019 passed by Speaker, Rajasthan Assembly. By means of the impugned order, the High Court was pleased to dismiss the Writ Petition preferred by the petitioners herein on holding the Order dated 18.09.2019 passed by the Speaker to be an 'administrative Order' and not an order adjudicating the claim of merger, without considering the substance of Order dated 18.09.2019 wherein the Speaker in unequivocal terms has given the benefit of para 4(2) of the Tenth Schedule to recognize the claim of merger made by Respondent Nos. 3 to 8, de hors the adjudication on disqualification under para 6 of the Tenth Schedule.

The facts and circumstances of the case in brief are that General Elections to the 15th Rajasthan State Legislative Assembly were held in the month of December, 2018. Respondent Nos. 3 to 8 herein contested and were elected as the members of Rajasthan Legislative Assembly on the symbol/ticket signed and issued by the National President of Bahujan Samaj Party (BSP), which is a recognized National Political Party by the Election Commission of India. Subsequent to the declaration of the results of the elections, the Party wise list of the Members of the Legislative Assembly of Rajasthan has been issued by the Secretary of the Rajasthan State Legislative Assembly wherein, the names of Respondent Nos. 3 to 8 was shown as MLAs belonging to Bahujan Samaj Party(BSP). Thus, the Bahujan Samaj Party (BSP) is the 'original political

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party' of respondent nos. 3 to 8 under the provisions of Tenth Schedule of the Constitution of India.

Subsequent to the formation of Government under the Chief Minister-ship of Sri Ashok Gehlot, the Congress Party started resorting to undemocratic, unethical, illegal and unconstitutional means to allure the MLAs belonging to BSP to defect from BSP, their original political party and join Congress Party. Consequently, the Respondent Nos. 3 to 8 had secretly made a joint application before the Hon'ble Speaker, Rajasthan State Legislative Assembly on 16.09.2019 claiming that the Bahujan Samaj Party had merged with Indian National Congress and that they have also decided to merge into Indian National Congress (INC).

Pursuant to the aforesaid application of Respondent Nos. 3 to 8, the Speaker of the Rajasthan Legislative Assembly vide his impugned Order dated 18.09.2019, straight away accepted the claim of respondent nos.3 to 8, that the Bahujan Samaj Party stands merged in the Indian National Congress (Rajasthan Assembly) and permitted them to be the members of the Indian National Congress by invoking the deeming provision in para 4 (2) of the Tenth Schedule of the Constitution of India. The Speaker proceeded to pass the aforesaid Order dated 18.09.2019 approving the merger in a most arbitrary manner, without even issuing any notice or granting any opportunity of hearing to the petitioner herein/Bahujan Samaj Party (BSP), which is the 'Original Political Party' in terms of Para 4 of the Tenth Schedule and the affected party. Neither the copy of the alleged application of Respondent Nos. 3 to 8 dated 16.09.2019 nor the copy of Order dated 18.09.2019 passed by the Speaker was provided to the petitioner herein/Bahujan Samaj Party

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(BSP). The copy of the so called application dated 16.09.2019 has not been provided till date to the petitioners.

Being aggrieved with the aforesaid Order dated 18.09.2019 passed by the Speaker of the Rajasthan State Legislative Assembly, the petitioners herein preferred S.B. Civil Writ Petition No. 8056 of 2020 before the High Court of Judicature for Rajasthan, Jaipur Bench. The High Court by means of the Impugned judgment dated 24.08.2020 was pleased to dismiss the Writ Petition preferred by the petitioners herein on holding that the Order dated 18.09.2019 to be an 'administrative order' and not an order adjudicating the claim of merger under paragraph 4 of the Tenth Schedule.

It is respectfully submitted that the Speaker, Rajasthan Legislative Assembly vide his Order dated 18.09.2019 has independently considered and adjudicated upon the claim of merger of BSP with INC as made by Respondent Nos. 3 to 8, only in purported exercise of the provisions of the Tenth Schedule of Constitution of India and the provisions of Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing party) Rules, 1989 and not otherwise. The operative portion of the Order dated 18.09.2019 reads as under:-

" The Order passed in this context by the Hon'ble Speaker for your information is as under:-

On 16.09.2010 all 6 MLA (s) of Legislature Party of BSP namely Shri Lakhan Singh, Shri Rajendra Singh Gudha, Shri Deep Chand, Shri Joginder Singh Awana, Shri Sandeep Kumar and Shri Wazib Ali appeared personally before me and prayed/claimed that they have unanimously decided of merger of Bahujan Samaj Party in Indian National Congress on 16.9.2019 and in this regard this application is submitted. There are total 6 (six) MLAs of Bahujan Samaj Party (BSP) in the Rajasthan State Assembly and entire

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legislature party has claimed that Bahujan Samaj Party stands merged in the Indian National Congress (Rajasthan Assembly).

As per 10th Schedule of the Constitution of India there is no legal impediment in case not less than two third of the members of the one Legislature party agree in merging with another political party.

On the contrary in the present case entire political party means all the members of Legislature Party of Bahujan Samaj Party BSP are merging with Indian National Congress which is in accordance with the provisions of Sub Para 1(a) and (2) of para 4 of the 10th Schedule.

Hence in the context of aforesaid facts mentioned in the Application, I have no justifiable cause to disbelieve the claim of the aforesaid MLA(s). Consequently, in the aforesaid circumstances in the back drop of the legal provisions envisaged in 10th Schedule of Constitution of India and also the provisions of Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing party) Rules, 1989, I deem MLA(s) Shri Lakhan Singh, Shri Rajendra Singh Gudha, Shri Deep Chand, Shri Joginder Singh Awana, Shri Sandeep Kumar and Shri Wazib Ali as part of Indian National Congress by virtue of sub para (2) of Para 4 of 10th Schedule of Constitution of India from 16.9.2019, date of merger of Bahujan Samaj Party (BSP) in the Indian National Congress (Rajasthan Assembly) and in light of aforesaid legal provisions, Indian National Congress shall be deemed as original political party of these Members of Legislative Assembly."

From a bare perusal of the aforesaid Order dated 18.09.2019, it is clearly evident that the Speaker proceeded to adjudicate upon the claim by accepting the defence against disqualification on the ground of defection as contained in para 4 of the Tenth Schedule in advance by giving approval to the claim of merger made by the 6 MLA's of Bahujan Samaj Party. The Speaker accepted the claim of merger by invoking the deeming provision in para 4(2), which comes in to play only as a defence against disqualification. On recording of such findings by the Speaker, nothing would be left to

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be decided in disqualification proceedings. This is legally impermissible, as under the scheme of the Tenth Schedule to the Constitution of India, the Speaker does not have an independent power to decide whether there has been a merger as contemplated by Para 4 and such a decision can be taken only when the question of disqualification arises in a proceeding under Para 6. [*Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270 paras 25 & 28 and *Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi*, (2015) 12 SCC 381, Para 34]. The aforesaid order of Speaker 18.09.2019 accepting the claim of merger by giving the benefit of para 4(2), amounts to putting the cart before the horse by providing the defence in the hands of defectors in advance for being used by them as and when an application for disqualification is filed.

Neither the Rules, 1989 nor the provisions of Tenth Schedule empower the Speaker to decide the claim of merger. The findings recorded by the Speaker with respect to provisions of para 4 of the Tenth Schedule cause serious prejudice to the rights of petitioner as they were recorded without hearing the petitioner who is the affected party and would come in the way in disqualification proceedings against the Respondent Nos. 3 to 8. The aforesaid order dated 18.09.2019, by any stretch of imagination cannot be said to be an order recording claim of merger for administrative purposes. The deeming provision in para 4(2) comes in to play only as a defence against disqualification and cannot be used to prove a claim of merger of 'original political party' into another political party as provided in para 4(1). The aforesaid order of Speaker accepting the claim of merger by giving the benefit of para 4(2) amounts to

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putting the cart before the horse by providing the defence in the hands of defectors in advance for being used by them as and when an application for disqualification is filed.

The High Court erred in holding the Order dated 18.09.2019 passed by the Speaker to be an 'administrative order' passed by the Speaker recording the claim of merger in his capacity as the Officer of the Legislative Assembly only for the purposes of carrying out suitable and necessary changes in the sitting arrangements of the members in the House. The High Court erred in recording such a finding only on a mere presumption/assumption without there being any such purpose evident from Order dated 19.09.2019. It is respectfully submitted that the Order dated 18.09.2019 does not disclose that it was issued for the purposes of carrying out suitable and necessary changes in the sitting arrangements of the members in the House as presumed by the High Court. The Order dated 18.09.2019 is in effect a quasi-judicial order passed by the Speaker adjudicating upon the claim of merger made by Respondent Nos. 3 to 8, contrary to the provisions of Tenth Schedule to the Constitution of India and the principles of law laid down by the Constitution bench of this Hon'ble Court in the case of *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270. There was no occasion for the speaker to invoke the deeming clause under para 4(2) of the tenth schedule to accept the claim, had it been an administrative order as presumed/interpreted by the High Court in its impugned judgment. Had the alleged application dated 16.09.2019 been a mere intimation to speaker as presumed by the High Court without even calling for the said application for its perusal, the Speaker could have simply notified in the Bulletin as

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provided in the Rules without recording any reasons on the claim of merger.

It is respectfully submitted that there was no procedure or requirement for passing an order accepting or recognizing the claim of merger under the Rules, 1989 or under the provisions of Tenth Schedule to the Constitution of India. Rules 3 and 4 of the Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing party) Rules, 1989 only provide for the procedure regarding information to be furnished by the leader of a group of MLAs or the individual Members to the Speaker of their Election, their affiliation with a particular political party and other information as provided therein, within 30 days of the first sitting of the House which is required to be recorded in the register containing information about the Members maintained under Rule 5. The Scheme of the Rules read with Form 3 stipulates intimation to the Speaker with regard to any change in the information furnished initially including change of affiliation, which is required to be recorded in the register as well as published in the bulletin. The said procedure under the Rules, 1989 does not require upon the Speaker to decide on the claim of alleged merger or to record a merger. Rules 3 and 4 does not require upon the Speaker to determine the validity of the claim of merger or to assign reasons for accepting the claim of merger. The procedure adopted by the speaker in passing the Order dated 18.09.2019 is de hors the provisions of Rules, 1989. From a bare perusal of Order dated 18.09.2019 it is evident that the Speaker has unilaterally adjudicated upon the claim of merger made by Respondent Nos. 3 to 8 herein and allowed the same exparte. The Speaker could not

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have recorded the findings on the claim of merger under para 4, when under the Scheme of Tenth Schedule, the merits of such a claim has to be necessarily decided only in an application for disqualification under Rule 6.

It is submitted that the alleged application dated 16.09.2019 pursuant to which the Order dated 18.09.2019 came to be passed was not placed on record by the respondents before the High Court and has not seen the light of the day till today. The validity and nature of Order dated 18.09.2019 could have been examined only in the context of alleged Application dated 16.09.2019 filed by the Respondent Nos. 3 to 8 before the Speaker and the decision of the speaker in that regard. It is only from the alleged application dated 16.09.2019, it would be evident as to what material was placed before the Speaker and as to what was claimed and what was sought from the speaker by the Respondent Nos.3 to 8 herein.

The High Court failed to consider that the Respondent Nos. 3 to 8 have moved the alleged Application dated 16.09.2019 claiming merger of BSP with INC in a most secret and clandestine manner pursuant to the allurements made by Congress Party. Immediately, the Speaker vide his Order dated 18.09.2019 accepted the claim of merger and held the Respondent Nos. 3 to 8 to be members of INC by giving the benefit of para 4(2) of the Tenth Schedule without even looking the application dated 16.09.2019 which was not filed by the Speaker or respondent 3 to 8 and a copy of which has not been supplied to petitioners till date. There was no occasion for the Petitioner to file a disqualification application prior to passing of Order dated 18.09.2019. The claim of merger was made by Respondent Nos. 3 to 8 independently only to preempt the

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petitioner from initiating disqualification proceedings against them under the Tenth Schedule and getting them disqualified. Without considering these circumstances the High Court erroneously held that in absence of claim for disqualification, the Order dated 18.09.2019 cannot be acknowledged to have been passed under paragraph 4 or in the nature of adjudication on the claim of merger contrary to the findings recorded in Order dated 18.09.2019.

The Respondent Nos. 3 to 8 are not entitled to the benefit of paragraph 4 of the Tenth Schedule as there was no merger of Original Political Party with any other political party as claimed by Respondent Nos. 3 to 8. The Respondent Nos. 3 to 8 were set up as candidates for election to the 15th Rajasthan State Legislative Assembly by the National Party viz. BSP which is the 'Original Political Party' in terms of Tenth Schedule of the Constitution of India. Consequently, they had contested the elections on the party symbol of 'Elephant', which was allotted to them by the National President of BSP and all of them were elected as members of the Rajasthan Legislative Assembly as a candidate set up by National Party viz. BSP.

Paragraph 4 of the Tenth Schedule to the Constitution of India provides for the circumstances in which a disqualification on the ground of defection shall not apply in case of a merger. From perusal of Para 4(1) of the Tenth Schedule, it is abundantly clear that for claiming protection under para 4, two conditions are required to be satisfied and both the conditions are to be satisfied simultaneously i.e.

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- (i) The "Original Political Party" should be shown to have merged with another political party with satisfactory evidence; AND
- (ii) The members claim either to have accepted merger and joined such other political party or having not accepted the merger and opted to function as a separate group must be established after first mandatory condition is satisfied.

Thus, only on satisfaction of paragraph 4(1) i.e. merger of original political party with another political party, the occasion of deemed merger under subparagraph (2) would arise as it specifically refers "..... have agreed to such merger". The use of the phrase "such merger" is significant and indicates that paragraph 4(2) can be invoked only in case of merger of original political party with another political party as contemplated under para 4 (1). In the instant case there was no merger of Bahujan Samaj Party (BSP) either at National level or at the State level with the Indian National Congress as claimed by Respondent Nos. 3 to 8 herein.

It is respectfully submitted that the Bahujan Samaj Party/ Petitioner herein which is the 'Original Political Party' in terms of Paragraph 4 of the Tenth Schedule and the most affected party, was neither been made a party in the alleged application dated 16.09.2019 nor was granted any opportunity of hearing by the Speaker prior to the passing of Order dated 18.09.2019 nor was supplied with the copy of application dated 16.09.2019. The High Court failed to consider that the Principles of natural justice apply even to an administrative action and are fundamental to the Rule of law. It is legally well settled that the Principles of natural justice provide protection to the rights of the individual against the arbitrary procedure that may be

adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights.

The High Court erred in holding that the grant of an opportunity of hearing would amount to an inquiry which was not warranted at the stage of recoding the claim of merger considering that the findings recorded by the Speaker on the claim of merger vide Order 18.09.2019 itself amounted to an inquiry which was not warranted under the Scheme of Tenth Schedule or under the Rules, 1989. The findings recorded by the Speaker in his Order dated 18.09.2019 without issuing any notice or granting opportunity of hearing, has adversely affected the rights of petitioner to seek disqualification under para 6 as nothing would be left for determination in an application for disqualification under para 6 of the Tenth Schedule.

Hence, the present Special Leave Petition.

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LIST OF DATES

07.12.2018 General Elections to the 15th Rajasthan State Legislative Assembly were held on 7th December, 2018. Respondent Nos. 3 to 8 herein were elected as the members of Rajasthan Legislative Assembly on the Symbol/ticket of Bahujan Samaj Party (hereinafter to referred to in short as B.S.P.), which is a recognized National Political Party by the Election Commission of India. As per the result declared by the Election Commission of India the total strength of the Assembly Seats in the House is 200 out of which 199 went to polls on December 7, 2018. the Party wise strength in the Rajasthan Vidhan Sabha is as under:-

1.	Congress Party	100
2.	B.J.P.	73
3.	Independents	13
4.	B.S.P	6
5.	B.T.P	2
6.	C.P.M	2
7.	R.L.P	3
8.	R.L.D	1
	TOTAL	200

Subsequent to the declaration of the results of elections to the 15th Rajasthan State Legislative Assembly, the Party wise list of the Members of the Legislative Assembly of Rajasthan has been issued by the Secretary of the Rajasthan State Legislative Assembly

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which shows that the name of Respondent Nos.1 to 6 as B.S.P MLAs in the list. Thus, the BSP is the 'original political party' of respondent nos.3 to 8 under the provisions of Tenth Schedule to the Constitution of India.

After the declaration of the result of elections, since the Indian National Congress Party (hereinafter to be referred as the Congress Party) was feeling difficulties in forming a stable government, it had approached the National President of BSP to extend the support of its six elected members (i.e. Respondent Nos.3 to 8) on this request the Bahujan Samaj Party agreed to extend its outside support to the Congress Party for forming government in Rajasthan. As a result of which Government was formed by the Congress Party headed by Sri Ashok Gehlot as the Chief Minister.

However, after few months several dissents started appearing within the Independents and others including certain elected MLAs of the Congress Party itself on account of actions of the Leadership. Instead of keeping all the supporting parties including Congress Party itself together, the Congress Party started resorting to undemocratic, unethical, illegal and unconstitutional practice of defection by alluring the MLAs belonging to BSP to defect from BSP their original political party and join Congress Party.

16.09.2019 On being allured by the Congress Party with the

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benefits, best known to the Respondent Nos. 3 to 8, they had secretly made a joint application before the Speaker, Rajasthan State Legislative Assembly on 16.09.2019 claiming that the Bahujan Samaj Party had merged with Indian National Congress and that they have also decided to merge into Indian National Congress (INC). The respondents No.3 to 8 did not disclose anywhere as to where, when and how the BSP which is a recognized National Political Party, has merged with Indian National Congress. The Petitioner herein which is the 'Original Political Party' in terms of Tenth Schedule was not made a party to the said proceedings.

18.09.2019 The Speaker of the Rajasthan State Legislative Assembly vide his ex-parte Order dated 18.09.2019 straight away accepted the claim of merger made by respondent nos.3 to 8 and permitted them to be the Member of the Congress party by giving the benefit of para 4 of the Tenth Schedule of the Constitution of India without even issuing any notice and without hearing or granting any opportunity of hearing to the petitioner herein/National Party viz. BSP which is the 'Original Political Party' in terms of Para 4 of the Tenth Schedule, in gross violation of the principles of natural justice. Even the copy of the alleged application dated 16.9.2019 of respondents No.3 to 8 nor the copy of the order dated 18.9.2019 was ever given or sent to the Petitioner. A true translated copy of the Order

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dated 18.09.2019 passed by the Hon'ble Speaker of the Rajasthan State Legislative Assembly is marked and filed as ANNEXURE P-1 to this SLP. (Pg. Nos. 71... to 74.)

- 09.10.2019 An RTI Application was filed by Nahar Singh Maheshwari, Advocate on 09.10.2019, before the Public Information Officer requesting for providing the copies of Application of merger dated 16.09.2019 filed by Respondent Nos. 3 to 8 and other documents.
- 24.10.2019 The RTI application filed by Nahar Singh Maheshwari, Advocate was declined by the Public Information Officer on 24.10.2019.
- 24.12.2019 Thereafter, the Appeal preferred by the Advocate against the refusal to supply the documents was also dismissed on 24.12.2019 by the First Appellate officer of the Rajasthan Vidhan Sabha Secretariat, Jaipur.
- 06.03.2020 One shri. Madan Dilawar, a Member of Legislative Assembly, Rajasthan belonging to BJP preferred an Application/complaint before the Speaker, Rajasthan Legislative Assembly seeking disqualification of Respondent Nos. 3 to 8 herein under the Tenth Schedule to the Constitution of India. However, the said application was kept pending without undertaking any proceedings against Respondent Nos. 3 to 8
- 20.07.2020 Being aggrieved with the inaction on the part of Speaker, to initiate disqualification proceedings against Respondent Nos. 3 to 8, shri. Madan Dilawar, a Member of Legislative Assembly, Rajasthan preferred

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S.B. Civil Writ Petition No. 7631 /2020 before the High Court of Rajasthan.

22.07.2020 Before the aforesaid Writ Petition No. 7631 /2020 could be taken up for hearing, the Secretary, Rajasthan Legislative Assembly vide his Order dated 22.07.2020 rejected the petition for disqualification submitted by Shri. Madan Dilawar on the technical ground that the Annexures were not verified and signed by him as required under Rule 6 of the Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing Party) Rules, 1989.

27.07.2020 Consequently, the S.B. Civil Writ Petition No. 7631 /2020 preferred by Shri. Madan Dilawar was dismissed by the High Court vide Order dated 27.07.2020 as infructuous. Thereafter, Shri Madan Dilawar preferred another Writ Petition i.e. S.B. Civil Writ Petition No. 8004 /2020 before the High Court challenging Orders dated 18.09.2019 passed by Speaker as well as Order dated 22.07.2020 passed by Secretary, Rajasthan Vidhan Sabha.

July, 2020 Being aggrieved with the Order dated 18.09.2019 passed by the Speaker, Rajasthan Legislative Assembly, the Petitioners herein preferred S.B. Civil Writ Petition No. 8056 of 2020 before the High Court of Judicature for Rajasthan, Jaipur Bench seeking for issuance of a writ, Order or direction quashing Order dated 18.09.2019 passed by the Speaker, Rajasthan Legislative Assembly. The Petitioners herein have also

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sought for grant of interim ex parte stay of Order dated 18.09.2019 passed by the Speaker. A true typed copy of the S.B. Civil Writ Petition No. 8056 of 2020 dated Nil filed by the Petitioners herein before the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur is marked and filed as ANNEXURE P-2 to this SLP. (Pg. Nos. ~~75~~... to. ~~110~~.)

30.07.2020 The High Court vide its Order dated 30.07.2020 was pleased to issue notice on the Writ Petition as well as the stay application preferred by the Petitioners herein. However, the High Court did not grant ad-interim ex parte stay of Order dated 18.09.2019 passed by the Speaker. A true typed copy of the Order dated 30.07.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur is marked and filed as ANNEXURE P-3 to this SLP. (Pg. Nos. ~~111~~ to. ~~111~~.) Here it would be relevant to submit that the S.B. Civil Writ Petition No. 8056 of 2020 preferred by the petitioners herein came to be heard alongwith S.B. Civil Writ Petition No. 8004 of 2020 filed by one Shri. Madan Dilawar a Member of Rajasthan Legislative Assembly.

August,
2020

Being aggrieved with the aforesaid Order dated 30.07.2020, wherein the Ld. Single judge of the High Court did not grant any ad-interim ex parte stay of Order dated 18.09.2019 passed by the Speaker, the Petitioners herein preferred D.B. Special Appeal (Writ)

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No. 510 of 2020 before the Ld. Division Bench of the High Court of Judicature for Rajasthan, Jaipur Bench.

- 05.08.2020 Ld. Division Bench of the High Court vide its Order dated 5.08.2020 was pleased to issue notice to Respondent No.1 in D.B. Special Appeal (Writ) No. 510 of 2020 and directed the matter to be listed on 06.08.2020.
- 06.08.2020 Ld. Division Bench of the High Court vide its Order dated 06.08.2020 disposed of the D.B. Special Appeal (Writ) No. 510 of 2020 by directing the appellants to take out service of notice on respondents through special messenger and through publication of notice in newspapers. The High Court also directed the Ld. Single Judge to hear and dispose of the stay applications filed by the appellants on the same day in accordance with law. A true typed copy of the Order dated 06.08.2020 in D.B. Special Appeal (Writ) No. 510 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur is marked and filed as ANNEXURE P-4 to this SLP. (Pg. Nos. 113.. to.119..)
- 24.08.2020 The High Court vide its impugned final judgment and Order dated 24.08.2020 dismissed the S.B. Civil Writ Petition No. 8056 of 2020 preferred by the petitioners herein on holding the Order dated 18.09.2019 passed by the Speaker to be an 'administrative Order' and not an order adjudicating the claim of merger, without considering the substance of Order dated 18.09.2019 wherein the Speaker in unequivocal terms has given

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the benefit of para 4(2) of the Tenth Schedule to recognize the claim of merger made by Respondent Nos. 3 to 8, de hors the adjudication on disqualification under para 6 of the Tenth Schedule.

01.09.2020

Hence the present Special Leave Petition.

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**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

(1) S.B. Civil Writ Petition No. 8056/2020

1. Bahujan Samaj Party, Through Its National General Secretary Satish Chandra Misra, Having Its Central Office At 4, Gurudwara, Rakabganj Road, New Delhi
2. Bahujan Samaj Party, State Unit, Rajasthan Through Its State President Bhagwan Singh Baba, Son Of Sri Prabhati Lal, Resident Of D-170C, Bhargu Marg, Bani Park, Jaipur, Rajasthan.

----Petitioners

Versus

1. Hon'ble Speaker, Rajasthan Legislative Assembly, Jaipur Rajasthan.
 2. Secretary, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
 3. Shri Rajendra Singh Gudha S/o Not Known, Member Legislative Assembly, Rajasthan, Udaipurwati (Jhunjhunu), Resident Of Ward No. 2, Gudha, Tehsil Udaipurwati, District Jhunjhunu, Rajasthan.
 4. Shri Lakhan Singh Karauli S/o Not Known, Member Legislative Assembly, Rajasthan, Resident Of House No. 464, Sarya Ka Pura, Khadkhad, Tehsil Hindaun, City And District Karauli, Rajasthan.
 5. Shri Deep Chand S/o Not Known, Member Legislative Assembly, Rajasthan, Kishangarh Bas (Alwar) Resident Of Village Jatka, Post Mahud, Tehsil Kishangarhbass, District Alwar, Rajasthan.
 6. Shri Joginder Singh Awana S/o Not Known, Member Legislative Assembly, Rajasthan, Nadbai (Bharatpur) Resident Of D-256, Sector-20, Noida, Gautambuddh Nagar, U.P.
 7. Shri Sandeep Kumar S/o Not Known, Member Legislative Assembly, Rajasthan, Tijara (Alwar) Resident Of Village Thada, Post Sithal, Tehsil Tijara, District Alwar, Rajasthan.
 8. Shri Wajib Ali S/o Not Known, Member Legislative Assembly, Rajasthan Nagar (Bharatpur) Resident Of House No. 468, Fakiran Mohallan, Sikari Patti, Ansick Nagar, Bharatpur, District Bharatpur, Rajasthan.
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----Respondents

Connected with

(2) S.B. Civil Writ Petition No. 8004/2020

Sh. Madan Dilawar S/o Madholal, MLA, H.No. 4-E-7, Rangbari Yojna, Kota (Raj.)

----Petitioner

Versus

1. The Hon'ble Speaker, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
2. Sh. Lakhan Singh S/o Jagan, Karoli (155), R/o House No. 464, Sarya Ka Pura Khadkhad, Teh. Hindon, District Karoli (Raj.)
3. Sh. Rajender Singh Guda S/o Madho Singh, Udyapurvati (139), R/o Ward No. 2 Guda, Teh. Udyapurvati, District Jhunjhunu, Rajasthan.
4. Sh. Deepchand S/o Baluram, Kishangadbas (71), R/o Gram Jatka, Post - Mahund, Teh. Kishangarh Bas, District Alwar, Rajasthan.
5. Sh. Joginder Singh Avana S/o Girwar Singh, Nadbai (62), R/o B-256, Sector 50, Noida, Gautam Budh Nagar, Uttar Pradesh.
6. Sh. Sandeep Kumar S/o Balwant, Tijara (174), R/o Gram Thada, Post - Sital, Teh. Tijara, District Alwar, Rajasthan.
7. Sh. Vajib Ali S/o Sher Mohammad, Nagar (158), R/o House No. 468, Fakiraj Mohala, Sikari Patti, Anshik 4, Nagar, District Bharatpur, Rajasthan.
8. The Secretary, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
9. Mr. C.P. Joshi, MLA S/o Late Sh. Ram Chandra Joshi, At Present Hon'ble Speaker, Rajasthan Legislative Assembly, 49, Civil Lines, Jaipur - 302 006
10. Bahujan Samaj Party, Through Its National General Secretary, Shri Satish Chand Mishra, Having Its Central Office At 4, Gurudwara Rakab Ganj Road, New Delhi.

----Respondents

**In SB Civil Writ Petition
No.8056/2020**

- For Petitioner(s) Shri Satish Chandra Mishra, Sr. Adv.
assisted by
: Shri Dinesh Kumar Garg and
Shri Deepak Kumar Kane
- For Respondent No.1 : Shri Kapil Sibal, Sr. Adv. (through
Video Conferencing) assisted by
Shri Prateek Kasliwal &
Shri Sunil Fernandes
Shri Nizam Pasha
Ms. Supriya Saxena
Ms. Priyanka Pareek
- For Respondent No.2 Shri M.S. Singhvi, Advocate General
assisted by
Shri Darsh Pareek &
Shri Siddhant Jain
- For Respondent No.3
& 4 Shri Rajeev Dhavan, Sr. Adv. (through
Video Conferencing) assisted by
Shri Ghanshyam Singh Rathore with
Ms. Alka Bhatnagar
Ms. Nupur Kumar
Shri Prastut Dalvi
- For Respondent No.5 Shri Sidharth Luthra, Sr. Adv.
(through Video Conferencing) with
Shri Rajesh Maharshi with
Shri Anmol Kheta
Shri Sheezan Hashmi
Shri Anoopam Prasad
Shri Udit Sharma
- For Respondent No.6
& 7 Shri Devadatt Kamat, Sr. Adv.
(through Video Conferencing) with
Dr. Vibhuti Bhushan Sharma
Shri Harshal Tholia
Shri Rajesh Inamdar
Shri Javed Ur Rehman
Shri Aditya Bhatt
- For Respondent No.8 Shri G.S. Bapna, Sr. Adv. (through
Video Conferencing) assisted by
Shri Sanjay Sharma
- For Intervenor-INC Shri Vivek K. Tankha, Sr. Adv.
(through Video Conferencing) with
Major R.P. Singh, Sr. Adv. assisted by
Shri Shashwat Purohit
Shri Varun Chopra
Shri Jaivardhan Joshi

**SB Civil Writ Petition
No.8004/2020**

- For Petitioner(s) : Shri Harish N. Salve, Sr. Adv. (through Video Conferencing)
Shri Satya Pal Jain, Sr. Adv. (through Video Conferencing) assisted by
Shri Ashish Sharma &
Shri Dheeraj Jain
- For Respondent No.1 : Shri Kapil Sibal, Sr. Adv. (through Video Conferencing) assisted by
Shri Prateek Kasliwal &
Shri Sunil Fernandes
Shri Nizam Pasha
Ms. Supriya Saxena
Ms. Priyanka Pareek
- For Respondent No.2 & 3 : Shri Rajeev Dhavan, Sr. Adv. (through Video Conferencing) assisted by
Shri Madhav Mitra with
Shri Syed Shahid Hasan
Ms. Nupur Kumar
Shri Prastut Dalvi
Shri Veerendra Singh
- For Respondent No.4 : Shri Sidharth Luthra, Sr. Adv. (through Video Conferencing) with
Shri R.B. Mathur with
Shri Anmol Kheta
Shri Sheezan Hashmi
Shri Anoopam Prasad
Shri Hitesh Mishra
- For Respondent No.5 & 6 : Shri Devadatt Kamat, Sr. Adv. (through Video Conferencing) with
Shri Anil Mehta
Shri Siddharth Bapna
Shri Rajesh Inamdar
Shri Javed Ur Rehman
Shri Aditya Bhatt
- For Respondent No.7 : Shri G.S. Bapna, Sr. Adv. (through Video Conferencing) assisted by
Shri Banwari Singh
- For Respondent No.8 : Shri M.S. Singhvi, Advocate General assisted by
Shri Darsh Pareek &
Shri Siddhant Jain

For Intervenor-INC

Shri Vivek K. Tankha, Sr. Adv. (through
Video Conferencing) with
Major R.P. Singh, Sr. Adv. assisted by
Shri Shashwat Purohit
Shri Varun Chopra
Shri Jaivardhan Singh
Shri Gurtej Pal Singh

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HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

JUDGEMENT

24/08/2020

The writ petition no.8056/2020 has been filed by the Bahujan Samaj Party (for short-`the BSP') with the following prayers:

I. To quash the impugned order dated 18.09.2019 passed by the Hon'ble Speaker, Respondent No.1 as contained in Annexure No.1 to this writ petition.

II. Disqualify Respondent Nos.3 to 8 from being the member of Rajasthan State Legislative Assembly under Paragraph 2(1) (a) of the Tenth Schedule of the Constitution of India for having voluntarily given up the membership of Bahujan Samaj Party and for having defected to Indian National Congress Party; and

III. Pass such other Orders as may be considered just and proper in the facts and circumstances of the case."

The writ petition no.8004/2020 has been preferred by Shri Madan Dilawar, a Member of Rajasthan Legislative Assembly with the following prayers:

"A. Issue of writ of certiorari or any appropriate writ, order or direction setting aside the order dated 22.07.2020 (served on the petitioner 28.07.2020) passed by the Respondent No.1;

B. Set aside the order dated 18.09.2019 passed by the Respondent No.1 has accepting the so-called merger of the Bahujan Samaj Party into the Congress and allowed them to become Members of the Indian National Congress;

C. Call for records pertaining to the petition dated 16th March, 2020 filed by the petitioner under 10th Schedule of the Constitution of India, praying for Disqualification of the Respondents No.2 to 7 from the Membership of the Rajasthan Vidhan Sabha w.e.f. 16-09-2019 and decide the same exercising powers under Article 226 of the Constitution of India;

D. Issue a Writ of Mandamus or any other such writ as this Hon'ble Court may deem fit disqualifying Respondent(s) No.2 to 7 from the Membership of the Rajasthan Vidhan Sabha w.e.f. 16.09.2019.

E. Pass any other order deemed fit in the interest of justice and equity."

Although the prayers in these writ petitions are worded differently; but, in essence, they seek to quash the order dated 18.9.2019 passed by the respondent no.1, the Speaker with a declaration that 6 MLAs of BSP, the respondents herein, stand disqualified with effect from 16.9.2019. In the writ petition

no.8004/2020, there is an additional prayer to set aside the order dated 22.7.2020 passed by the respondent no.1.

Since both these writ petitions involve common facts and common questions of law, they are being decided by this common order.

The facts in brief, as taken from S.B. Civil Writ Petition No.8004/2020, are that the election for Legislative Assembly of Rajasthan was held on 7.12.2018 in which the respondents no.2 to 7 were elected on the tickets issued by BSP, a national political party. On 16.9.2019, the respondents no.2 to 7 moved an application with the Speaker claiming merger of BSP in Indian National Congress (for short-`the INC'). The Speaker, vide its order dated 18.9.2019, accepted the claim in terms of paragraph 4(1)(a) and 4(2) of the Tenth Schedule of the Constitution of India. Shri Madan Dilawar filed a disqualification petition dated 6.3.2020 under paragraph 6 of Tenth Schedule seeking disqualification of the respondents nos.2 to 7 with effect from 16.9.2019 alleging defection qua paragraph 2. The aforesaid application came to be rejected by the Speaker vide its order dated 22.7.2020 impugned by Shri Madan Dilawar in addition to seeking disqualification of the respondents no. 2 to 7.

Shri Satish Chandra Mishra, learned senior counsel assisted by Shri Dinesh Garg, assailing the order dated 18.9.2019 contended, relying on a Constitution Bench judgement of the Hon'ble Supreme Court in the case of Rajendra Singh Rana & Ors. vs. Swami Prasad Maurya & Ors.(2007) 4 SCC 270 and a Division Bench judgement of the Hon'ble Supreme Court in the case of Jagjit Singh vs. State of Haryana & Ors.-(2006) 11 SCC page 1,

that the Speaker is not clothed with independent jurisdiction to invoke the provisions of paragraph 4 to accept a claim of merger dehors adjudication on disqualification application under paragraph 6 and the provisions of paragraph 4 are available only as defence against the plea of disqualification.

He submitted that there was no material before the Speaker to accept the claim of merger raised by the respondents no.2 to 7 except the application itself which has not seen light of the day inasmuch as neither its copy was supplied to them in spite of their request nor, same has been placed on record of the writ petition along with its reply by the Speaker.

Referring to the provisions of paragraph 4, the learned senior counsel asserted that the same envisage merger of a political party in two steps; paragraph 4(1) speaks of merger of original political party with another political party and only on satisfaction of this condition, the occasion of deemed merger under sub-paragraph (2) would arise as it specifically refers "..... **have agreed to such merger**". He submits that use of the phrase "such merger" employs significance and indicates that paragraph 4(2) can be invoked only in case of merger of original political party with another political party. He contended that indisputably, there has been no merger of either National Unit of BSP or its State Unit with the INC and hence the order impugned dated 18.9.2019 cannot be sustained in the eye of law.

Shri Mishra submitted that he had no occasion to assail the order dated 18.9.2019 by way of disqualification petition vide paragraph 6 inasmuch as on earlier occasion i.e. after the Rajasthan Assembly Election, 2008, the disqualification petition

filed by the BSP assailing the order dated 09.04.2009 whereby the Speaker had accepted the claim of merger by all the six MLAs of the BSP of their party with the INC, was dismissed by the Speaker after lapse of about two and half years vide order dated 27.2.2012 on account of its non maintainability as Rule 6 of the Rajasthan Assembly Members (Disqualification on the Grounds of Defection) Rules of 1989 (for short- 'the Rules of 1989'), requires plea of disqualification only on behest of a Member of the Assembly. He submitted that on this occasion also, the petitioner-BSP is left with no Member in the Assembly to file a disqualification petition and hence, the petitioner has approached this Hon'ble Court invoking this writ jurisdiction.

Shri Satya Pal Jain, learned senior counsel assisted by Shri Ashish Sharma for the petitioner-Madan Dilawar contended that the order dated 18.9.2019 is beyond the jurisdiction of the Speaker as no such order vide paragraph 4 of Tenth Schedule could have been passed on an application filed by the respondents no.2 to 7 claiming merger. He submitted that paragraph 4 does not stipulate adjudicatory process on any claim of merger and can only be put as defence on a disqualification petition under paragraph 6.

He attacked the order dated 18.9.2019 on the ground of it being violative of principles of natural justice as neither any notice either to the BSP or any other person was given nor, any opportunity of hearing was afforded to any interested person before passing it. He submitted that the Speaker was required to conduct an enquiry as to whether there had been merger of BSP with INC in conformity with the provisions of paragraph 4 before

recording his satisfaction in this regard vide order dated 18.9.2019.

Relying on the judgements of the Hon'ble Supreme Court in the cases of Kedar Shashikant Deshpande & Ors. vs. Bor Municipal Council & Ors.-(2011) 2 SCC 654, Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi & Ors.-(2015) 12 SCC 381 and a Full Bench judgement of Punjab and Haryana High Court in Prakash Singh Badal & Ors. vs. UOI-AIR 1987 P&H 263, learned senior counsel canvassed that there cannot be any deemed merger under paragraph 4(2) unless there is merger of a political party with another political party under paragraph 4(1).

Assailing the order dated 22.7.2020, he submitted that it does not tantamount to an order rejecting the disqualification petition in as much as the office note prepared by the staff has simply been endorsed by the Speaker without application of mind and is a non-speaking one.

Relying upon the judgement of Hon'ble Supreme Court in the case of Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council & Ors.-(2004) 8 SCC 747, learned senior counsel asserted that the disqualification petition could not have been dismissed citing procedural/technical lapses. He asserted that the law envisages that mere bringing to the notice of the Speaker the factum of disqualification incurred by any Member is sufficient whereupon the Speaker is under the constitutional obligation to adjudicate upon the question of disqualification.

Per contra, Shri Kapil Sibal, learned senior counsel assisted by Shri Prateek Kasliwal, learned counsel, agreeing with the submission made by learned senior counsels for the petitioners

that enquiry vide paragraph 4 of Tenth Schedule is not contemplated independent of a disqualification application vide paragraph 6, submitted that the writ petition against the order dated 18.9.2019 is not maintainable, it being in the nature of an administrative order passed by the Speaker under Rules 3, 4 and 5 read with Form-3 of the Rules of 1989. He contended that since there is no dispute between the parties as to the order dated 18.9.2019 not being an order under paragraph 4, the arguments raised by learned senior counsels for the petitioners of it being violative of provisions of paragraph 4, are rendered untenable. The learned senior counsel contended that mere reference of the provisions of paragraph 4 in the order dated 18.9.2019 would not change its nature which is essentially an administrative order having been passed under the Rules of 1989.

He submitted that as and when the Speaker receives an application from a Member/group of Members claiming merger, he has to record the factum of such claim in the Register being maintained for this purpose as well as for other administrative reasons which does not amount of adjudication on the claim of merger; rather, there is a constitutional bar to entertain any such claim at that stage in absence of disqualification petition. Learned senior counsel submitted that at the stage of recording the claim of merger, the Speaker cannot examine merit of such claim, which he can do only while entertaining a disqualification petition under paragraph 6 as paragraph 4 affords the defence to the Member whose disqualification is alleged. He contended that the disqualification is never automatic and it requires adjudication by the Speaker as and when a disqualification petition is filed alleging

that the claim of merger tantamounts to voluntary giving up membership of the party on whose symbol the Member was elected. Referring to the paragraphs 2, 4 and 6 of the Tenth Schedule, he submitted that the scheme of Tenth Schedule stipulates adjudication on the question of disqualification only under paragraph 6 and no such enquiry is required to be carried out at any stage prior to it.

Relying on the Constitution Bench judgement of the Hon'ble Apex Court in Kihoto Hollohan vs. Zachillhu & Ors.-1992 Suppl. (2) SCC 651, Shri Sibal asserted that the Speaker acts as a quasi judicial Tribunal while taking a decision on a disqualification petition under paragraph 6 and it is only against such decision, judicial review is permissible by the High Court/Supreme Court on the limited parameters as laid down therein. He submitted that except the decision taken vide paragraph 6, the proceedings before the Speaker cannot be subject matter of judicial review. He submitted that, therefore, the order dated 18.9.2019 cannot be subject matter of judicial review not being an order passed on the disqualification petition.

Placing reliance on the judgements of the Hon'ble Supreme Court in the cases of Speaker, Haryana Vidhan Sabha (supra) and Kelsham Meghachandra Singh vs. the Hon'ble Speaker, Manipur Legislative Assembly & Ors.-2020 (1) ALT 299, learned senior counsel submitted that the Hon'ble Apex Court has refused to entertain challenge to the order passed purportedly under paragraph 4 in absence of adjudication by the Speaker on the plea of disqualification under paragraph 6. He submitted that the Hon'ble Supreme Court proceeded to examine the validity of the

order passed by the Speaker accepting claim of split in the case of Rajendra Singh Rana (supra) in the peculiar facts and circumstances of the case wherein the order was passed without adjudicating the pending disqualification petition and term of the Assembly was going to expire very soon and therefore, the same cannot be held as precedent to interfere with the order dated 18.9.2019 passed herein. He submitted that a Division Bench of this Court has, in the case of Shri Krishna vs. State of Rajasthan & Ors., D.B. Civil Special Appeal (Writ) No.86/2010, vide its judgement dated 15.3.2020, categorically held that no writ lies against an order passed by the Speaker accepting the claim of merger and the only remedy available for a person challenging such claim, is to file a disqualification petition and this Court is bound by the Division Bench judgement of this Court.

Supporting the order dated 22.7.2020; learned senior counsel argued that the Speaker has committed no error in dismissing the disqualification application not being in consonance with the mandatory provisions contained in the Rules of 1989. He submitted that the petitioner is free to move a fresh application vide paragraph 6 in tune with the statutory requirement laid down under Rules of 1989. Repelling apprehension of the learned senior counsel for the BSP, he submitted very candidly that if any disqualification petition is moved even by the BSP, the same would be entertained in spite of not being moved by one of the Members as envisaged under Rule 6 of the Rules of 1989.

Learned senior counsel submitted that on a disqualification application moved by Shri Vijay Singh on 7.8.2020, notices have already been issued to the respondents no. 2 to 7 by the Speaker

vide its order dated 10.8.2020 fixing the date 14.8.2020 for appearance and reply by the respondents. He, therefore, submitted that this Court has no jurisdiction to entertain the writ petitions against the order dated 18.9.2019 not being an adjudicatory order on the disqualification petition.

Shri Mahendra Singh Singhvi, learned Advocate General assisted by Shri Darsh Pareek, learned counsel, advancing the arguments raised by Shri Sibal, submitted that it is only an order passed by the Speaker acting as quasi judicial tribunal under paragraph 6 which can be subject matter of judicial review by this Court on the touch stone of the parameters laid down by Hon'ble Apex Court in the case of Kihoto Hollohan (supra).

Replying to the contention raised by Shri Mishra that Rule 6 of the Rules of 1989 bars the petitioner-BSP from assailing the order dated 18.9.2019, learned Advocate General, relying upon the judgement of the Hon'ble Supreme Court in the case of Speaker, Orissa Legislative Assembly vs. Utkal Keshari Parida- (2013) 11 SCC 794, asserted that any person interested is also entitled to bring to the notice of the Speaker the factum of disqualification incurred by any Member of the House and the Speaker, on receiving such information, is under the constitutional obligation under paragraph 6 to adjudicate upon it. Defending the order dated 18.9.2019, Shri Singhvi contended that it is an administrative order for making proper sitting arrangement in the House and by no stretch of imagination; it can amount to adjudication on the claim of merger by the respondents no.2 to 7.

Shri Rajeev Dhavan, learned senior counsel assisted by Shri Madhav Mitra, learned counsel, submitted that the office of the

Speaker does not come into picture in the entire scheme of Tenth Schedule unless a disqualification petition is moved under paragraph 6. He contended that the Tenth Schedule does not stipulate adjudication at each and every stage i.e. at the stage of paragraph 2 and paragraph 4 and only adjudication required from the Speaker under the Tenth Schedule, is when disqualification is alleged against a Member. Placing reliance upon the judgement of the Hon'ble Supreme Court in the case of Rajendra Singh Rana (supra), learned senior counsel contended that proceeding under the Tenth Schedule gets started before the Speaker only on a complaint being made alleging disqualification. He submitted that the jurisdiction of any constitutional authority can only be relatable to the Constitution itself and cannot be enlarged by any authority including the judiciary because of any necessitated circumstances. Referring to the judgement of the Hon'ble Supreme Court in the case of Raja Soap Factory vs. S.P. Shantharaj & Ors., AIR 1965 SC 1449, learned senior counsel contended that the Speaker acquires the jurisdiction of the Tenth Schedule only when disqualification petition is moved.

He argued that the submissions made by the learned counsel for the petitioners are self contradictory inasmuch as on the one hand it is contended that the Speaker does not have any jurisdiction to accept claim of merger under paragraph 4 in absence of a claim of disqualification; on the other hand, they are seeking to quash the order dated 18.9.2010 on the premise of it having been passed by the Speaker without satisfying himself as to merger of the original political party i.e. BSP with the INC; the alleged mandatory requirement under sub paragraph 4(1).

Learned senior counsel submitted that the disqualification under the Tenth Schedule is never automatic unless somebody triggers the motion by moving under paragraph 6. He submitted that no doubt, the disqualification, if any, would relate back to the date of disqualification incurred under paragraph 2; but, only after adjudication by the Speaker under paragraph 6. He submitted that a conjoint reading of paragraphs 2, 4 and 6 of the Tenth Schedule reveals that when a disqualification petition is moved alleging disqualification, paragraph 4 affords the defence. He submitted that in these circumstances, the order dated 18.9.2019 cannot be reckoned as an adjudication accepting the claim of merger.

Drawing attention of this Court towards sub-para 2 of paragraph 6, the learned senior counsel asserted that all the proceedings under sub-paragraph 1 of this paragraph, are deemed to be proceedings in the State Legislature within the meaning of Article 212 and hence, such proceedings; barring the final decision, are immune from the scrutiny of judicial review. He submitted that if the acceptance of claim of merger vide order dated 18.9.2019 is taken as an order under paragraph 4, it would inevitably result into the proceedings vide paragraph 4 having no immunity as envisaged for the proceeding under paragraph 6(1) vide paragraph 6(2), which could never have been intention of the Parliament while introducing the Tenth Schedule in view of the very high constitutional status being enjoyed by the Speaker.

Shri Siddharth Luthra, learned senior counsel assisted by Shri Rajesh Maharishi, learned AAG, drawing attention of this Court towards Rule 4 of the Rules of 1989 read with Form 3, submitted that claim of merger by the 6 MLAs of BSP was in the

nature of intimation to the Speaker about change of their affiliation who was under an obligation to publish such claim in bulletin form without entering into any enquiry under paragraph 4. He submitted that there can be no decision on the claim of merger dehors adjudication on a disqualification petition. Referring to a judgement of the Hon'ble Gauhati High Court in the case of Padi Richo vs. Speaker, Arunachal Pradesh Legislative Assembly & Ors. reported in (2017) 6 Gauhati Law Reports 431, learned senior counsel submitted that while accepting the claim of merger, the Speaker acts only as an administrative authority and is not required to enter into any adjudicatory process in absence of the plea of disqualification.

Shri Devidutt Kamat, learned senior counsel assisted by Dr. Vibhuti Bhushan Sharma, learned AAG, submitted that Tenth Schedule of the Constitution of India provides a comprehensive and exhaustive scheme for decision on disqualification of a Member of the Parliament or the Assembly, as the case may be. Referring to paragraph 6(2), he submitted that the adjudicatory process under paragraph 6(1) is given trappings of legislative nature rendering such proceedings beyond the scope of the judicial review; therefore, logically, any proceeding prior to the stage of inquiry under paragraph 6(1), would be protected more rigorously. He placed reliance on paragraph 431 of the Constitution Bench judgement of the Hon'ble Apex Court in case of Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha & Ors.-(2007) 3 SCC 184 in this regard.

He asserted that acceptance of claim of merger, in absence of a disqualification petition, is only a ministerial act on the part of the Speaker.

Placing reliance on a Full Bench judgement of the Punjab & Haryana High Court in case of Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha, 1997 SCC Online P&H, 788, learned senior counsel submitted that even adjudication under paragraph 6 does not stipulate giving of notice to the political party whose Member claims merger with another political party and hence, submission of the petitioner that the order dated 18.9.2019 deserves to be set aside being violative of the principles of natural justice, does not merit acceptance.

Referring to paragraphs 117 and 118 of the Constitution Bench judgement of Hon'ble Apex Court in the case of Kihoto Hollohan (supra), he submitted that the Speaker represents the August House, its dignity and freedom. He contended that within the walls of the House, his authority is supreme and therefore, this Court cannot interfere in the order impugned undisputedly not passed under paragraph 6; only order under Tenth Schedule against which this Court can exercise its writ jurisdiction. Shri Kamat relied upon another Constitution Bench judgement of the Supreme Court in case of Nabam Rebia & Anr. Vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Ors., (2016) 8 SCC 1 to canvass that this Court has constricted power of judicial review and is restricted to the adjudication qua paragraph 6 carving out certain extreme exceptions because the Speaker, while exercising this jurisdiction, exercises the power of "constitutional adjudication". Referring to yet another judgment of the Hon'ble

Supreme Court in case of Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly & Ors.-(2020) 2 SCC 595, learned senior counsel asserted that under our constitutional scheme, it is only the Speaker who has been vested with power to take a decision on the question of disqualification and therefore, the prayer made by the petitioners in the writ petitions seeking disqualification is not amenable to the jurisdiction of this Court. To buttress this submission, he also placed reliance on the judgement of the Hon'ble Supreme Court in the case of Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council & Ors.-(2004) 8 SCC 747.

Lastly, learned senior counsel argued that the judgements rendered by the Supreme Court in the cases of Rajendra Singh Rana (supra) and Jagjit Singh (supra) have no application in the present case as those cases pertained to paragraph 3 i.e. of split and not of merger.

Learned senior counsel Shri G.S. Bapna assisted by Shri Sanjay Sharma, learned counsel, contended that both the writ petitions deserve to be dismissed only on the ground of delay and laches. He submitted that the order dated 18.9.2019 has been assailed by the BSP by way of this writ petition after a delay of about ten months and was challenged by the petitioner Madan Dilawar after six months by way of disqualification petition without offering any plausible explanation for this inordinate delay.

Learned senior counsel Shri Vivek K Tankha assisted by Major R.P. Singh, learned AAG, drawing attention of this Court towards various provisions under Chapter III of Part-VI of the Indian Constitution, submitted that the Speaker happens to be the

Chief Officer of the State Legislature responsible for conduct of its business. He submitted that if any Member incurs disqualification under Article 191(1), decision of the Governor shall be final; but, if the disqualification is incurred under the Tenth Schedule, Article 191(2) provides the decision of the Speaker to be final. Referring to Article 208, learned senior counsel contended that the Rules of Procedure for regulating the procedure and conduct of its business by a House, are made by the Speaker or the Chairman, as the case may be. He submitted that the provisions of Article 212 bar jurisdiction of the Court to question validity of any proceeding in the legislature on the ground of any alleged irregularity of procedure and no officer or Member of the Legislature of the State in whom powers are vested by or under the Constitution, for regulating procedure or the conduct of business, or for maintaining order, in the legislature, shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers. He contended, therefore, the order dated 18.9.2019, passed by the Speaker in exercise of his administrative power to conduct business of the House, cannot be subjected to the scrutiny of judicial review in the writ jurisdiction. Learned senior counsel contended that, whenever any claim of merger is raised by a Member(s), the Speaker is required to record such claim to determine status of such Member(s) for effecting proper sitting arrangement as well as for smooth and proper conduct of the business of the House, without any adjudication on merit of such claim in absence of plea of disqualification.

Relying on Rule 4 read with Form 3 of the Rules of 1989, learned senior counsel submitted that the order dated 18.9.2019

is in the nature of procedural information order which is also reflected from its heading.

He argued that it is the Speaker only who is authorized to take a decision on the plea of disqualification of a Member and this Court has no jurisdiction to take a decision on such plea in absence of any such adjudication by the Speaker in the first instance. He placed reliance on the Constitution Bench judgement of the Hon'ble Apex Court in case of Kihoto (supra) and a Division Bench judgement of this Court in Shri Krishna (supra) to buttress his submission.

Lastly, he contended that after passing of the order dated 18.9.2019, two sessions of Legislative Assembly have already been held in November, 2019 and March, 2020 respectively without any iota of objection against the order by any of the petitioners and hence, the writ petitions are liable to be dismissed being hit by the principles of estoppel and acquiescence.

Shri Satish Chandra Mishra, learned senior counsel submitted, in rejoinder, that the contention raised by the learned counsels for the respondents as to the order dated 18.9.2019 being administrative in nature, is not tenable in the face of the order itself. Referring to the order impugned, he contended that it is in the nature of decision by the Speaker on the claim raised by the respondents no.2 to 7 of merger of BSP with the INC on the parameters laid down under paragraph 4 and is, therefore, without jurisdiction. He submitted that since the order dated 18.9.2019 is void ab initio and non-est, the writ petition cannot be held to be suffering from delay and laches.

Learned senior counsel asserted that the Division Bench judgement of this Court in the case of Shri Krishna (supra), cannot be held to be a binding precedent as it was rendered in absence of the BSP as a party to it which was the only party adversely affected by the order of the Speaker accepting claim of merger. He submitted that even the Hon'ble Division Bench has categorically held that the appellant-petitioner was having no locus standi to challenge the order passed by the Speaker. He further contended that the order passed by the Division Bench in case of Shri Krishna (supra) was subject matter of challenge in the SLP filed by the BSP against the order passed by the Speaker rejecting their disqualification petition; but, the effluxion of time, rendered the SLP infructuous; but, the Hon'ble Supreme Court was pleased to leave the questions of law involved therein, open. He submitted that in these circumstances, the aforesaid judgment of the Division Bench of this Court cannot be said to have attained finality.

Reiterating his submissions, learned senior counsel argued that the provisions of paragraph 4(2) are not independent of provisions of paragraph 4(1) and unless the respondents were able to show merger of the BSP with the INC either at the National or at State level, the deeming provision could not have been invoked by the Speaker for accepting the claim of merger. Relying on a judgement of the Full Bench of the Bombay High Court in case of Shah Faruq Shabir vs. Govind Rao Ramu Vasave & Ors., 2016 (4) AIR Bombay 786, he contended that the principle of split under paragraph 3 is squarely applicable in case of merger as well and therefore, the contention raised by the respondents that the

ratio of the judgements of the Hon'ble Supreme Court in the cases of Rajendra Singh Rana (supra) and Jagjit Singh (supra), has no applicability in the present case, is not tenable.

He asserted that the judgement rendered by the Hon'ble Gauhati High Court has no application in the present case as that case pertained to issuance of a bulletin only by the office of the Speaker without accepting the claim of merger under paragraph 4; whereas, in the present case, the order dated 18.9.2019, it in no uncertain terms, speaks of decision by the Speaker as to acceptance of the claim of merger by the respondents no.2 to 7 in terms of paragraph 4. He argued that even assuming the order impugned to be an administrative order, it deserves to be quashed and set aside being violative of principles of natural justice inasmuch as it has been passed without issuing any notice to the BSP.

Learned senior counsel Shri Satya Pal Jain submitted, in rejoinder, relying upon a Constitution Bench judgement of the Hon'ble Supreme Court in Mohinder Singh Gill vs. the Chief Election Commissioner of India & Ors, AIR 1978 SC 851 that the order dated 18.9.2019 can be defended by the respondents only on the reasons specified therein and the same cannot be supplemented later on. He submitted that since the order impugned has been passed invoking paragraph 4, its validity has to be adjudged only on the parameters laid down therein and it cannot be treated as an executive order as claimed by the respondents. He submitted, relying on a Full Bench judgement of the Punjab and Haryana High Court in the case of Prakash Singh Badal vs. Union of India, AIR 1987 P&H 263, that the order dated

18.9.2019 having been passed under paragraph 4, is without jurisdiction, void ab initio and non est in the eye of law.

Learned senior counsel asserted that the writ petition does not suffer from any delay as immediately after passing of the order dated 18.9.2019, an application dated 9.10.2019 came to be filed under Right to Information Act, 2005 seeking copy of the application dated 16.9.2019 and other related documents; but, the application as well as the first appeal against the order rejecting application, came to be dismissed.

He submitted that in his disqualification petition, he has raised all the legal objections against the order accepting merger; but, the same was dismissed by the Speaker vide order dated 22.7.2020 without appreciating any of the grounds raised therein. He argued that since the order dated 22.7.2020 categorises itself as "कार्यालय टिप्पणी" i.e. "office note", undisputedly prepared by the staff which has simply been approved by the Speaker without any application of mind; hence, by no stretch of imagination, it can be reckoned as an order passed by the Speaker. Relying on the judgement of the Hon'ble Supreme Court of India in case of Dr. Mahachandra Prasad Singh (supra), he contended that the order dated 22.7.2020 being contrary to the law laid down therein, cannot be sustained in the eye of law and is liable to be quashed and set aside.

Heard the learned counsels for the parties and perused the record.

The pivotal question which arises for consideration of this Court is regarding the nature of the order dated 18.09.2019.

While, it has been case of the petitioners that since the order dated 18.9.2019 has been passed by the Speaker invoking the provision of paragraph 4, it is without jurisdiction. The respondents, on the other hand, have claimed the order to be administrative in nature.

The parties are ad idem that the Speaker does not have independent jurisdiction to adjudicate upon the claim of merger vide paragraph 4 dehors a motion seeking disqualification and, as a matter of fact, the provisions of paragraph 4 afford defence to a legislator against the plea of his disqualification. The following judgements of the Hon'ble Apex Court lay down, in no uncertain terms, the aforesaid proposition of law.

1. Rajendra Singh Rana & Ors. Vs. Swami Prasad Maurya & Ors., (2007) 4 SCC 270;

25..... "A proceeding under the Tenth Schedule gets started before the Speaker only on a complaint being made that certain persons belonging to a political party had incurred disqualification on the ground of defection. To meet the claims so raised, the members of Parliament or Assembly against whom the proceedings are initiated have the right to show that there has been a split in the original political party and they form 1/3rd of the Members of the Legislature of that party or that the party has merged with another political party and hence para 2 is not attracted. On the scheme of Articles 102 and 191 and the Tenth Schedule, the determination of the question of split or merger cannot be divorced from the motion before the Speaker seeking a disqualification of a Member or Members concerned. It is therefore not possible to accede to the arguments that under the Tenth Schedule to the Constitution, the Speaker is an independent power to decide that there has been a split or merger of a

political party as contemplated by para 3 and 4 of the Constitution."

26....."The Rules prescribed by various Legislatures including the U.P. Legislature contemplate the making of an application to the Speaker when there is a complaint that some Member or Members have voluntarily given up his membership or their memberships in the party. It is only then that in terms of the Tenth Schedule, the Speaker is called upon to decide the question of disqualification raised before him in the context of para 6 of the Tenth Schedule. **Independent of a claim that someone has to be disqualified, the scheme of the Tenth Schedule or the Rules made thereunder, do not contemplate the Speaker embarking upon an independent enquiry as to whether there has been a split in a political party or there has been a merger.** Therefore, in the context of Article 102 and 191 and the scheme of the Tenth Schedule to the Constitution, we have no hesitation in holding that the Speaker acts under the Tenth Schedule only on a claim of disqualification being made before him in terms of para 2 of the Tenth Schedule."

27..... "Call it a defence or whatever, a claim under para 3 as it existed prior to its deletion or under para 4 of the Tenth Schedule, are really answers to a prayer for disqualifying the member from the legislature on the ground of defection. Therefore, in a case where a Speaker is moved by a legislature party or the leader of a legislature party to declare certain persons disqualified on the ground that they have defected, it is certainly open to them to plead that they are not guilty of defection in view of the fact that there has been a split in the original political party and they constitute the requisite number of legislators or that there has been a merger."

**2. Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi,
(2015) 12 SCC 381;**

42. Accordingly, the main challenge to the impugned decision of the Division Bench of the Punjab and Haryana High Court is with regard to the competence of the Speaker of the Assembly to decide the question of disqualification of the Members of the Haryana Janhit Congress (BL) Party on their joining the Indian National Congress Party on the basis of the letters written by the five Members of the former legislature party. Incidentally, the learned Single Judge held that the issue would have to be decided by the Speaker himself while considering the disqualification petitions under paragraph 6 of the Tenth Schedule to the Constitution. What is important, however, is the question as to whether such a decision could be arrived at under paragraph 4 of the Tenth Schedule to the Constitution whereunder the Speaker has not been given any authority to decide such an issue. Paragraph 4 merely indicates the circumstances in which a Member of a House shall not be disqualified under Sub-paragraph (1) of Paragraph 2. One of the circumstances indicated is where the original political party merges with another political party and the Member claims that he and any other Member of his original political party have become Members of such other political party, or, as the case may be, of a new political party formed by such merger. As stressed by the learned Solicitor General, for the purpose of sub-paragraph (1), the merger of the original political party of a Member of the House, shall be deemed to have taken place if, and only if, not less than two-thirds of the Members of the legislature party concerned agreed to such merger. **In other words, a formula has been laid down in paragraph 4 of the Tenth Schedule to the Constitution, whereby such Members as came within such formula could not be disqualified on ground of defection in case of the merger of his original political party with another**

political party in the circumstances indicated in paragraph 4(1) of the Tenth Schedule to the Constitution.

43. The scheme of the Tenth Schedule to the Constitution indicates that the Speaker is not competent to take a decision with regard to disqualification on ground of defection, without a determination under paragraph 4, and paragraph 6 in no uncertain terms lays down that if any question arises as to whether a Member of the House has become subject to disqualification, the said question would be referred to the Speaker of such House whose decision would be final. The finality of the decisions of the Speaker was in regard to paragraph 6 since the Speaker was not competent to decide a question as to whether there has been a split or merger under paragraph 4. The said question was considered by the Constitution Bench in Rajendra Singh Rana's case (supra). While construing the provisions of the Tenth Schedule to the Constitution in relation to Articles 102 and 191 of the Constitution, the Constitution Bench observed that the whole proceedings under the Tenth Schedule gets initiated as a part of disqualification proceedings. Hence, determination of the question of split or merger could not be divorced from the motion before the Speaker seeking a disqualification of the Member or Members concerned under paragraph 6 of the Tenth Schedule. **Under the scheme of the Tenth Schedule the Speaker does not have an independent power to decide that there has been split or merger as contemplated by paragraphs 3 and 4 respectively and such a decision can be taken only when the question of disqualification arises in a proceeding under paragraph 6. It is only after a final decision is rendered by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution that the jurisdiction of the High Court under Article 226 of the Constitution can be invoked."**

Thus, the crystal clear position of law which emerges is that the Speaker has no independent power to adjudicate upon the claim of merger in absence of a motion of disqualification and the provisions of paragraph 4 afford to a Legislator a defence mechanism against the plea of his defection. However, once, a Member is held to be suffering from disqualification, it relates back to the date incurring the same.

In view of the aforesaid well settled and unexceptional proposition of law, as admitted by both the parties also, the contention by the petitioners that since the order impugned is in the nature of the decision by the Speaker accepting claim of merger of the BSP with the INC raised by the respondents no.2 to 7 on the touchstone of parameters under paragraph 4 in absence of the motion seeking disqualification, it is without jurisdiction rendering it void ab initio and non est in the eye of law, has no legs to stand and does not deserve to be accepted. This Court, in view of the fact that the order dated 18.9.2019 came to be passed in absence the claim of disqualification, is unable to persuade itself to acknowledge the order as having been passed under paragraph 4 or in the nature of adjudication on the claim of merger. Rather, this Court finds force in the submission made by the respondents that whenever any claim of merger is raised by a Member / Group of Members, otherwise than by way of defence to the plea of defection, the Speaker is under an obligation, under the Rules of business, without any adjudication on merit of such claim, to accept the same for the purposes of carrying out necessary changes in the register being maintained for this purpose as well

as changes in the sitting arrangement of the Members in the House.

The Hon'ble Apex Court has, in case of Rajendra Singh Rana (supra), held as under:

25... "The power to recognize a separate group in Parliament or Assembly may rest with the Speaker on the basis of the Rules of business of the House. But that is different from saying that the power is available to him under the Tenth Schedule to the Constitution independent of a claim being determined by him that a Member or a number of Members had incurred disqualification by defection."

28..."Under the Tenth Schedule the Speaker is not expected to simply entertain a claim under paras 3 and 4 of the Schedule without first acquiring jurisdiction to decide a question of disqualification in terms of para 6 of the Schedule. The power, if any, he may otherwise exercise independently to recognize a group or a merger, cannot be traced to the Tenth Schedule to the Constitution. The power under the Tenth Schedule to do so accrues only when he is called upon to decide the question referred to in para 6 of that Schedule."

Rule 3 and Rule 4 of the Rules of 1989 provide the procedure regarding information to be furnished by the leader of a group of MLAs or the individual Members to the Speaker of their Election, their affiliation with a particular political party and other information as provided therein, within 30 days of the first sitting of the House which is required to be recorded in the register containing information about the Members maintained under Rule 5. Scheme of the Rules read with Form 3 also stipulates intimation to the Speaker with regard to any change in the information

furnished initially including change of affiliation, which is required to be recorded in the register as well as published in the bulletin. Such change also necessitates change in the sitting arrangement of the Members in the House. Under our constitutional scheme, the Speaker discharges dual functions; one as the highest administrative officer of the House responsible for its smooth, proper and efficient working and second as the quasi judicial Tribunal under Tenth Schedule to adjudicate upon the question of disqualification by way of defection. Since, any adjudication on the claim of merger cannot be divorced from the decision on disqualification petition; rather, there is constitutional bar on entertaining such claim dehors decision on the plea of disqualification, the order dated 18.9.2019 can only be held to have been passed by the Speaker in exercise of his administrative authority as the Officer of the House. The Hon'ble Gauhati High Court has, in case of Padi Richo (supra) involving somewhat similar circumstances, wherein a group of MLAs claiming merger requested the Speaker to publish the information in the bulletin form which was published accordingly under the heading "matters for general information"; repelling the contention raised by the petitioners therein that such order of the Speaker tantamounted to recognition of the claim of merger, held that such publication in the bulletin could not be held as an adjudication by the Speaker accepting claim of merger and could not be treated as an order under Tenth Schedule. It was further held by the Hon'ble High Court therein that since no adjudication on the claim of merger takes place in absence of the plea of defection, the principles of natural justice are not required to be followed at the time of

recording claim of merger as such for the purpose of its publication in the bulletin.

The Full Bench of Punjab and Haryana High Court has, in case of Prakash Singh Badal (supra), held as under:

34....."Under para. 6, the Speaker would have the jurisdiction in this matter only if any question arises as to whether a member of the House has become subject to disqualification under the said Schedule and the same has been referred to him for decision. The purpose of requirement of a reference obviously is that even when a question as to the disqualification of a member arises, the Speaker is debarred from taking suo motu cognizance and he would be seized of the matter only when the question is referred to him by any interested person. The Speaker has not been clothed with a suo motu power for the obvious reason that he is supposed to be a non-party man and has been entrusted with the jurisdiction to act judicially and decide the dispute between the conflicting groups. The other prerequisite for invoking the jurisdiction of the Speaker under para 6 is the existence of a question of disqualification of the some member. Such a question can arise only in one way, viz., that any member is alleged to have incurred the disqualification enumerated in para 2(1) and some interested person approaches the Speaker for declaring that the said member is disqualified from being member of the House and the claim is refuted by the member concerned.

35. Now, let us examine the matter other way round as suggested by Mr. Shanti Bhushan. **Suppose a split has taken place in the original party giving rise to a separate faction and more than one third of the members have chosen to form a group representing such a faction; the question arises, is there any cause for them to approach the Speaker under para 6? The answer obviously would be in the negative.**

All that they need do would be to approach the Speaker, put up their claim and request him to make necessary corrections in the records. When such a claim is made, by no stretch of reasoning it can be said that a question has arisen as to whether they have become subject to disqualification under the Tenth Schedule. The Speaker, therefore, would have no jurisdiction to take cognizance of any dispute under para 6 nor to render any decision. Instead, he has to accept the claim as it is. This procedure has to be adopted because the entries in the records maintained under para 8(1)(a) have to be corrected and seats to be allotted to the new group by virtue of the "powers conferred on the Speaker under R. 4 of Chap. II of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly). When the members claim to have formed a separate group, they would obviously be deemed to have voluntarily given up the membership of their political party within the meaning of clause (a) of para 2(1). If some interested party feels that thereby they have incurred the disqualification, it is he who has to approach the Speaker under para 6 and it would be then that a question can be said to have arisen as to whether a member of a House has become subject to disqualification and the Speaker would be seized of the matter. If no one challenges the claim of the members who have formed a new group, the provisions of para 6 would not come into operation nor the Speaker would be seized of any question relating to the disqualification of any member of the House. The action of the Speaker which he is required to take when a claim is made under para 3 would not, therefore, be an order under para 6 and would be only an executive action on his part in exercise of his powers under Rules 4 and 113 of the

said Rules. Moreover, as already stated above, the provisions of para 3 are an exception to para 2 and provide a defence to a member who is alleged to have incurred a disqualification. It is a thing of common knowledge that no one can approach a judicial or quasi judicial authority for adjudication upon his defence because unless someone alleges that he has committed the wrong, no cause of action would arise for pleading the defence or seeking an adjudication thereon.

36. The argument of Mr. Shanti Bhushan that if the splinter group had no right to approach the speaker under para 6 and has to wait till some interested party makes a reference to the Speaker, it would lead to a paradoxical situation as in that case the splinter group would not know to which political party they belong or whose whip they are to obey becomes untenable in view of the analysis of the relevant provisions made above. The moment such a claim is made, the splinter group would be deemed to have given up voluntarily the membership of their political party and the new faction which has come into being would be deemed to be their political party for the purposes of para 2(1). If their claim is not disputed by any interested person or by their original political party, no trouble would arise; but if somebody disputes their claim, he has to approach the Speaker under para 6, who would then be seized of the matter and pass a proper order because no other authority in case of dispute has the jurisdiction to declare that the splinter group has incurred the disqualification or not."

The majority view in the aforesaid Full Bench judgement of the Punjab and Haryana High Court was approved by the Hon'ble Apex Court in case of Rajendra Singh Rana (supra). The aforesaid judgments leave no room for doubt that whenever a Member or

group of Members approaches the Speaker with a claim of merger, the Speaker is under an obligation to record such claim for administrative reasons and such action cannot be traced to the Tenth Schedule.

In the aforesaid facts and circumstances as well as the law laid down by the Hon'ble Apex Court of India and the High Courts, if the order dated 18.9.2019 is juxtaposed to the Constitutional Scheme under Chapter III of Part-VI, Tenth Schedule and the Rules of 1989, the only inevitable conclusion which arises is that it is in the nature of administrative order passed by the Speaker recording claim of merger by the respondents no.2 to 7 in his capacity as the Officer of the Legislative Assembly only for the purposes of carrying out suitable and necessary changes in the register containing information about the Members, its publication in the bulletin as stipulated under the Rules of 1989 and for carrying out necessary changes in the sitting arrangements of the Members in the House and cannot be reckoned as an adjudication by the Speaker upon the claim of the respondents regarding merger of BSP with INC. Such order cannot be held to be in the nature of the pre-emptive move also either by the respondents no.2 to 7 or by the Speaker to any probable plea of defection.

The contention of the learned counsels for the petitioners that the order impugned is without jurisdiction being in the nature of "decision" by the Speaker on the claim of merger, does not merit acceptance as this Court is not persuaded to accept the order dated 18.9.2019 falling in the category of "decision". As has already been held on the basis of scheme of Tenth Schedule, the authoritative pronouncement of the Hon'ble Apex Court and

various High Courts, the Speaker acquires jurisdiction to adjudicate upon the claim of merger only while considering the plea of disqualification and not otherwise, therefore, the order dated 18.09.2019 cannot be held to be the decision on the claim of merger by the respondents no. 2 to 7. Even otherwise also, the "decision" in itself implies conflict of facts and/or law and verdict on such conflict through judicial process by an independent and competent authority which is final qua the authority passing it. The Hon'ble Supreme Court has, in case of Purnima Manthena & Ors. Vs. Renuka Datla & Ors.-(2016) 1 SCC 237, held as under:

49...."A decision logically pre-supposes an adjudication on the facts of the controversy involved and mere deferment thereof to a future point of time till the completion of the essential legal formalities would not ipso facto fructify into a verdict to generate a question of law to be appealed from."

Similarly, the Hon'ble High Court of Delhi in case of M/s. Ratan & Co. vs. P. Narayanan, AIR 1977 Delhi 93 held as under:

"23. A decision means a concluded opinion. It is an authoritative answer to the question raised before a court. It is the settlement of a controversy submitted to it. Decision implies the exercise of a judicial determination as the final and definite result of examining a question....."

Therefore, in the considered opinion of this court, the order dated 18.9.2019 fails to meet any of such criteria so as to bring it within the trappings of "decision" by the Speaker on the claim of merger by the respondents no.2 to 7 and cannot be reckoned as "decision".

The contention of the learned counsels for the petitioners that since the order impugned dated 18.9.2019 refers itself to be the decision on claim of merger and hence, it cannot be treated to be an administrative order, does not deserve acceptance as it is trite that mere nomenclature given to an order is never determinative of its true nature which can only be assessed by looking into its substance. The Hon'ble Supreme Court has, in case of C. Gupta vs. Glaxo-Smithkline Pharmaceuticals Ltd.-(2007) 7 SCC 171, held as under:

"18. It is not in dispute that the nomenclature is really not of any consequence. Whether a particular employee comes within the definition of workman has to be decided factually."

A coordinate Bench of this Court in case of Inderjeet Singh vs. State of Rajasthan & Anr., RLW 2009 (2) Raj.1848 held as under:

"12. A question which arises for consideration in this case is as to whether the appointment of the petitioner in the year 1977 was an adhoc appointment or a substantive appointment. For considering this question, the circumstances relating to the appointment, the post on which the petitioner was appointed and method adopted for giving appointment to the petitioner are to be considered. In other words, while considering the nature of appointment of the petitioner, the substance has to be seen and not only the nomenclature used in the order of appointment. Mere mentioning of adhoc, temporary etc., in the order of appointment would not change the real nature of appointment. In the instant case, the petitioner was given appointment in the year 1977 with

due selection, after having been successful in the interview held on 16.11.1977. The said appointment was against a vacant post and on a regular pay scale. The said appointment was thereafter continued till further orders by orders, vide order dated 20.6.1978...."

"13. Taking into consideration, the overall facts and circumstances, particularly the fact that the appointment given to the petitioner after a selection process, merely mentioning in the order of appointment in the year 1977 that the appointment was adhoc, is not the correct indication about nature of appointment. In fact, the appointment given to the petitioner was substantive in nature..."

Much emphasis has been laid by the petitioners on the aspect that vide order impugned, the Speaker has accepted the claim of merger relying upon the provisions of paragraph 4 of the Tenth Schedule and therefore, the same is without jurisdiction, void ab initio and non est in the eye of law. In this regard, suffice is to say that mere mentioning of wrong statutory provision or its non-mentioning does not render an order illegal if the authority to pass the same can be traced to a statutory provision. The Hon'ble Apex Court has, in the case of P.K. Palanisamy V N. Arumugham and Anr.-(2009)9 SCC 173, held as under:-

27..."It is a well settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor".

Similarly, in the case of N. Mani v. Sangeetha Theatre and Ors. (2004) 12 SCC 278, it is stated:

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

Since, validity of the order dated 18.09.2019 can be traced to the Rules of 1989; mere mentioning of provisions of paragraph 4 of the Tenth Schedule in it, would not render it void ab initio.

The offshoot of the aforesaid discussion in the light of settled principles of law is that the order dated 18.9.2019 cannot be reckoned as a decision on the claim of merger vide paragraph 4 of the Tenth Schedule; but, only as an administrative order under the Rules of 1989.

The question which, now, arises for consideration is the scope of interference in the order dated 18.9.2019 and jurisdiction of this Court to declare the respondents nos.2 to 7 as disqualified on account of defection?

A Constitution Bench of the Hon'ble Apex Court in the case of Kihoto (supra), after analyzing the purpose of introduction of Tenth Schedule introduced by the Constitution (52nd Amendment) Act, 1985 and its entire scheme, concluded as under:

"111. In the result, we hold on contentions (E) and (F) :

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

40

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

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

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence."

Thus, it was held by the Hon'ble Apex Court that the Speaker is the sole repository of the adjudicatory power under paragraph 6 of the Tenth Schedule to decide the question of disqualification on plea of defection and the Court acquires jurisdiction to put such adjudication to judicial review only on the infirmities based on violation of constitutional mandate, mala fides, non compliance with rules of natural justice and perversity. It was also held that the judicial review should not cover any stage prior to the making of a decision by the Speaker or a Chairman.

Another Constitution Bench judgement of the Hon'ble Apex Court in case of Raja Ram Pal (supra), held as under:

431... "(n) Article 122 (1) and 212 (1) prohibit the validity of any proceedings in legislature from being called in question in a Court merely on the ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the Court nor will it go into the adequacy of the material or substitute its opinion for that of legislature;

(p) Ordinarily, the Legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the Court may examine the validity of said contention, the onus on the person alleging being extremely heavy;"

Yet another Constitution Bench judgement of the Hon'ble Supreme Court of India in case of Nabam Rebia (supra), held as under:

"237. The aforesaid reasoning eloquently speaks of the power, position and the status the office of the Speaker enjoys under the Constitution. It also states about the scope of the fiction. **The Court has constricted the power of judicial review and restricted it to the stage carving out certain extreme exceptions. It is because the speaker, while exercising the authority/jurisdiction, exercises the power of "constitutional adjudication".** The concept of constitutional adjudication has constitutional value in a parliamentary democracy; and constitutional values sustain the democracy in a sovereign Republic. The Speaker is expected to maintain propriety as an adjudicator. The Speaker when functions as a tribunal has the jurisdiction/authority to pass adverse orders. It is therefore, required that his conduct should not only be impartial but such impartiality should be perceptible. It should be beyond any reproach. It must reflect the trust reposed in him under the Constitution. Therefore, the power which flows from the introduction of Tenth Schedule by constitutional amendment is required to be harmoniously construed with Article 179(c). Both the provisions of the Constitution are meant to subserve the purpose of sustenance of democracy which is a basic feature of the Constitution. The majority in Manoj Narula vs. Union of India-(2014) 9 SCC 1 where speaking about democracy has opined that democracy in India is a product of the rule of law and it is not only a political philosophy but also an embodiment of constitutional philosophy."

In the aforesaid judgement also, it has been reaffirmed by the Hon'ble Apex Court that the Speaker, while exercising his jurisdiction under paragraph 6 of the Tenth Schedule, exercises

the power in the nature of "constitutional adjudication" and power of judicial review is restricted.

The Hon'ble Supreme Court in case of Shrimanth Bala Saheb Patil (supra), was pleased to held as under:

"103. Article 192 of the Constitution provides that the Governor will be the authority for determination of disqualification on the grounds as contained under Article 191(1) of the Constitution. In contrast, the decision as to disqualification on the ground as contained in Article 191(2) of the Constitution vests exclusively in the Speaker in terms of Para 6 of the Tenth Schedule. There is no dispute that provisions under Tenth Schedule are relatable to disqualification as provided under Articles 102(2) and 191(2) of the Constitution."

The Hon'ble Apex Court has, in case of Speaker, Haryana Vidhan Sabha (supra) held as under:

43..."It is only after a final decision is rendered by the Speaker under para 6 of the Schedule X to the Constitution that the jurisdiction of the High Court under Article 226 of the Constitution of India can be invoked."

44...."In that regard, we are of the view that since the decision of the Speaker on a petition under para 4 of Schedule X concerns only a question of merger on which the Speaker is not entitled to adjudicate, the High Court could not have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under para 6 of Schedule X to the Constitution. It is in fact in a proceeding under para 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order which is amenable to the writ jurisdiction of the High Court. It is in such proceedings that the question relating to the

disqualification is to be considered and decided. Accordingly, restraining the Speaker from taking any decision under para 6 of Schedule X is, in our view, beyond the jurisdiction of the High Court, since the Constitution itself has vested the Speaker with the power to take a decision under para 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order."

The facts in the case of Speaker, Haryana Vidhan Sabha (supra) were somewhat similar to the facts as in the present case. In that case, the disqualification petition was filed subsequent to the order passed by the Speaker accepting the claim of merger purportedly under paragraph 4 of the Tenth Schedule and during pendency of the disqualification petition, a writ petition came to be filed by Shri Kuldeep Bishnoi seeking disqualification. The matter ultimately reached the Hon'ble Apex Court. The Hon'ble Apex Court, while declining to interfere in the order accepting claim of merger, was pleased to sustain the order passed by the Hon'ble Punjab and Haryana High Court directing the Speaker to take a decision on the disqualification petition within a period of four months.

Recently, the Hon'ble Apex Court, in case of Keisham Meghachandra Singh (supra) held as under:

"23. Indeed, the same result would ensue on a proper reading of Kihoto Hollohan (supra). Paragraphs 110 and 111 of the said judgment when read together would make it clear that what the finality clause in paragraph 6 of the Tenth Schedule protects is the exclusive jurisdiction that vests in the Speaker to

decide disqualification petitions so that nothing should come in the way of deciding such petitions.

The exception that is made is also of importance in that interlocutory interference with decisions of the Speaker can only be qua interlocutory disqualifications or suspensions, which may have grave, immediate, and irreversible repercussions. **Indeed, the Court made it clear that judicial review is not available at a stage prior to the making of a decision by the Speaker either by a way of quia timet action or by other interlocutory orders."**

"31. It is not possible to accede to Shri Sibal's submission that this Court issue a writ of quo warranto quashing the appointment of the Respondent No.3 as a minister of a cabinet led by a BJP government. **Mrs. Madhavi Divan is right in stating that a disqualification under the Tenth Schedule from being an MLA and consequently minister must first be decided by the exclusive authority in this behalf, namely, the Speaker of the Manipur Legislative Assembly.** It is also not possible to accede to the argument of Shri Sibal that the disqualification petition be decided by this Court in these appeals given the inaction of the Speaker. It cannot be said that the facts in the present case are similar to the facts in Rajendra Singh Rana (supra). In the present case, the life of the legislative assembly comes to an end only in March, 2022 unlike in Rajendra Singh Rana (supra) where, but for this Court deciding the disqualification petition in effect, no relief could have been given to the petitioner in that case as the life of the legislative assembly was about to come to an end. The only relief that can be given in these appeals is that the Speaker of the Manipur Legislative Assembly be directed to decide the disqualification petitions pending before him within a period of four weeks from the date on which this judgment is intimated

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to him. In case no decision is forthcoming even after a period of four weeks, it will be open to any party to the proceedings to apply to this Court for further directions/reliefs in the matter."

In the case of Shri Krishna.(supra), the order dated 9.4.2009 whereby the Speaker, Rajasthan Legislative Assembly accepted claim by 6 BSP MLAs of merger of the BSP with the INC under Schedule X, was assailed by way of writ petition which came to be dismissed by the learned Single Judge vide its judgement dated 18.12.2009 holding that it is the Speaker only who has jurisdiction to decide the question of disqualification of a Member of the Assembly with liberty to the petitioner to approach the Speaker for adjudication on the plea of disqualification. The Special Appeal (Writ) preferred by the petitioner against the judgement dated 18.12.2009 did not find favour with the Division Bench of this Court. This Court is bound by the aforesaid judgement and the contention of the learned counsels for the petitioners that the judgement dated 15.3.2010 passed by the Division Bench, is not binding upon this Court as it did not attain finality, is devoid of merit and is liable to be rejected.

Thus, the conspectus of the aforesaid judgements of the Hon'ble Supreme Court, the Division Bench of this Court as well as the scheme of Tenth Schedule shows that the Speaker, who enjoys a very high constitutional status, is the sole authority to delve upon the question of disqualification and while doing so, he acts as a quasi judicial Tribunal. Further, it is only his final decision, which can be subject matter of judicial review on limited parameters as prescribed in the case of Kihoto (supra). The Court acquires

jurisdiction only upon determination on the question of disqualification and not prior to that except in exceptional circumstances not obtaining in the present case.

Reliance placed by the petitioners on the case of Rajendra Singh Rana (supra) to substantiate their contention that this Court can interfere in the order dated 18.9.2019 accepting claim of merger, is wholly misplaced and misconceived. The Hon'ble Supreme Court proceeded to examine the validity of the order of the Speaker accepting claim of split passed in the teeth of pending disqualification application and especially in the circumstance where term of the Assembly was going to expire soon. The following observations of the Hon'ble Apex Court are apt to be reproduced as under:-

43. As against these submissions, it is contended that it was for the Speaker to take a decision in the first instance and this Court should not substitute its decision for that of the Speaker. It is submitted that the High Court was therefore justified in remitting the matter to the Speaker, in case this Court did not agree with the 37 MLAs that the decision of the Speaker did not call for interference.

44. Normally, this Court might not proceed to take a decision for the first time when the authority concerned has not taken a decision in the eye of law and this Court would normally remit the matter to the authority for taking a proper decision in accordance with law and the decision this Court itself takes on the relevant aspects. What is urged on behalf of the Bahujan Samaj Party is that these 37 MLAs except a few have all been made ministers and if they are guilty of defection with reference to the date of defection, they have been holding office without authority, in defiance of democratic principles and in such a situation, this Court must take a decision on

the question of disqualification immediately. It is also submitted that the term of the Assembly is coming to an end and an expeditious decision by this Court is warranted for protection of the constitutional scheme and constitutional values. We find considerable force in this submission.

45. "Here, the alleged act of disqualification of the 13 MLAs took place on 27.8.2003 when they met the Governor and requested him to call the leader of the opposition to form the Government. The petition seeking disqualification of these 13 members based on that action of theirs has been allowed to drag on till now. It is not necessary for us to consider or comment on who was responsible for such delay. But the fact remains that the term of the Legislative Assembly that was constituted after the elections in February 2002, is coming to an end on the expiry of five years. A remand of the proceeding to the Speaker or our affirming the order of remand passed by the High Court, would mean that the proceeding itself may become infructuous..."

Therefore, the Hon'ble Apex Court, while reinforcing the law that the court acquires jurisdiction only after final adjudication by the Speaker on the claim of split/merger qua plea of defection, endeavoured to decide the validity of the order passed by the Speaker accepting claim of split keeping the adjudication on the plea of disqualification pending as well as in view of the fact that the term of the Assembly was going to expire soon; therefore, this judgement cannot be held to be precedent requiring this Court to examine the validity of the order dated 18.9.2019.

There is another angle of the matter also. The order dated 18.9.2019 being administrative in nature, has immunity under Article 212 of the Constitution of India and no such exceptional

circumstance, as laid down vide paragraph 431 of the Constitution Bench judgement of the Hon'ble Apex Court in case of Raja Ram Pal (supra), exists in the present case which may warrant interference. Even otherwise also, it is settled law that the writ jurisdiction of the High Court is confined to the final adjudication by the Speaker on the plea of disqualification and the proceedings prior to that are not amenable to the jurisdiction except in exceptional circumstances as provided by Hon'ble Supreme Court in the case of Kihoto (supra) in following terms:

"110. In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. **Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence."**

In so far as contentions of the learned counsels for the petitioners that the order dated 18.9.2019 deserves to be quashed and set aside being violative of the principles of natural justice and suffering from the vice of non-application of mind; are concerned, suffice is to say that the order impugned does not decide any of the rival claims of the parties and cannot be treated as an

adjudication on the claim of merger. As already held, it simply records the claim by the respondents no.2 to 7 of the merger of BSP with the INC. The order reflects prima facie satisfaction of the Speaker as to the claim having actually been made by the respondents no.2 to 7 and he was not required to conduct any further inquiry in this regard at that stage in absence of any plea of disqualification. The Speaker being a non-partisan person, is not expected, in our constitutional scheme, to invite objection at the time of recording claim of merger for the administrative purposes. If the submission of the petitioners is accepted, it would inevitably invite inquiry at this stage which is totally unwarranted under the Tenth Schedule as well as the scheme of the Rules of 1989. This Court finds support from the judgement of the Hon'ble Punjab and Haryana High Court in case of Prakash Singh Badal (supra) as well as of the Hon'ble Gauhati High Court in case of Padi Richo (supra) in this regard. Therefore, the contentions, in this regard, deserve to be rejected.

Since, the order dated 18.9.2019 has been held to be an administrative order and not an order under paragraph 4 of the Tenth Schedule, this Court refrains itself from venturing into the question of its validity qua the parameters laid down therein.

Therefore, in view of the aforesaid analysis and also in view of the aforesaid settled and unexceptional position of law, this Court is of the opinion that it does not have jurisdiction either to interfere with the order dated 18.9.2019 or, to declare the respondents no.2 to 7 to be disqualified on the plea of their defection and the decision, in this regard, rests with the Speaker only under Tenth Schedule of the Constitution of India.

So far as validity of the order dated 22.7.2020 is concerned, the Hon'ble Supreme Court has, in case of Dr. Mahachandra Prasad Singh (supra), held as under:

"16. Sub-rule (1) of Rule 6 says that no reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of the said rule and sub-rule (6) of the same rule provides that every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. The heading of Rule 7 is 'PROCEDURE'. Sub-rule (1) of this rule says that on receipt of petition under Rule 6, the Chairman shall consider whether the petition complies with the requirement of the said Rule and sub-rule (2) says that if the petition does not comply with the requirement of Rule 6, the Chairman shall dismiss the petition. These rules have been framed by the Chairman in exercise of power conferred by paragraph 8 of Tenth Schedule. The purpose and object of the Rules is to facilitate the job of the Chairman in discharging his duties and responsibilities conferred upon him by paragraph 6, namely, for resolving any dispute as to whether a member of the House has become subject to disqualification under the Tenth Schedule. The Rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. Being subordinate legislation, the Rules cannot make any provision which may have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule. There is no provision in the Tenth Schedule to the effect that until a petition which is signed and verified in the manner laid down in CPC for verification of pleadings is made to the Chairman or the Speaker of the House, he will not get the

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

A three-Judges Bench of the Hon'ble Apex Court in the case of Orissa Legislative Assembly (supra), was pleased to hold as under:

"19. The aforesaid observation is precisely what we too have in mind, as otherwise, the very object of the introduction of the Tenth Schedule to the Constitution would be rendered meaningless. The provisions of sub-rules (1) and (2) of Rule 6 of the 1987 Rules have, therefore, to be read down to make it clear that not only a Member of the House, but any person interested, would also be entitled to bring to the notice of the Speaker the fact that a Member of the House had incurred disqualification under the Tenth Schedule to the Constitution of India. On receipt of such information, the Speaker of the House would be entitled to decide under Para 6 of the Tenth Schedule as to whether the Member concerned had, in fact, incurred such disqualification and to pass appropriate orders on his findings."

In view of the aforesaid dictum by the Hon'ble Apex Court, the order dated 22.7.2020, rejecting the disqualification application on the ground of violation of Rule 6(7) of the Rules of 1989, which does not go to the root of the matter, cannot be sustained in the eye of law. Even otherwise also, once, the factum of alleged defection was brought to the notice of the Speaker, he was under the constitutional obligation to adjudicate upon the same. In view of the law laid down by the Hon'ble Apex Court in case of Orissa Legislative Assembly (supra), the BSP is also entitled to raise plea of disqualification before the Speaker.

S.B. Civil Writ Petition No.8056/2020

Resultantly, the writ petition is dismissed. However, the petitioners are at liberty to file a disqualification petition with the

Speaker raising plea of defection of the respondents no.3 to 8. If any such petition is filed, the Speaker is expected to decide the same in accordance with law without rejecting it under Rule 6(2) of the Rules of 1989.

S.B. Civil Writ Petition No.8004/2020

This writ petition is partly allowed to the extent that the order dated 22.7.2020 passed by the Speaker is quashed and set aside. The Speaker is expected to take a decision on the disqualification petition filed by the petitioner within the period of three months from today as the outer limit fixed by the Hon'ble Supreme Court in para 28 of the judgement in Keisham Meghachandra Singh (supra) for decision on such petitions. Rests of the reliefs prayed for, are declined.

The application no.1/2020 stands disposed of accordingly.

(MAHENDAR KUMAR GOYAL),J

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IN THE SUPREME COURT OF INDIA
[S.C.R. Order XXI Rule 3 (1) (a)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.....OF 2020

(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)

WITH PRAYER FOR INTERIM RELIEF

IN THE MATTER OF :

BETWEEN

POSITION OF PARTIES

	<u>IN THE</u>	<u>IN THIS</u>
	<u>HIGH COURT</u>	<u>HON'BLE</u>
		<u>COURT</u>

- | | | |
|---|------------------------|------------------------|
| <p>1. Bahujan Samaj Paarty,
Through its National General
Secretary, Satish Chandra Misra,
Having its Central Office at
4, Gurudwara Rakabganj Road,
New Delhi.</p> | <p>Petitioner No.1</p> | <p>Petitioner No.1</p> |
| <p>2. Bahujan Samaj Party,
State Unit, Rajasthan,
Through its State President
Bhagwan Singh Baba,
Son of Sri. Prabhati Lal,
R/o D-170C, Bhargu Marg, Baani
Park, Jaipur, Rajasthan.</p> | <p>Petitioner No.2</p> | <p>Petitioner No.2</p> |

VERSUS

- | | | |
|---|----------------------------|--|
| <p>1. Hon'ble Speaker,
Rajasthan Legislative Assembly,
Jaipur, Rajasthan.</p> | <p>Respondent
No.1</p> | <p>Contesting
Respondent
No.1.</p> |
|---|----------------------------|--|

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|----|--|--------------------|-----------------------------------|
| 2. | Secretary,
Rajasthan Legislative Assembly,
Jaipur, Rajasthan. | Respondent
No.2 | Contesting
Respondent
No.2. |
| 3. | Shri. Rajendra Singh Gudha
S/o Madho Singh
Member Legislative Assembly,
Rajasthan, Udaipurwati
(Jhunjhunu),
Resident of Ward No.2,
Gudha, Tehsil Udaipurwati,
District Jhunjhunu,
Rajasthan. | Respondent
No.3 | Contesting
Respondent
No.3 |
| 4. | Shri Lakhan Singh Karaul,
S/o Jagan
Member Legislative Assembly,
Rajasthan, Karoli
Resident of House No.464, Sarya
Ka Pura, Khadkhad, Tehsil
Hindaun, City & District Karauli,
Rajasthan. | Respondent
No.4 | Contesting
Respondent
No.4. |
| 5. | Shri Deep Chand,
S/o Baluram
Member Legislative Assembly,
Rajasthan, Kishangarh Bas
(Alwar),
Resident of Village
Jatka, Post Mahud, Tehsil
Kishangarhbass,
District Alwar, Rajasthan. | Respondent
No.5 | Contesting
Respondent
No.5. |

- | | | | |
|----|---|--------------------|-----------------------------------|
| 6. | Shri Joginder Singh Awana,
S/o Girwar Singh
Member Legislative Assembly,
Rajasthan, Nadbai (Bharatpur),
Resident of D-256, Sector-20,
NOIDA, Gautam Budh Nagar, U.P. | Respondent
No.6 | Contesting
Respondent
No.6. |
| 7. | Shri Sandeep Kumar,
S/o Balwant
Member Legislative Assembly,
Rajasthan, Tijara (Alwar),
Resident of Village Thada,
Post Sithal, Tehsil Tijara, District
Alwar, Rajasthan. | Respondent
No.7 | Contesting
Respondent
No.7. |
| 8. | Shri Wajib Ali,
S/o Sher Mohammad
Member Legislative Assembly,
Rajasthan, Nagar (Bharatpur),
Resident of House No.468,
Fakiran Mohallan, Sikari Patti,
Ansick Nagar, Bharatpur, District
Bharatpur, Rajasthan. | Respondent
No.8 | Contesting
Respondent
No.8. |

To,

Hon'ble The Chief Justice of India
and His Lordship's other Companion
Judges of the Hon'ble Supreme Court of India.

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THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED.

MOST RESPECTFULLY SHOWETH:

1. The Petitioners above named submit this Petition seeking Special Leave to Appeal against final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur. By means of the impugned order, the High Court was pleased to dismiss the Writ Petition preferred by the petitioners herein on holding the Order dated 18.09.2019 passed by the Speaker to be an 'administrative Order' and not an order adjudicating the claim of merger, without considering the substance of Order dated 18.09.2019 wherein the Speaker has given the benefit of para 4(2) of the Tenth Schedule to recognize the claim of merger made by Resondent Nos. 3 to 8, dehors the adjudication on disqualification under para 6 of the Tenth Schedule.

2. **QUESTION OF LAW:-**

The following substantial questions of law arise for consideration by this Hon'ble Court:-

- I. Whether the High Court by means of the impugned judgment is justified in dismissing the Writ Petition preferred by the petitioner herein on holding the Order dated 18.09.2019 passed by the Speaker to be an administrative Order and not an order passed under Para 4

of the Tenth Schedule adjudicating the claim of merger, without considering the substance of Order dated 18.09.2019 wherein the Speaker has given the benefit of para 4(2) of the Tenth Schedule to recognize the claim of merger de hors the adjudication on disqualification under para 6?

- II. Whether the High Court is justified in holding the Order dated 18.09.2019 passed by the Speaker to be an 'administrative order' passed by the Speaker recording the claim of merger in his capacity as the Officer of the Legislative Assembly only for the purposes of carrying out suitable and necessary changes in the sitting arrangements of the members in the House and cannot be reckoned as an 'adjudication' by the Speaker upon the claim of respondent Nos. 3 to 8 regarding merger of BSP with INC?
- III. Whether the Speaker is clothed with independent jurisdiction to invoke the provisions of Para 4 of the Tenth Schedule to the Constitution of India, to accept a claim of merger de hors the adjudication on disqualification application under Para 6 of the Tenth Schedule?
- IV. Whether the High Court erred in holding that the Order dated 18.09.2019 does not fall in the category of "decision" contrary to the record of the case?
- V. Whether the Speaker vide Order dated 18.09.2019 is justified in deciding the claim of merger independently in

absence of any procedure or requirement for passing an order accepting or recognizing the claim of merger under the Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing party) Rules, 1989 or under the provisions of Tenth Schedule to the Constitution of India?

- VI. Whether the High Court erred in holding that it does not have jurisdiction to examine the validity of Order dated 18.09.2019 passed by the Speaker?
- VII. Whether there was any material before the Speaker to accept the claim of merger raised by Respondent Nos. 3 to 8, except the application itself which was neither supplied to the Petitioner/BSP nor was it placed on record of the High Court in the proceedings giving rise to the instant Special Leave Petition?
- VIII. Whether the High Court is justified in upholding the Order dated 18.09.2019 passed by the Speaker in absence of any merger of either National unit of Bahujan Samaj Party (BSP) or its State unit with Indian National Congress (INC) as required under Para 4(1) and Para 4(2) of the Tenth Schedule to the Constitution of India?
- IX. Whether the High Court committed an error of law in upholding the Order dated 18.09.2019 passed by the Speaker in violation of the principles of natural justice since, no notice was issued either to BSP or any other person while deciding the alleged application dated

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18.09.2019 filed by six BSP legislators in the Rajasthan Legislative Assembly?

- X. Whether the High Court has committed an error of law in interpreting the contours of provisions contained in Article 191(2) of the Constitution of India?
- XI. Whether the Order dated 18.09.2019 passed by the Ld. Speaker of the Rajasthan Legislative Assembly runs contrary to the law laid down by this Hon'ble Court in the case of *Kedar Shashikant Deshpande & Ors. Vs. Bhor Municipal Council & Ors., (2011) 2 SCC 654 and Speaker, Haryana Vidhan Sabha Vs. Kuldeep Bishnoi, (2015) 12 SCC 381*?
- XII. Whether the High Court erred in holding that it is bound by the Judgment dated 15.03.2010 passed by the Ld. Division Bench of the High Court in the case of D.B. Civil Special Appeal (Writ) No. 86/2010, Shri Krishna Vs. State of Rajasthan without considering that it was filed by a person who had no locus and was dismissed on the ground of locus as well, and without impleading Bahujan Samaj Party as respondent in the said writ petition.
- XIII. Whether the High Court failed to consider that the Judgment dated 15.03.2010 passed by the Ld. Division Bench of the High Court in the case of D.B. Civil Special Appeal (Writ) No. 86/2010, Shri Krishna Vs. State of Rajasthan affirming the judgment dated 18.12.2009 passed by the Ld. Single judge is rendered *per*

incuriam and is passed *Sub-Silentio* to the principles of law laid down by the Constitution bench of the Hon'ble Supreme Court in the case of *Rajendra Singh Rana* [(2007) 4 SCC 270] and *Kihoto Hollohan* [1992 Supp (2) SCC 651]?

- XIV. Whether the High Court failed to consider that the findings recorded in the Single Judge and Division Bench Judgment would not be binding upon the petitioners as Bahujan Samaj Party was not impleaded in the said writ petition and was never heard even through it was the only Affected party and was admittedly passing the disqualification application filed by it before the Speaker, Rajasthan Assembly.
- XV. Whether the High Court is justified in holding that the order dated 18.09.2019 being administrative in nature, has immunity under Article 212 of the Constitution of India contrary to the constitutional principles laid down by the Constitution Bench of this Hon'ble Court in the case of *Raja Ram Pal vs Honble Speaker Lok sabha* 2007(3)SCC 184 para 451 and law on Xth Schedule laid down in the landmark judgment of *Kihoto Hollohan vs Zachillhu* 1992suppl (2) SCC 651 para 111.

3. **DECLARATION IN TERMS OF RULE 3 (2):**

The Petitioner states that no other Petition seeking leave to appeal has been filed by the Petitioner against final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur.

4. **DECLARATION IN TERMS OF RULE 5:**

That Annexure (s) P-1 to P-4... produced alongwith the Special Leave Petition, are true copies of the pleadings/documents which formed part of the record of the case in the Court/Tribunal below against whose order the leave to appeal is sought in this Petition.

5. **GROUND:**

Leave to appeal is sought for on the following grounds:-

- A) BECAUSE substantial questions of law of general public importance arise in the instant Petition.
- B) BECAUSE the High Court is not justified in dismissing the Writ Petition preferred by the petitioner herein on holding the Order dated 18.09.2019 passed by the Speaker to be an 'administrative Order' and not an order passed under Para 4 of the Tenth Schedule adjudicating the claim of merger, without considering the substance of Order dated 18.09.2019 wherein the Speaker has given the benefit of para 4(2) of the Tenth Schedule to recognize the claim of merger de hors the adjudication on disqualification under para 6. It is respectfully submitted that the Speaker, Rajasthan Legislative

Assembly vide his Order dated 18.09.2019 has independently considered and adjudicated upon the claim of merger of BSP with INC made by Respondent Nos. 3 to 8, only in purported exercise of the provisions of the Tenth Schedule of Constitution of India and the provisions of Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing party) Rules, 1989 and not otherwise. The operative portion of the Order dated 18.09.2019 reads as under:-

" The Order passed in this context by the Hon'ble Speaker for your information is as under:-

On 16.09.2010 all 6 MLA (s) of Legislature Party of BSP namely Shri Lakhan Singh, Shri Rajendra Singh Gudha, Shri Deep Chand, Shri Joginder Singh Awana, Shri Sandeep Kumar and Shri Wazib Ali appeared personally before me and prayed/claimed that they have unanimously decided of merger of Bahujan Samaj Party in Indian National Congress on 16.9.2019 and in this regard this application is submitted. There are total 6 (six) MLAs of Bahujan Samaj Party (BSP) in the Rajasthan State Assembly and entire legislature party has claimed that Bahujan Samaj Party stands merged in the Indian National Congress (Rajasthan Assembly).

As per 10th Schedule of the Constitution of India there is no legal impediment in case not less than two third of the members of the one Legislature party agree in merging with another political party. On the contrary in the present case entire political party means all the members of Legislature Party of Bahujan Samaj Party BSP are merging with Indian National Congress which is in accordance with the provisions of Sub Para 1(a) and (2) of para 4 of the 10th Schedule.

Hence in the context of aforesaid facts mentioned in the Application, I have no justifiable cause to disbelieve the claim of the aforesaid MLA(s). Consequently, in the aforesaid circumstances in the back drop of the legal provisions envisaged in 10th Schedule of Constitution of India and also the provisions of Rajasthan Legislative Assembly Members

(Disqualification on the grounds of changing party) Rules, 1989, I deem MLA(s) Shri Lakhan Singh, Shri Rajendra Singh Gudha, Shri Deep Chand, Shri Joginder Singh Awana, Shri Sandeep Kumar and Shri Wazib Ali as part of Indian National Congress by virtue of sub para (2) of Para 4 of 10th Schedule of Constitution of India from 16.9.2019, date of merger of Bahujan Samaj Party (BSP) in the Indian National Congress (Rajasthan Assembly) and in light of aforesaid legal provisions, Indian National Congress shall be deemed as original political party of these Members of Legislative Assembly."

From a bare perusal of the aforesaid Order dated 18.09.2019, it is clearly evident that the Speaker proceeded to adjudicate upon the claim by accepting the defence against disqualification on the ground of defection as contained in para 4 of the Tenth Schedule in advance by giving approval to the claim of merger made by the 6 MLA's of Bahujan Samaj Party. The Speaker accepted the claim of merger by invoking the deeming provision in para 4(2), which comes in to play only as a defence against disqualification. On recording of such findings by the Speaker, nothing would be left to be decided in disqualification proceedings. This is legally impermissible, as under the scheme of the Tenth Schedule to the Constitution of India, the Speaker does not have an independent power to decide whether there has been a merger as contemplated by Para 4 and such a decision can be taken only when the question of disqualification arises in a proceeding under Para 6. The aforesaid order of Speaker 18.09.2019 accepting the claim of merger by giving the benefit of para 4(2), amounts to putting the cart before the horse by providing the defence in the hands of

defectors in advance for being used by them as and when an application for disqualification is filed.

Neither the Rules, 1989 nor the provisions of Tenth Schedule empower the Speaker to decide the claim of merger. The findings recorded by the Speaker with respect to provisions of para 4 of the Tenth Schedule cause serious prejudice to the rights of petitioner as they were recorded without hearing the petitioner who is the affected party and would come in the way in disqualification proceedings against the Respondent Nos. 3 to 8. The aforesaid order dated 18.09.2019, by any stretch of imagination cannot be said to be an order recording claim of merger for administrative purposes.

- C) BECAUSE the High Court erred in holding the Order dated 18.09.2019 passed by the Speaker to be an 'administrative order' passed by the Speaker recording the claim of merger in his capacity as the Officer of the Legislative Assembly only for the purposes of carrying out suitable and necessary changes in the sitting arrangements of the members in the House. The High Court erred in recording such a finding only on a mere presumption/assumption without there being any such purpose evident from Order dated 19.09.2019. It is respectfully submitted that the Order dated 18.09.2019 does not disclose that it was issued for the purposes of carrying out suitable and necessary changes in the sitting arrangements of the members in the House. The Order dated 18.09.2019 is in effect a quasi-judicial order passed by the Speaker adjudicating upon the claim of merger made by Respondent

Nos. 3 to 8, contrary to the provisions of Tenth Schedule to the Constitution of India and the principles of law laid down by the Constitution bench of this Hon'ble Court in the case of *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270. There was no occasion for the speaker to invoke the deeming clause under para 4(2) of the tenth schedule to accept the claim, had it been an administrative order as presumed/interpreted by the High Court in its impugned judgment. Had the alleged application dated 16.09.2019 been a mere intimation to speaker as presumed by the High Court, it could have been simply notified in the Bulletin as provided in the Rules without recording any reasons on the claim of merger.

- D) BECAUSE there was no procedure or requirement for passing an order accepting or recognizing the claim of merger under the Rules, 1989 or under the provisions of Tenth Schedule to the Constitution of India. Rules 3 and 4 of the Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing party) Rules, 1989 only provide for the procedure regarding information to be furnished by the leader of a group of MLAs or the individual Members to the Speaker of their Election, their affiliation with a particular political party and other information as provided therein, within 30 days of the first sitting of the House which is required to be recorded in the register containing information about the Members maintained under Rule 5. The Scheme of the Rules read with Form 3 stipulates intimation to the Speaker with regard to

any change in the information furnished initially including change of affiliation, which is required to be recorded in the register as well as published in the bulletin. The said procedure under the Rules, 1989 does not require upon the Speaker to decide on the claim of alleged merger or to record a merger. Rules 3 and 4 does not require upon the Speaker to determine the validity of the claim of merger or to assign reasons for accepting the claim of merger. The procedure adopted by the speaker in passing the Order dated 18.09.2019 is de hors the provisions of Rules, 1989. From a bare perusal of Order dated 18.09.2019 it is evident that the Speaker has unilaterally adjudicated upon the claim of merger made by Respondent Nos. 3 to 8 herein. The Speaker could not have recorded the findings on the claim of merger under para 4, when under the Scheme of Tenth Schedule, the merits of such a claim has to be necessarily decided only in an application for disqualification under Rule 6.

- E) BECAUSE the High Court erred in not considering that the Order dated 16.09.2019 does not disclose that 'it was issued for the purposes of carrying out suitable and necessary changes in the register containing information about the Members, its publication in the bulletin as stipulated under the Rules of 1989 and for carrying out necessary changes in the sitting arrangements of the Members in the House'. On the contrary, the Order dated 18.09.2019 specifically recorded reasons and decided the question of validity of merger vis-à-vis the provisions of Para 4 of the Tenth Schedule preemptorily before any disqualification application

came be filed against Respondent Nos. 3 to 8. In such circumstances, the High court is not justified in assuming it to be an administrative order issued for the abovesaid alleged purposes which are not reflected from the Order dated 18.09.2019.

- F) BECAUSE the High Court erred in holding that the Order dated 18.09.2019 does not fall in the category of "decision" without considering the substance of Order dated 18.09.2019. A 'decision' does not merely mean the 'conclusion' — it embraces within its fold the reasons which form the basis for arriving at the 'conclusions'. It is submitted that the Speaker considered the facts as stated in the Application dated 16.09.2019 and adjudicated upon the claim of merger by holding the Respondent Nos. 3 to 8 to be part of Indian National Congress by virtue of sub para (2) of Para 4 of 10th Schedule of Constitution of India. The High Court erroneously proceeded on the assumption as if the speaker has not dealt with the merits of the claim of Respondent Nos. 3 to 8 and has not recorded any findings in his Order dated 18.09.2019. It is not the question of mentioning of wrong statutory provisions, but it is the question of authority/jurisdiction of Speaker to record the findings giving the benefit of para 4(2) of Tenth Schedule to decide the claim of merger which is wholly erroneous and unwarranted. The High Court misconstrued and misapplied the principles laid down in the case of Purnima Manthena & Ors. Vs. Renuka Datla & Ors.-(2016) 1 SCC 237, M/s. Ratan & Co. vs. P. Narayanan, AIR 1977 Delhi 93, C. Gupta vs. Glaxo-

Smithkline Pharmaceuticals Ltd.-(2007) 7 SCC 171 and Inderjeet Singh vs. State of Rajasthan & Anr., RLW 2009 (2) Raj.1848.

- G) BECAUSE it is legally well settled that an administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights which are the subject of adjudication. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision. Absence of a lis between the parties would not necessarily lead to the conclusion that the power conferred on an administrative body would not be quasi-judicial. In the instant case the Speaker vide his Order dated 18.09.2019 decided the claim of merger made by Respondent Nos. 3 to 8 and exercised his discretion to decide the rights of the parties. The Order dated 18.09.2019 cannot be said to be an 'administrative act' as the Speaker has considered the application and exercised his discretion to accept the claim pursuant to the material placed in support thereof and recorded findings after hearing the parties who personally appeared before him. In such circumstances the Order dated 18.09.2019 cannot be said to be a mere administrative act. This Hon'ble Court in the case of *National Securities Depository Ltd. v. SEBI*, (2017) 5 SCC 517 was pleased to hold as under:-

"14. This statement of the law has been followed in *Shivji Nathubhai v. Union of India*, 1960 (2) SCR 775, where the question which faced the Supreme Court was whether the Central Government's power under Rule 54 of the Mineral Concession Rules, 1949, to review administrative orders could be stated to be in a quasi-judicial capacity. After setting out Lord Justice Atkin's passage in *Advani case*, 1950 SCR 621, this Court held that three requisites were necessary in order that the act of an administrative body be characterised as quasi-judicial:

- (i) There must be legal authority;
- (ii) This authority must be to determine questions affecting the rights of subjects; and
- (iii) There must be a duty to act judicially.

Applying the aforesaid tests, it was held that the Central Government's power of review under Rule 54 was quasi-judicial in that there is legal authority to ⁵²⁵determine questions affecting the rights of subjects and the duty to act judicially which involves a hearing and a decision on the merits of the case.

15. Similarly, in *Indian National Congress (I) v. Institute of Social Welfare*(2002) 5 SCC 685, this Court held that the exercise of powers under Section 29-A of the Representation of the People Act, 1951 by the Election Commission is a quasi-judicial power. After referring to *R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd.*⁵ and *Province of Bombay v. Khushaldas S. Advani*⁶, this Court laid down: [*Indian National Congress (I) case*⁸, SCC p. 700, paras 24-25]

"24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforesaid decisions are these:

Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no *lis* or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

25. Applying the aforesaid principle, we are of the view that the presence of a *lis* or contest between the contending

parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially."

It can be seen from the aforesaid decision that in addition to the tests already laid down, the absence of a lis between the parties would not necessarily lead to the conclusion that the power conferred on an administrative body would not be quasi-judicial — so long as the aforesaid three tests are followed, the power is quasi-judicial.

16. In *Shankarlal Aggarwala v. Shankarlal Poddar*, 1964 (1)SCR 717, the question posed before this Court was whether an order of a Company Judge which confirms a sale is administrative or judicial. This Court held: (SCR pp. 728-29 : AIR p. 511, para 13)

"13. It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative and a judicial order. That the power is entrusted to or wielded by a person who functions as a Court is not decisive of the question whether the act or decision is administrative or judicial. But we conceive that an administrative order would be one which is directed to the regulation or ⁵²⁶supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the Court. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a Court, and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision. It has sometimes been said that the essence of a judicial proceeding or of a judicial order is that there should be two parties and a lis between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition. (Sic) No doubt, it would not be possible to describe an order passed deciding a lis before the

authority, that it is not a judicial order but it does not follow that the absence of a *lis* necessarily negatives the order being judicial."

17. Two other decisions give us an interesting insight into the difference between administrative and quasi-judicial orders. In *Jayantilal Amritlal Shodhan v. F.N. Rana*¹⁰, this Court held that the report of a Collector made under Section 5-A of the Land Acquisition Act is an administrative decision despite the fact that the Collector has to give the objector an opportunity of being heard. This was held because the Collector is not required to arrive at any decision on the *lis* presented to him. He has to submit the case for the decision of the appropriate Government together with a report containing recommendations on objections. It is thus clear that the Collector's report would not determine any question that affects rights even though there may be a duty to act judicially in the sense that the Collector has to hear objectors before him before making his report. Similar is the case in *Govindbhai Gordhanbhai Patel v. Gulam Abbas Mulla Allibhai*¹¹. This judgment decided that the function of a Collector under Section 63(1) proviso of the Bombay Tenancy and Agricultural Lands Act is administrative and not quasi-judicial. In arriving at this conclusion this Court referred to various earlier decisions of this Court, which had held that an Advocate General granting or refusing sanction under Section 92 of the Civil Procedure Code was an administrative decision, just as granting or withholding sanction to file a suit under Section 55(2) of the Muslim Wakfs Act, 1954, is also an administrative decision. An order made in a reference under Section 10 of the Industrial Disputes Act is similarly an administrative order. In each of these three cases no *lis* is decided on merits affecting the rights of the subject, and this is the reason why these decisions have been held to be administrative and not quasi-judicial in nature. One other judgment may be referred to. In *Neelima Misra v. Harinder Kaur Paintal*, this Court held following a passage in *Wade's Administrative Law* that a judicial decision is made according to law, whereas an administrative decision is made according to administrative policy. A quasi-judicial function lying somewhere in between is an administrative function which the law requires to be exercised in some respects as if it

were judicial. A quasi-judicial decision is, therefore, a decision which is subject to a certain measure of judicial procedure."

- H) BECAUSE the High Court erred in not considering that the validity and nature of Order dated 18.09.2019 could have been examined only in the context of alleged Application dated 16.09.2019 filed by the Respondent Nos. 3 to 8 before the Speaker and the decision of the speaker in that regard. It is only from the alleged application dated 16.09.2019, it would be evident as to what material was placed before the Speaker and as to what was claimed and what was sought from the speaker by the Respondent Nos.3 to 8. However, the alleged application dated 16.09.2019 was not placed on record by the respondents before the High Court and has not seen the light of the day till today.
- I) BECAUSE the High Court failed to consider that the Respondent Nos. 3 to 8 have moved the alleged Application dated 16.09.2019 claiming merger of BSP with INC in a most secret and clandestine manner pursuant to the allurements made by Congress Party. Immediately, the Speaker vide his Order dated 18.09.2019 accepted the claim of merger and held the Respondent Nos. 3 to 8 to be members of INC by giving the benefit of para 4(2) of the Tenth Schedule. There was no occasion for the Petitioner to file a disqualification application prior to passing of Order dated 18.09.2019. The claim of merger was made by Respondent Nos. 3 to 8 independently only to preempt the petitioner from initiating disqualification proceedings against them under the Tenth Schedule and getting them disqualified.

Without considering these circumstances the High Court erroneously held that in absence of claim for disqualification, the Order dated 18.09.2019 cannot be acknowledged to have been passed under paragraph 4 or in the nature of adjudication on the claim of merger contrary to the findings recorded in Order dated 18.09.2019.

- J) BECAUSE under the scheme of Schedule X of the Constitution of India, the Speaker does not have any independent power to decide whether there has been split or merger as contemplated by Para 4 and any such decision can be taken only when the question of disqualification arises in a proceeding under Para 6. The Speaker was not competent to separately decide a question as to whether there has been a split or merger under Para 4 of Schedule X. Para 4 merely indicates the circumstances in which a Member of a House shall not be disqualified under sub-para (1) of Para 2. In the case of *Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270, the Constitution bench of this Hon'ble Court, was pleased to examine this issue and hold as under :

"25. In the context of the introduction of sub-article (2) of Article 102 and Article 191 of the Constitution, a proceeding under the Tenth Schedule to the Constitution is one to decide whether a member has become disqualified to hold his position as a Member of Parliament or of the Assembly on the ground of defection. The Tenth Schedule cannot be read or construed independent of Articles 102 and 191 of the Constitution and the object of those articles. A defection is added as a disqualification and the Tenth Schedule contains the provisions as to disqualification on the ground of defection. A proceeding under the Tenth Schedule gets started before the Speaker only on a complaint being made that certain persons belonging to a political party had incurred disqualification on the ground of

defection. To meet the claim so raised, the Members of Parliament or Assembly against whom the proceedings are initiated have the right to show that there has been a split in the original political party and they form one-third of the members of the legislature of that party, or that the party has merged with another political party and hence para 2 is not attracted. On the scheme of Articles 102 and 191 and the Tenth Schedule, the determination of the question of split or merger cannot be divorced from the motion before the Speaker seeking a disqualification of a member or members concerned. It is therefore not possible to accede to the argument that under the Tenth Schedule to the Constitution, the Speaker has an independent power to decide that there has been a split or merger of a political party as contemplated by paras 3 and 4 of the Tenth Schedule to the Constitution. The power to recognise a separate group in Parliament or Assembly may rest with the Speaker on the basis of the Rules of Business of the House. But that is different from saying that the power is available to him under the Tenth Schedule to the Constitution independent of a claim being determined by him that a member or a number of members had incurred disqualification by defection. To that extent, the decision of the Speaker in the case on hand cannot be considered to be an order in terms of the Tenth Schedule to the Constitution. The Speaker has failed to decide the question, he was called upon to decide, by postponing a decision thereon. There is therefore some merit in the contention of the learned counsel for BSP that the order of the Speaker may not enjoy the full immunity in terms of para 6(1) of the Tenth Schedule to the Constitution and that even if it did, the power of judicial review recognised by the Court in *Kihoto Hollohan*, 1992 suppl (2) SCC 651, is sufficient to warrant interference with the order in question.

28. The decision of a Full Bench of the Punjab & Haryana High Court in *Prakash Singh Badal v. Union of India*³ was relied upon to contend that the Speaker gets jurisdiction to render a decision in terms of the Tenth Schedule to the Constitution of India only when in terms of para 6 thereof a question of disqualification arose before him. The Full Bench by a majority held: (AIR pp. 280-81, para 34)

"Under para 6, the Speaker would have the jurisdiction in this matter only if any question arises as to whether a member of the House has become subject to disqualification under the said Schedule and the same has been referred to him for decision. The purpose of requirement of a reference obviously is that even when a question as to the disqualification of a member arises, the Speaker is debarred from taking suomotu cognizance and he would be seized of the matter only when the question is referred to him by any interested person. The Speaker has not been clothed with a suomotu power for the obvious reason that he is supposed to be a non-party man and has been entrusted with the jurisdiction to act judicially and decide the dispute between the conflicting groups. The other prerequisite for invoking the jurisdiction of the Speaker under para 6 is the existence of a question of disqualification of some member. Such a question can arise only in one way viz. that any member is alleged to have incurred the disqualification enumerated in para 2(1) and some interested person approaches the Speaker for declaring that the said member is disqualified from being member of the House and the claim is refuted by the member concerned."

It was argued on behalf of the 37 MLAs that this position adopted by the Full Bench does not reflect the correct position in law since there is nothing in the Tenth Schedule which precludes the Speaker from rendering an adjudication either in respect of a claim under para 3 of the Schedule or para 4 of the Schedule, independent of any question arising before him in terms of para 2 of the Schedule. Considering the scheme of the Tenth Schedule in the context of Articles 102 and 191 of the Constitution and the wording of para 6 and the conferment of jurisdiction on the Speaker thereunder, we are inclined to the view that the position adopted by the majority of the High Court of Punjab & Haryana in the above decision as to the scope of the Tenth Schedule, reflects the correct legal position. Under the Tenth Schedule, the Speaker is not expected to simply entertain a claim under paras 3 and 4 of the Schedule without first acquiring jurisdiction to decide a question of disqualification in terms of para 6 of the Schedule. The power if

any, he may otherwise exercise independently to recognise a group or a merger, cannot be traced to the Tenth Schedule to the Constitution. The power under the Tenth Schedule to do so accrues only when he is called upon to decide the question referred to in para 6 of that Schedule."

Further, this Hon'ble Court in the case of *Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi*, (2015) 12 SCC 381, reiterated as under :

43. The scheme of Schedule X to the Constitution indicates that the Speaker is not competent to take a decision with regard to disqualification on ground of defection, without a determination under Para 4, and Para 6 in no uncertain terms lays down that if any question arises as to whether a Member of the House has become subject to disqualification, the said question would be referred to the Speaker of such House whose decision would be final. The finality of the decisions of the Speaker was in regard to Para 6 since the Speaker was not competent to decide a question as to whether there has been a split or merger under Para 4. The said question was considered by the Constitution Bench in *Rajendra Singh Rana* case⁷. While construing the provisions of Schedule X to the Constitution in relation to Articles 102 and 191 of the Constitution, the Constitution Bench observed that the whole proceedings under Schedule X gets initiated as a part of disqualification proceedings. Hence, determination of the question of split or merger could not be divorced from the motion before the Speaker seeking a disqualification of the Member or Members concerned under Para 6 of Schedule X. Under the scheme of Schedule X the Speaker does not have an independent power to decide that there has been split or merger as contemplated by Paras 3 and 4 respectively and such a decision can be taken only when the question of disqualification arises in a proceeding under Para 6. It is only after a final decision is rendered by the Speaker under Para 6 of Schedule X to the Constitution that the jurisdiction of the High Court under Article 226 of the Constitution can be invoked."

From a bare perusal of the Order dated 18.09.2019, it is evident that the Speaker exercised the power under Para 4 of the Tenth Schedule of the Constitution of India. Therefore, the Order dated 18.09.2019 passed by the Speaker upholding the merger of Bahujan Samaj Party in the Indian National Congress in view of Para 4 of the Tenth Schedule of the Constitution of India, without even issuing notice to BSP or giving any opportunity of hearing is unconstitutional and without jurisdiction perverse and in gross violation of the Principles of Natural Justice and Fair Play.

- K) BECAUSE the Bahujan Samaj Party/ Petitioner herein which is the 'Original Political Party' in terms of Paragraph 4 of the Tenth Schedule and the most affected party, was neither made a party in the alleged application dated 16.09.2019 nor was granted any opportunity of hearing by the Speaker prior to the passing of Order dated 18.09.2019. No notice was given to the Bahujan Samaj Party/ Petitioner herein which is the aggrieved party and the 'Original Political Party' in terms of Paragraph 4 of the Tenth Schedule, before proceeding to decide the application dated 16.09.2019. Even the copy of the alleged application of respondents No.3 to 8 dated 16.9.2019 nor copy of the order dated 18.9.2019 passed by the Speaker was given or sent to the Petitioner herein. It is legally well settled that an Order passed in violation of principles of natural justice is procedurally ultravires and suffers from jurisdictional error. This Hon'ble Court in *Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641*, was pleased to hold under:

"20... An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rule of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not case in a rigid mould and they cannot be put in a legal straitjacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case."

- L) BECAUSE the High Court failed to consider that the Principles of natural justice apply even to an administrative action. It is legally well settled that the Principles of natural justice provide protection to the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. This Hon'ble Court in the case of Sahara India (Firm) (1) Vs. CIT, (2008) 14 SCC 151, was pleased to hold as under:-

"17. Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in State of Orissa v. Dr. Binapani Dei¹⁵ the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistent with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.

18. Recently, in *Canara Bank v. V.K. Awasthy*, the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that the principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights, the Court said: (SCC pp. 331-32, para 14)

"14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle *audi alteram partem*, in addition to the language

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of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See Union of India v. Col. J.N. Sinha 17.)"

- M) BECAUSE the High Court erred in not considering that the findings recorded by the Speaker on the claim of merger vide Order 18.09.2019 itself amounted to an inquiry which was not warranted under the Scheme of Tenth Schedule or under the Rules, 1989. The findings recorded by the Speaker in his Order dated 18.09.2019 without issuing any notice or granting opportunity of hearing, has adversely affected the rights of petitioner to seek disqualification under para 6 as nothing would be left for determination in an application for disqualification under para 6 of the Tenth Schedule. In such circumstances, the High Court is not justified in holding that the grant opportunity of hearing would amount to an inquiry which was not warranted at the stage of recoding the claim of merger.
- N) BECAUSE the High Court failed to consider that the alleged claim of respondents No.3 to 8 regarding the merger of Bahujan Samaj Party (BSP) in Indian National Congress on 16.09.2019 was accepted by the Speaker without even ascertaining as to whether there was a split in the Original political party viz., BSP which is a National Party and the

Original Party (BSP) had merged with Congress Party at National Level or State's Level and what was the procedure followed for same and where and when was the meeting held, what were the proceedings dated, who were those who attended the meeting and whether any resolution was passed and prepared for the said purpose. No such material or document or evidence was placed to prove that there was split in the Original Political party or its merger at the National level which is mandatory in the case of a recognized National Political Party. The Hon'ble Speaker vide his Ex-Parte Order dated 18.9.2019 proceeded to accept the claim of merger merely on the claim of Respondent Nos.3 to 8, without considering any of the above said aspects as is clearly evident from the Order dated 18.09.2019. Thus, the Order dated 18.09.2019 is legally vitiated and the findings recorded therein are without any material basis.

- O) BECAUSE the Respondent Nos. 3 to 8 are not entitled to the benefit of paragraph 4 of the Tenth Schedule as there was no merger of Original Political Party with any other political party as claimed by Respondent Nos. 3 to 8. The Respondent Nos. 3 to 8 were set up as candidates for election to the 15th Rajasthan State Legislative Assembly by the National Party viz. BSP which is the 'Original Political Party' in terms of Tenth Schedule of the Constitution of India. Consequently, they had contested the elections on the party symbol of 'Elephant', which was allotted to them by the National President of BSP and all of them were elected as members of the Rajasthan Legislative Assembly as a candidate set up by

National Party viz. BSP. The Respondent Nos. 3 to 8 herein having been elected as members of Rajasthan Legislative Assembly as candidates set up by the national party, they represent a national party viz. BSP and the "merger" contemplated in paragraph 4 of the Tenth Schedule has to be a merger at the National level and at every place including Center and all States, and it cannot take place selectively in any one State. Undisputedly there has been no merger of B.S.P. with INC either at National Level or State Level.

- P) BECAUSE the High Court failed to consider that Para 4 of the Tenth Schedule to the Constitution of India provides for the circumstances in which a disqualification on the ground of defection shall not apply in case of a merger. Para 4 merely indicates the circumstances in which a Member of a House shall not be disqualified under sub-para (1) of Para 2. Under the scheme of Schedule X the Speaker does not have an independent power to decide that there has been merger as contemplated by Para 4 and such a decision can be taken only when the question of disqualification arises in a proceeding under Para 6. Para 4 of the Tenth Schedule reads as under:-

4. Disqualification on ground of defection not to apply in case of merger.—

(1) A member of a House shall not be disqualified under subparagraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger."

From a bare perusal of paragraph 4 of the Tenth Schedule, it is abundantly clear that for claiming protection under para 4, two conditions are required to be satisfied and both the conditions are to be satisfied simultaneously i.e.

- (iii) The "Original Political Party" should be shown to have merged with another political party with satisfactory evidence; AND
- (iv) The members claim either to have accepted merger and joined such other political party or having not accepted the merger and opted to function as a separate group must be established after first mandatory condition is satisfied.

Thus, only on satisfaction of paragraph 4(1) i.e. merger of original political party with another political party, the occasion of deemed merger under subparagraph (2) would arise as it specifically refers "..... have agreed to such merger". The use of the phrase "such merger" is significant and indicates that paragraph 4(2) can be invoked only in case

of merger of original political party with another political party. In the instant case undisputedly there was no merger of Bahujan Samaj Party (BSP) either at National level or at the State level with the Indian National Congress as claimed by Respondent Nos. 3 to 8 herein.

The Constitution bench of this Hon'ble Court in the case of *Rajendra Singh Rana & Ors Vs. Swami Prasad Maurya*, 2007 (4) SCC 270, has considered the question of "split" [which, mutatis mutandis, apply to merger] and has overruled the plea that a split in the original political party need not separately be established if a split in the legislature party is shown. It was held that by acceding to such a plea, one of the limbs of para 3 would be made redundant or otiose. The relevant paragraphs of the judgment are reproduced as under:-

"36. The question whether for satisfying the requirements of para 3; it was enough to make a claim of split in the original political party or it was necessary to at least prima facie establish it, fell to be considered in the decision in Jagjit Singh v. State of Haryana (2006) 11 SCC 1, rendered by a Bench of three Judges to which one of us, (Balasubramanian, J.) was a party. Dealing with an argument that a claim of split in the original political party alone is sufficient in addition to showing that one-third of the Members of the legislature party had formed a separate group, the learned Chief Justice has explained the position as follows: (SCC p. 33, paras 67-69)

"67. Learned counsel for the petitioner, however, relies upon para 37 in Ravi S. Naik case, 1994 supp (2) SCC 641, in support of the submission that only a claim as to split has to be made and it is not necessary to prove the split. The said observations are: (SCC p. 660)

'37. In the present case the first requirement was satisfied because Naik has made such a claim. The only

question is whether the second requirement was fulfilled.'

68. The observations relied upon are required to be appreciated in the light of what is stated in the next paragraph i.e. para 38, namely: (SCC p. 661)

'As to whether there was a split or not has to be determined by the Speaker on the basis of the material placed before him.'

69. Apart from the above, the acceptance of the contention that only a claim is to be made to satisfy the requirements of para 3 can lead to absurd consequences besides the elementary principle that whoever makes a claim has to establish it. It will also mean that when a claim as to split is made by a Member before the Speaker so as to take benefit of para 3, the Speaker, without being satisfied even prima facie about the genuineness and bona fides of the claim, has to accept it. It will also mean that even by raising a frivolous claim of split of original political party, a Member can be said to have satisfied this stipulation of para 3. The acceptance of such a broad proposition would defeat the object of defection law, namely, to deal with the evil of political defection sternly. We are of the view that for the purposes of para 3, mere making of claim is not sufficient. The prima facie proof of such a split is necessary to be produced before the Speaker so as to satisfy him that such a split has taken place."

38. Acceptance of the argument that the legislators are wearing two hats, one as members of the original political party and the other as members of the legislature and it would be sufficient to show that one-third of the legislators have formed a separate group to infer a split or to postulate a split in the original party, would militate against the specific terms of para 3. That paragraph speaks of two requirements, one, a split in the original party and two, a group comprising of one-third of the legislators separating from the legislature party. By acceding to the two hat theory one of the limbs of para 3 would be made redundant or otiose. An interpretation of that nature has to be avoided to the extent possible. Such an interpretation is not warranted by the context. It is also not permissible to assume that Parliament has used words that are redundant or

meaningless. We, therefore, overrule the plea that a split in the original political party need not separately be established if a split in the legislature party is shown."

- Q) BECAUSE the High Court failed to consider that the role of Speaker in conducting the proceedings of the House and the role of speaker under the Tenth Schedule to the Constitution of India are separate and distinguishable. From the perusal of the Order dated 18.09.2019 passed by the Ld. Speaker, it is clearly evident that the speaker recognized the merger by giving the benefit of para 4(2) of the Tenth Schedule in exercise of the provisions of the Tenth Schedule to the Constitution of India and the provisions of Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing party) Rules, 1989. The Order dated 18.09.2019 passed by the Speaker is quasi-judicial in nature and the same cannot by any stretch of imagination be termed to mean an administrative act recording the claimed merger. Pursuant to the Application of Respondent Nos. 3 to 8, the Speaker vide his Order dated 18.09.2019, has considered the claim and the material placed in support thereof, assigned reasons and recorded findings for exercise of his discretion after hearing the Respondent Nos. 3 to 8, who personally appeared before him, however without hearing and even issuing notice to B.S.P.
- R) BECAUSE the High Court erred in not considering that the judgment of the *Gauhati High Court in the case of PadiRicho Vs. Speaker, Arunachal Pradesh Legislative Assembly & Ors, (2017) 6 Gauhati Law Reports 431*, supports the case of

Petitioner rather than the case of Respondents. In the case of *Padi Richo (supra)* the Speaker refused to pass any order recognizing the merger by stating that there is no procedure for recognizing the merger by the Speaker under the anti-defection law. The Speaker has simply directed for publishing the information given in Form-III in Bulletin. Whereas, in the present case the Speaker proceeded to pass a separate order recognizing the claim of merger (i.e. vide Order dated 18.09.2019) under the provisions of the Tenth Schedule to the Constitution of India and the provisions of Rajasthan Legislative Assembly Members (Disqualification on the grounds of changing party) Rules, 1989, when there was no such procedure for recognizing the merger in the said provisions. The Speaker vide order dated 18.09.2019 recognized the merger by giving the benefit of para 4(2) of the Tenth Schedule.

S) BECAUSE the High Court erred in holding that it is bound by the Judgment dated 15.03.2010 passed by the Ld. Division Bench of the High Court in the case of D.B. Civil Special Appeal (Writ) No. 86/2010, Shri Krishna Vs. State of Rajasthan for the following reasons:-

(i) Firstly, the judgment dated 15.03.2010 which was rendered *per-incuriam* as it run contrary to the observations made/principles of law laid down by the Constitution bench of the Hon'ble Supreme Court in the case of *Rajendra Singh Rana [(2007) 4 SCC 270]* and *Kihoto Hollohan [1992 Supp (2) SCC 651]*.

It is legally well settled that a decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. A decision passes *sub silentio*, when the particular point of law involved in the decision is not perceived by the court or present to its mind. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. [*State of U.P. Vs. Synthetics and Chemicals Ltd.*, (1991) 4 SCC 139, *Arnit Das (1) v. State of Bihar*, (2000) 5 SCC 488 and *State of U.P. v. Jeet S. Bisht*, (2007) 6 SCC 586, Para 18-22]

It is respectfully submitted that the point regarding the exercise of jurisdiction of the Speaker that is canvassed by the petitioner herein was neither argued nor adjudicated upon by the division bench in its judgment dated 15.03.2010 in D.B. Civil Special Appeal (Writ) No. 86/2010. Though the Ld. Single Judge quoted para 25 and 29 of the Judgment in the case of Rajendra Sing Rana (Supra), the High Court without considering the ratio of the judgment and the principles of law settled therein, it has erroneously proceeded to hold the judgment to be not applicable, as the facts of Rajendra Singh Rana's case are not applicable to this case. It is the principle of law as laid down by the Court in the

judgment which is binding and not the facts. The High Court failed to consider para 28 of the judgment in Rajendra Singh Rana case wherein it was clearly held that:

“Under the Tenth Schedule, the Speaker is not expected to simply entertain a claim under paras 3 and 4 of the Schedule without first acquiring jurisdiction to decide a question of disqualification in terms of para 6 of the Schedule. The power if any, he may otherwise exercise independently to recognise a group or a merger, cannot be traced to the Tenth Schedule to the Constitution. The power under the Tenth Schedule to do so accrues only when he is called upon to decide the question referred to in para 6 of that Schedule.”

The Division bench of the High Court in the case of Shri Krishna has erroneously held that the ratio in the decision of Rajendra Singh Rana to be not applicable as the issue in that case was with regard to defection and not with regard to merger. It is submitted that the principle of law laid down in Rajendra Singh Rana case relates to ‘Split’ as contained in Para 3 of the Tenth Schedule. The principle referable to ‘split’ equally applies to ‘merger’ contained in para 4. Here it would be relevant to submit that the Full bench of the Bombay High Court (Aurangabad Bench) in the case of Shah Faruq Shabir Vs. Govindrao Ramu Vasave, 2016(4) AIR Bom.R 786 : 2016(5) Mh.LJ 436 held as under:-

“43. The judgment of the Division Bench has to be tested on the touchstone of the principles laid down by the Supreme Court in the matter of Jagjit Singh v. State of Haryana and others, reported in (2006) 11 SCC 1 and in the matter of Rajendra Singh Rana and others v. Swami Prasad Maurya and others, reported in (2007) 4 SCC

270. *Although aforesaid judgments relate to split, the principle, referable to split, equally applies to merger. Tested on the touchstone the principle laid down by the Supreme Court in the above referred two judgments, reliance placed on the judgment of Umesh (supra), to contend that original political party, referred to in Section 5 is the municipal party or panchayat samiti party or zilla parishad party, is not acceptable."*

Thus, in view of the facts and circumstances stated above, the judgment dated 15.03.2010 passed by the Division Bench of the High Court in D.B. Civil Special Appeal (Writ) No. 86/2010 affirming the judgment dated 18.12.2009 passed by the Ld. Single judge is rendered *per incuriam* and is passed *Sub-Silentio* to the principles of law laid down by the Constitution bench of the Hon'ble Supreme Court in the case of *Rajendra Singh Rana [(2007) 4 SCC 270]* and *Kihoto Hollohan [1992 Supp (2) SCC 651]*.

- (ii) Secondly, the Bahujan Samaj Party/Petitioner herein who is the aggrieved party against the Order of merger dated 09.04.2009 passed by the Speaker, was not made a party to the proceedings in the aforesaid case before the High Court deliberately by the petitioner. The High Court ought to have dismissed the Writ Petition for non-joinder of necessary parties without going in to the merits of the case. It is legally well settled that the High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents. [*Prabodh Verma v. State*

of U.P., (1984) 4 SCC 251, Para 50 (1) &(2), Avtar Singh v. Delhi Sikh Gurdwara Management Committee, (2006) 8 SCC 487, Para 31 and Ramrao v. All India Backward Class Bank Employees Welfare Assn., (2004) 2 SCC 76, Para 27]

- (iii) Thirdly, the proceedings were initiated by a person, who neither had any locus in the issue nor was an aggrieved party. The proceedings in the aforesaid case before the High Court are in gross abuse of the process of the courts, more so when the disqualification petition filed by the Bahujan Samaj Party was pending for consideration before the Speaker. The Division bench of the High Court in its judgment dated 15.03.2010, Paras 18, 19 and 39 took note of the fact that the appellant/petitioner therein has not shown his bonafides as to how he is aggrieved and what rights of the appellant have been infringed by the order passed by the Hon'ble Speaker dated 09.04.2009. The High Court in its judgment dated observed as under:-

"39. As strongly contended by the learned counsel for the respondents that the present appellant/petitioner is having no locus standi to challenge the order passed by the Hon'ble Speaker, as observed herein above, upon perusal of para 1 of the writ petition, we are of the view that the appellant/petitioner has not shown his bonafides as to how he is aggrieved and what rights of the appellant have been infringed by the order passed by the Hon'ble Speaker dated 09.04.2009."

In such circumstances, having accepted that the petitioner had no locus, the High Court ought not to

have recorded any findings on merits which would affect the rights of the aggrieved party. The Writ Petition was politically motivated and was filed under the garb of Public Interest Litigation without impleading the Bahujan Samaj Party/Petitioner herein which is the aggrieved/affected party with the ill intention to get the petition dismissed on merits behind the back of B.S.P. and thereby pre-empt it from filing any writ petition challenging the order of merger. It is a settled position in law that even in cases of public interest litigation the principles of natural justice apply and any order passed without impleading the affected parties would be bad.[*Jayant Achyut Sathe v. Joseph Bain D'Souza*, (2008) 13 SCC 547, Para 17]

- (iv) Fourthly, filing of the Writ Petition (i.e. S.B. Civil Writ Petition No. 13042/2009) by a person who has no locus to challenge Order dated 09.04.2009 passed by speaker, by impleading the State Government and without impleading the affected/ aggrieved party [i.e. Bahujan Samaj Party (BSP)], more so when the disqualification Application of BSP was pending before the speaker, leads only to an undoubtable inference that the proceedings are collusive proceedings with interested persons. The proceedings before the High Court were vitiated by fraud and collusion to further the political interests and the judgment rendered on such petition cannot be made binding upon the petitioner.[*Temple of Thakur ji vs State of Rajasthan AIR 1998 Raj 85*]

- (v) *Fifthly*, without impleading the aggrieved party/necessary party i.e. Bahujan Samaj Party, the judgment rendered on such petition cannot be made binding upon such aggrieved party and cannot act as a res-judicata. [*Mahboob Sahab v. Syed Ismail*, (1995) 3 SCC 693, Para 8,9, & 10]
- (vi) *Sixthly*, there is no adjudication by the Ld. Single Judge, in view of the dismissal of the Writ Petition on the ground that there was a specific bar in Para 7 of the Tenth Schedule. The Ld. Single Judge in his judgment dated 18.12.2009 presumed that there is specific bar upon the Courts to exercise jurisdiction in respect of any matter connected with the disqualification of a member and placed reliance on para 7 in dismissing the Writ Petition. It is respectfully submitted that the reliance placed on Para 7 of the Tenth Schedule by the Ld. Single judge is not correct in law for the reason that the Constitution Bench of the Supreme Court in the case of *Kihoto Hollohan Vs. Zachillhu*, 1992 Supp (2) SCC 651, paras 130, 150-172, 186 has already declared Para 7 of the Tenth Schedule as unconstitutional and invalid. It was held that though it sought to take away the jurisdiction of the Supreme Court and High Court to decide the question of disqualification of a Member of Legislature, it was not got ratified by the State Legislature as required by the Proviso to Clause (2) of Article 368.

It is respectfully submitted that the High Court without considering the aforesaid aspects and the facts and circumstances in which the Order dated 15.03.2010 came to be passed, it has erroneously held the Judgment dated 15.03.2010 passed by the Ld. Division Bench of the High Court in the case of D.B. Civil Special Appeal (Writ) No. 86/2010, Shri Krishna Vs. State of Rajasthan to be binding.

- T) BECAUSE, High Court is not justified in holding that the order dated 18.09.2019 being administrative in nature has immunity under Article 212 of the constitution of India. High Court has not appreciated in proper perspective the law laid down by this Hon'ble Court permitting judicial review in exceptional circumstances as laid down in the case of Kihoto Hollohan (supra) and Raja Ram Pal by the Constitution Bench of this Hon'ble Court.
- U) BECAUSE impugned judgment is legally erroneous and is liable to be set aside.

6. **GROUND FOR INTERIM RELIEF:-**

Petitioners submit the following ground for interim relief :-

- I) In view of the facts stated in the Synopsis and list of dated and the grounds of challenge as set out in para 5 above, Petitioner has got a prima facie case in its favour.
- II) That the balance of convenience lies in favour of the petitioners and against the Respondents.
- III) That the petitioners shall suffer irreparable loss if the impugned order is not stayed.

7. **MAIN PRAYER**

It is therefore, most respectfully prayed that Your Lordships may graciously be pleased to:

- I. Grant Special Leave to Appeal against final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur.
- II. Pass such other order or orders that may be deemed fit and proper.

8. PRAYER FOR INTERIM RELIEF:-

It is, therefore, most respectfully prayed that Your Lordships may graciously be pleased to:

- I. Grant an ad-interim ex-parte stay of operation of the final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur.; and/or
- II. Grant an ad-interim ex-parte stay of operation of the Order dated 18.09.2019 passed by the Speaker, Rajasthan Legislative Assembly, Jaipur ; and/or
- III. Make the order absolute in terms of supra prayer I and II above after notice to the Respondents; and/or.
- IV. Pass such other order or further orders as may be deemed fit and proper in the facts and circumstances of the case.

DRAWAN & FILED BY

[Shail Kumar Dwivedi]
Advocate for the Petitioners.

Place: New Delhi
Drawn on : 31.08.2020
Filed on : 01.09.2020

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No. of 2020

IN THE MATTER OF :-

Bahujan Samaj Party & Anr.Petitioners

Versus

Hon'ble Speaker,
Rajasthan Legislative Assembly & Ors. ...Respondents

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/Annexures attached to the Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This Certificate is given on the basis of the instruction given by the Petitioner/person authorized by the Petitioners whose Affidavit is filed in support of the Special Leave Petition.

Filed by

Place: New Delhi
Filed on 01.09.2020

[Shail Kumar Dwivedi]
Advocate for the Petitioners

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No. OF 2020

IN THE MATTER OF :-

Bahujan Samaj Party & Anr.

....Petitioners

Versus

Hon'ble Speaker,
Rajasthan Legislative Assembly & Ors.

...Respondents

AFFIDAVIT

I, Bhagwan Singh Babu, aged about ...5.5... Years, S/o

Late. Prabhati Lal..., R/o D-170 C, Bahhu Marg, Bani Park,

Jaipur, Rajasthan presently working as State President, do hereby solemnly

affirm and state on oath as under :-

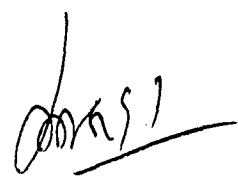
1. That in my official capacity stated above, I am fully acquainted with the facts and circumstances of the case. I am authorized by Petitioner No. 2 as well to file this affidavit on its behalf and therefore, I am competent to swear this Affidavit.

2. That I have gone through the contents of the accompanying List of Dates, S.L.P. with prayer for interim relief and accompanying applications and have fully

100-15

understood their contents. I say that the facts stated therein are true and correct to my knowledge and belief. The Annexure Nos. P- 1.. to P-.4. to the SLP are true copies of their respective originals.

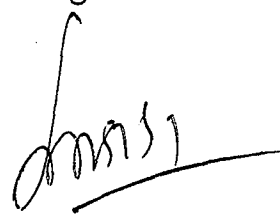
3. That the contents of list of dates consists of 19..pages (i.e. pages Nos. 'B' to T...of paper -book). SLP. with prayer for interim relief consists of 43..pages (i.e. page Nos..55.to 97..of SLP of paper-book) with paras 1 to 8 entire SLP paper - book consists of page Nos. B to T...and 1 to 173.



DEPONENT

VERIFICATION:

Verified at New Delhi on this 1st day of September, 2020 that the contents of the above affidavit are true to my knowledge and belief.



DEPONENT

TENTH SCHEDULE

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

(a) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or 2[* * *], paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

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

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

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

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

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

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

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

(b) a nominated member of a House shall, —

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

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

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

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

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,—

- (i) where he was a member of a political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;
- (ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

[Paragraph 3 omitted by Constitution (Ninety-first Amendment) Act, 2003]

4. Disqualification on ground of defection not to apply in case of merger.— (1) A member of a House shall not be

disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party —

- (a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or
- (b) have not accepted the merger and opted to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

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

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

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

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

[Paragraph 7 declared invalid for want of ratification in accordance with the proviso to clause (2) of Article 368 as per majority opinion in *Kihoto Hollohon v. Zachilhu*, (1992) 1 SCC 309.]

// True Typed Copy //

Rajasthan Legislative Assembly

Rajasthan Assembly Member (Disqualification on the grounds of changing party) Rules, 1989

Rajasthan Legislative Assembly Secretariat, Jaipur

Rajasthan Assembly Member (Disqualification on the Grounds of Changing Party) Rules, 1989

By using its power conferred under para 8 of the Tenth Schedule of the Constitution of India, the Speaker of the Rajasthan Legislative Assembly makes the following Rule, i.e. :-

1. Short Name : The name of this rules are Rajasthan Assembly Member (Disqualification on the grounds of changing party) Rules, 1989.
2. Definition : Until and unless, there is no desire or in reference, in this rules :-
 - a. "Speaker" It means the Speaker of the Rajasthan Legislative Assembly.
 - b. "Tenth Schedule" means the Tenth Schedule of the Constitution of India.
 - c. "The Leader" in relation to the Member of Legislative of any party means such member of the said party who have been appointed as the leader by its party and there is any other member also who has been authorized by the said party to work as a leader of the said party for the purpose of this rules, to discharge the works in the absence of the said leader.
 - d. "Form" means the form enclosed with this rules.
 - e. The "Date of initialization" in relation to this rules, means the date on which this Rule will be effective under the sub para (2) of the para 8 of the Tenth Schedule.
 - f. "State Government" means the Government of Rajasthan.

- g. "Legislative Assembly News" means the Rajasthan Legislative Assembly News.
 - h. "Secretary" means the Secretary of the Rajasthan Legislative Assembly. Even the person are under this who are performing/ executing the works of the Secretary, at that time.
 - i. "House" means the Rajasthan Legislative Assembly.
 - j. "Member" means the Member of the Rajasthan Legislative Assembly.
 - k. "Committee/ Board" means the Privileges House of the Rajasthan Legislative Assembly.
3. The information provided by the leader of the Member of the Legislative Assembly - Party : The leader of each Member of the Legislative Assembly - Party (different from such the Legislative Assembly - Party, wherein there is only one member) will provide the following to the Speaker within 30 days of the first meeting of the Assembly or wherein the Legislative Assembly - Party has been constituted after such date, therein the Speaker should provide within 30 days of the date of its constitution or in any circumstances, within the extra period where the Speaker granted its permission on the basis of the sufficient reason, i.e. : -
- a. A detail/ description (in writing) wherein there will be the name of such Member of the Legislative Assembly - Party and other details relating to such members, as it is, in the Form - 1, and there will be the name and designation of those members of such party, who have been appointed/ authorized for the purposes of corresponding/ communication with the Speaker.
 - b. A copy of the Rules and Regulations of the concerned Political Party (whether he/ she is known through this name or Constitution or through any other name); and

c. A copy of such Rules and Regulations wherein there is any separate Rule and Regulation of such Member of Legislative Assembly - Party (whether he/ she is known through this name or Constitution or through any other name)

(2) In case there is only one member in any Member of Legislative Assembly - Party, wherein such Member has become the member of the House within 30 days of the first meeting of the House or has become the member of the House after such date, will send a copy of the Rules and Regulations to the Speaker as mentioned in para (B) of the sub Rule (1) within thirty days of the date of taking the charge in the House or within the extra period where the member the Speaker be grant its permission with the appropriate reason, in any circumstances.

(3) In the number of the Member of the Legislative Assembly - Party wherein there is only one member, in case of increment, in relation to such Member of the Legislative Assembly - Party, the provisions of the sub Rule (1) will be applicable similarly as in the case wherein like in relation to such Member of the Legislative Assembly - Party has been appointed on the date when its number has been increased.

(4) In case there is any change in the information provided by the Leader of any Member of the Legislative Assembly - Party under Rule (1) and by any Member under Sub - Rule (2), then he will provide the written information of such change to the Speaker within thirty days or within such extra period where the Speaker has granted its permission on the basis of the sufficient cause.

(5) That in case of the existing House on the date of enforcement of these Rules, the direction for the date of the first meeting of the House in Sub Rule (1) and Sub Rule (2) will means that this is the direction for the date of the initialization of these Rules.

(6) In case any member of any political party participates in the election of the House or stays from the election of the House, without obtaining the prior permission of such political party, person or authority against any direction issued/ given by such political party or any authorized person on behalf of the political party, person or authority, then the leader of the concerned legislative party or such member, the legislative party, leader or the sole member, then immediately after the lapse of 15 days from the date of staying the election or participating in the election and in any circumstances, as per the form - 2, such member will inform the Speaker within 30 days of staying away from the election or participating the election, that whether such political party, person or authority has forgiven or not for participating in the election or staying away from election.

Clarification : Any Member will be considered as stayed from the election, as and when he/ she will be stayed fairly from the election on authorizing him/ her for the election.

4. The information etc. provided by the Members : Each such Member who have taken its seat in the House prior to the date of the initialization of the of this Rules, will send a detail of the Specifications and the declaration to the Secretary in Form - 3, within 30 days of such date or within the further period whose permission is granted by the Speaker with the appropriate reason/ cause.

(2) Each such Member who have taken its seat in the House prior to the date of the initialization of the of this Rules, will provide/ submit its pledge or oath and its Election Certificate as the case may be before the ex - Secretary or the certified copy of the Notification issued showing his/ her name as the Member, under Article 188 of the Constitution of India and the detail of the Specifications and the declaration to the Secretary in Form - 3.

Clarification : The "Election Certificate" for the enforcement of this sub Rule is the Election Certificate issued under Representation of the People Act, 1951 (43 of the 1951) and the Rules made thereunder.

(3) The summary of the information provided by the Member under this Rule will be published in the Newspaper of the Legislative Assembly and in case there is any anomaly in the Solution of the Speaker, then its rectification will be necessarily published in the Legislation Assembly Newspaper.

5. The Register of the Information regarding the Members : The Secretary will keep a register in the Form - 4 which will be based on the information in relation to the Members under Rule 3 and Rule 4.

(2) The information in relation to each of the Members will be recorded in the fresh/ separate pages.

6. The direction through the application : The direction of the question of whether any Member has been disqualified or not under the Tenth Schedule, will be given through the application provided in relation to the said Member in accordance to the provisions of this Rule, or not.

(2) Any application in relation to any Member will be given in written by any other Member to the Speaker.

But the application in relation to the Speaker will be addressed to the Secretary.

(3) The Secretary will provide
(a) a report to the House immediately in this regard under the provision of Rule (2), after the receipt of the application.

(b) In compliance of the provision of sub para (1) of para 6 of the Tenth Schedule, after the election/ selection of any Member, the House will immediately bring the said application in the notice of the House.

(4) Prior to giving any application in relation to any Member, the Applicant will see it is liable to be believed or whether the question arise that whether this Member is disqualified or not under the Tenth Schedule.

(5) In each of the

(a) Application, there will be a short description of the facts on which the Applicant relied upon; and

(b) In case there is any documentary evidence enclosed with the Application on which the Applicant relied upon, and where he relied upon the information provided to the Applicant through any person, then the Applicant will enclose the summary of the information viz. name along with the address and details of each of such person.

(6) The Applicant will sign each and every pages of the application and will verify the contents under the Code of Civil Procedure, 1908 (5 of 1908) for the verification of the statements.

(7) The Applicant will sign each and every provision of the Application and it will be verified in the same manner as to the Application.

7. Procedure :

(1) On getting the application under Rule 6, the Speaker will consider that whether the Application is in compliance to the said Rule.

(2) In case the application is not in compliance to the Rule 6, then the Speaker will cancel the Application and will immediately inform to the Applicant.

(3) **In case the application is in accordance to the Rule 6, then the Speaker will provide/ send the copies of the Application and its provisions to the : -**

a. Those Member, against which the Application has been filed; and

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- b. Where he/ she is the member of the Legislative Assembly – Party and the Leader of the said Party has not obtained the Application, will be provided/ given the same.

And such Member and Leader, will provide its written notes to the Speaker within seven days of the receipt of such copies, or within the extra/ additional period on which the Speaker has given its permission with the appropriate grounds/ reasons.

- (4) On considering the Notes received under sub Rule (3) in relation to the Application, in case Speaker will either consider for the retention of the question, or in case keeping in view the nature and circumstances of the case, finds the solution within the permitted period/ duration that doing so is necessary or considerable, then he/ she will send the Application to the Committee/ Board for the furnishing the preliminary test report of the said Application.
- (5) After referring to the Application to the Committee/ Board under the sub Rule (4), the Speaker will immediately communicate to the Applicant and will announce in the House about the said instruction/ direction , or in case the Session of the House is not going on, then will publish the information of the said instruction/ direction in the Newspaper of the Legislative Assembly.
- (6) Where the Speaker directs the Committee/ Board under sub Rule (4), the Speaker will immediate keep retention of the said question immediately after getting the report from the Committee/ Board.
- (7) The procedure, in reference of which the Speaker for resolving any question under sub Rule (4), and the procedure which will be referenced for the use of the

preliminary examination, will be the exact procedure which will be referenced by the Committee/ Board to terminate/ collide the right of the House and the Chairman or the Committee/ Board will reach the conclusion that the said member has been disqualified under the Tenth Schedule, only when the said Member personally desire to grant the sufficient opportunity to put its pleadings.

- (8) The provision of the sub Rule (1) to (7) will be applicable on the Application in relation to the Speaker in the same manner as it is applicable on the application in relation to any other member, and for this purpose, the meaning of the direction towards the Speaker in these sub Rules will be enclosed along with the copy of the direction of the elected member by the House under the provision of the sub para (1) of the para 6 of the Tenth Schedule.

8. Decision on the application :

- (1) After considering the Application, the Elected Member, vide its written instruction under the Speaker or the provision of the sub para (1) of para No. 6 of the Tenth Schedule : -

a. Dismiss the application, or

b. Will announce that the Member in relation to which the application has been filed/ given, has been disqualified, and will send or forward the copies of the said order to the said Member in relation to which the application has been filed and the concerned leader of the Legislative Assembly Party, if any.

- (2) Each such decision wherein a declaration has been made regarding the disqualification of any Member under Tenth Schedule, will immediately be informed/ reported to the House, in case of its being in the House and in case he/ she is not in the Session of the House,

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will provide its report immediately after the restarting/ recollection of the Session.

- (3) Each and every decision pronounced under Rule (1), will be published in the Newspaper of the Legislative Assembly and the Secretary will sent/ forward the copies of the said decision to the Election Commission of India and to the State Government.
9. The Speaker can issue the direction in relation to the detailed working of this Rule, from time to time, which should be considered as necessary for the detailed working of this Rules.

Giriraj Singh Tiwari
Speaker
Rajasthan Legislative Assembly

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Form - 1

[See Rule 3 (1)(a)]

Name of the Legislative Party:

.....

Name of the Local Political Party

.....

Sr. No.	Name of the Member (in clear letters)	Name of the father/husband	Local address	Elected from which constituency
1	2	3	4	5

Date:

.....

Sign. Of the Leader of the Legislator Party

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Form - 2
[See Rule 3 (6)]

Sir,
The Speaker,
Rajasthan Legislative Assembly
Jaipur

Sir,
In the meeting held on
(date) of the House in the
election on the subject of

+ Shri	I i.e.
..... + Member, (having its part No. as)) and who is the member of the (Name of the political party) and who is the (Name of the Legislator Party) (Name of the Member) Member its part No. of the Member Legislative Assembly and is the leader/ sole member of the (Name of the Legislator party)

has given the election without getting the prior permission of the (the said person/ authority/ party against the directions issued by any person/ authority/ party). I/ he have/ has been stayed from the election.

2. On the above said matter has been considered by X+ (Person/ authority/ party) and the said X stayed from the election, X has been forgiven/ has not been forgiven by X.

Date:

Your's faithfully,
Signature

+ - Cross the not applicable part/ words.
X - The name of the person, authority, party who has issued the direction/ instruction.

Form - 3
(See Rule 4)

- 1. Name of the Member (in clear words) :
.....
- 2. Name of the Father/ husband :
.....
- 3. Permanent address :
.....
- 4. Address of the Jaipur :
.....
- 5. The date of the election/ election of name :
.....
- 6. Relating to the party : -
 - i. On the date of the election/ election of name
 - ii. On 28th February, 1995;
 - iii. On the date of issuing of this form.

Declaration

I,, do hereby declare/ verify that above said information are true and correct.

I, promise to inform immediately to the Speaker in case there is any change in the above mentioned information.

Date:

Signature of the Member/
Thumb Impression

* will be filled up by the person elected prior date of start of Constitution (52nd Amendments) Act, 1985 i.e. 1st March, 1985 or by the members whose name is nominated.

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Form - 4
[See Rule 5(1)]

Name of the Member (in clear words)	Name of the father/husband	Permanent address	Address of Jai pur	Area of his Constituency of the State from where he has been elected	Date of the election/nomination of name	Name of the political party from which he is allied with	Name of the legislator or party from which he is allied with	Note
1	2	3	4	5	6	7	8	9

Quoted from the Constitution

(Tenth Schedule)

[Article 102 (2) and Article 191 (2)]

Provision in relation to the Disqualification on the grounds of changing party

1. Election - Until and unless, there is no desire or in reference, in this rules : -
 - a. "House" means any House of the Parliament or the Assembly of any State, any House of the Legislature.
 - b. As per the provision of para 2 (***) or para 4, the Member of any Political Party in relation to any such Member of the House means the group of all such members of the House who is the Member of the Political Party at that time with the Legislature, as per the said provisions.
 - c. The 'Original Political Party' in relation to any Member of the House means such political party who is the Member for the purposes as mentioned in sub para No. (2) of the para No. 2.
 - d. The 'Para' of this schedule means the para.
2. Disqualification on the grounds of changing the party: -
 - (1) Any member of the House under the provisions of the (para 4 and para 5), who is the member of the political party, for being the member of the House, he/ she will be disqualified wherein : -
 - (a) He/ she has fairly left his membership from the political party; or

Clarification : For the purposes of this sub para : -

¹ It has been added on (01.03.1985) by section 6 of the Constitution (92th Amendments), 1985

² It has been deleted by section 5 (A) of the Constitution (51st Amendments), 2003

³ Reestablished by section 5(B) of the Constitution (91st Amendments) Act, 2003

- (a) In case of any elected member of the House, it will be considered that he/she is the member of such political party, if any, wherein he was the candidate for contesting the election ;
- (b) In relation to the name of the nominated Member of the House: -
- i. In case, he/ she is the member of any political party on the date of nomination of his name as a Member, it will be considered that he is the member of such political party;
 - ii. In any circumstances, it will be considered that he is the member of such political party, wherein he becomes the member or becomes the member for the first time, prior to the lapse of six months from the date of taking his charge in compliance of the Article 99 or Article 188.
- (2) Any elected member of the House who has been appointed/ elected differently/ separately from the candidate of any political party will be disqualified for being the member of the House in case he goes to any other political party after the election.
- (3) Any nominated member of the House will be disqualified for being the member of the House in case he joins some other political party after the lapse of six months from the date of his taking charge in compliance of Article 99 or Article 188.
- (4) Despite being the provisions as mentioned in the above paras, any such person who is the member of the House at the starting of the Constitution of India (92nd Amendment) Act, 1985 (whether he is an elected member of nominated member).

- i. In such case, where he was the member of the Political Party prior to the starting, then for the purposes of sub para (1) it will be considered that he/ she is elected as the member of such House as a candidate by the political party.
- ii. In case of otherwise, for het purposes of sub para (2), it will be considered that he/ she is such elected member of the House who is elected by any political party distinctly in the form of the elected member, or for the purpose of sub para (3), it will be considered that he is the nominated member of the House.

4. The Non Applicability of the dissolution of the disqualification on the ground of changing party -

(1) Any Member of the House will not be disqualified under sub para (1) of para 2 in case his original political party allied with any other political party and claims that he/ she and other member of its original political party :-

(a) became the member of the new political party from such other political party or from such alliance ;
or

(b) he/ they has/ have not accepted the dissolution and have decided to work as a distinct group/ party.

and from the time of such alliance, it will be considered about any other political party and the new political party or group, he/ she is the member of such political party, for the purpose of para 2 and sub para (1), and he/ she belongs to the original political party for the purposes of this para.

⁴ The para 3 has been omitted/ deleted by section 5(C) of the Constitution (91st Amendments) Act, 2003.

(2) For the purposes of this para and sub para (1), the alliance of the original political party of any member of the House will be considered as the allied, as and when atleast two third members of the concerned legislative assembly agree for such alliance.

5. Concession/ Rebate - Despite being any facts of this schedule, any person who has been appointed as the Speaker of the Lok Sabha or the Dy. Speaker or the Deputy Chairman of the Rajya Sabha or the Chairman or the Deputy Chairman of the Legislative Council of any State or the Speaker or Deputy Speaker of any Legislative Assembly of any State, will not be disqualified under this schedule.
 - a. In case, due to the election he resign/ left his membership fairly, of which he was the member of such political party prior to the election, and thereafter until when he possess the said post/ designation, till then he/ she does not join the said political party or does not become the member of any other political party; or
 - b. In case, due to the election he resign/ left his membership fairly, of which he was the member of such political party prior to the election, and re - join such political party after not being in such post/ designation.
6. Decision on the question about the disqualification on the basis of changing the party -
 - i. In case there is a question that whether any member of the House has been disqualified under this Schedule or not, then he/ she will be directed for the decision of the Chairman or Speaker of such House, and its decision will be final.

But where the question arise that whether the Chairman or Speaker of the House is disqualified or not, then he/ she shall be directed for the decision of the member elected by

House, and his/ her decision will be final.

ii. In relation to the question of disqualification of any member of the House under this Schedule, it will be considered that there is a proceeding of the Parliament under the means of Article 122 or the proceedings of the Legislature under the Article 212.

7. The jurisdiction of the Court - Even despite being having any facts, any of the Court will not have the jurisdiction to disqualify the membership of any member of the House in any manner, under this Constitution.

8. Rule (1) - Under sub para (2) of this para, the Chairman or the Speaker of the House can make the Rule for the working of the provisions of this scheme, and the following can be provisioned in the rules, without putting any adverse effect on it, i.e. :-

a. To keep the register and other record about the different Members of the House and their political party.

b. Such report which will be provided by any member in relation to the leader of the Legislation with regard to his/ her forgiveness under part (b) of sub para (1) of the para 2;

c. Such report which will be provided by any political party to any Member of the House for his/ her entry in the political party and such officer of the House who shall be given such report; and

d. The procedure of deciding any question in sub para (1) of para 6, under which there is an investigation procedure which should be used for the purpose of deciding such question.

(2) After making the Rule by the Chairman or the Speaker under sub para (1) of this para it will be immediately produce before the House for 30 days. This tenure can be

completed maximum in one session or two or more sessions. After the lapse of the said thirty days, the said Rule will be effective, until and unless it is not changed or it is not approved prior to this. In case the said rule is approved as such, then it will be effective in the changed manner/ form or the original as it was placed/ presented. In case the Rule, is approved as such, then it will be cancelled/ become ineffective.

(3) By using the power conferred under the provisions of the Article 105 or Article 194, or any other power, the Chairman or the Speaker of the House, without putting any adverse effect can give its direction that in case of violation of the Rules made under this para by any person, the action be taken under the appropriate rule.

(TRUE TRANSLATED COPY)

Annexure P-1 125

GOVERNMENT OF RAJASTHAN
GENERAL SECTION

General Information pertaining to functions of Assembly and other subjects

No. 18 September 2019

All the Hon'ble Members of Rajasthan State Assembly are hereby informed that all the MLA(s) of Legislature Party of Bhaujan Samaj Party named below have written a letter to the Hon'ble Speaker, Rajasthan State Assembly on 16 September 2019 thereby informing that for merger of BSP in Indian National Congress (Rajasthan Assembly) it has been decided unanimously that:-

1.	Shri Lakhan Singh Karauli (155)	Permanent Address House No.464, Sarai ka Pura, Khatkhat, Tehsil Hindaun District Karauli Rajasthan
2.	Shri Rajendra Singh Gudha Udaipurwati (139)	Permanent Address Ward No.2, Gudha, Tehsil Udaipurwati, District Jhunjhunu Rajasthan
3.	Shri Deep Chand Kishangarhbas (71)	Permanent Address Village Jatka Post Mahund, Tehsil Kishangarhbas District Alwar

4.	Shri Joginder Singh Avana Nadbai (62)	Permanent Address B-256, Sector 50, Noida, Gautam Buddh Nagar, UP
5.	Shri Sandeep Kumar Tijara (174)	Permanent Address Village Thada, Post Seetal, Tehsil Tijara District Alwar Rajasthan
6.	Shri Wazib Ali Nagar (156)	Permanent Address House No.466, Pakiraj Mohalla, Sikri Pati, Ashiqu - 4, Nagar District Bharatpur

The order passed in this context by the Hon'ble Speaker for your information is as under:-

On 16.9.2019 all 6 MLA(s) of Legislature party of BSP namely Shri Lakhman Singh, Shri Rajendra Singh Gudha, Shri Deep Chand, Shri Joginder Singh Awana, Shri Sandeep Kumar and Shri Wazib Ali appeared personally before me and prayed / claimed that we have unanimously decided of merger of Bahujan Samaj Party in Indian National Congress on 16.9.2019 and in this regard this application is submitted. There are total 6 (six) MLAs of Bahujan Samaj Party (BSP) in the Rajasthan State Assembly and entire legislature party has

claimed that Bahujan Samaj Party stands merged in the Indian National Congress (Rajasthan Assembly).

As per 10th Schedule of the Constitution of India there is no legal impediment in case not less than two third of the members of the one Legislature party agree in merging merge with another political party. On the contrary in the present case entire political party means all the members of Legislature Party of Bahujan Samaj Party BSP are merging with Indian National Council which is in accordance with the provisions of Sub Para 1(a) and (2) of Para No.4. of 10th Schedule.

Hence in the context of aforesaid facts mentioned in the Application I have no justifiable cause to disbelieve the claim of the aforesaid MLA(s). Consequently, in the aforesaid circumstances in the back drop of the legal provisions envisaged in 10th Schedule of Constitution of India and also provisions of Rajasthan Legislative Members (Ineligibility on the ground of change of party) Rules, I

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deem MLA(s) Shri Lakhan Singh, Shri Rajendra Singh Gudha, Shri Deep Chand, Shri Joginder Singh Awana, Shri Sandeep Kumar and Shri Wazib Ali as part of Indian National Congress by virtue of sub-para (2) of Para No.4 of 10th Schedule of Constitution of India from 16.9.2019 date of merger of Bahujan Samaj Party (BSP) in the Indian National Congress (Rajasthan Assembly) and in light of aforesaid legal provisions Indian National Congress shall be deemed as their Political Party and accordingly as per Para 4 Indian National Congress shall be deemed as original political party of these Members of Legislative Assembly.

Sd/- 18.9.2019
(Dr. C.P.Joshi)
Speaker, Rajasthan State Assembly
Assembly Building
Jaipur-302005

Sd/-
Pramil Kumar Mathur
Secretary

ANNEXURE P-2

IN THE HON'BLE HIGH COURT OF JUDICATURE FOR

RAJASTHAN, JAIPUR BENCH, JAIPUR.

S.B. Civil Writ Petition No. 2056 /2020

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1. Bahujan Samaj Party
Through its National General Secretary
Satish Chandra Misra, having its Central Office
at 4, Gurudwara, Rakabganj Road, New Delhi.
2. Bahujan Samaj Party, State Unit, Rajasthan,
through its State President Bhagwan Singh Baba,
Son of Sri Prabhati Lal, Resident of D-170C,
Bhargu Marg, Bani Park,
Jaipur, Rajasthan.

... Petitioners

VERSUS

1. Hon'ble Speaker, Rajasthan Legislative Assembly, Jaipur
Rajasthan.
2. Secretary, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
3. Shri Rajendra Singh Gudha,
Member Legislative Assembly, Rajasthan,
Udaipurwati (Jhunjhunu), Resident of Ward No.2,
Gudha, Tehsil Udaipurwati, District Jhunjhunu,
Rajasthan.

4. Shri Lakhaj Singh Karaul,
Member Legislative Assembly, Rajasthan,
Resident of House No.464, Sarya Ka Pura,
Khadkhad, Tehsil Hindaun, City & District
Karauli, Rajasthan.
5. Shri Deep Chand,
Member Legislative Assembly, Rajasthan,
Kishangarh Bas (Alwar), Resident of Village
Jatka, Post, Mahud, Tehsil Kishangarhbass,
District Alwar, Rajasthan.
6. Shri Joginder Singh Awana,
Member Legislative Assembly, Rajasthan,
Nadbai (Bharatpur), Resident of D-256, Sector-20,
NOIDA, Gautambuddh Nagar, U.P.
7. Shri Sandeep Kumar,
Member Legislative Assembly, Rajasthan,
Tijara (Alwar), Resident of Village Thada,
Post Sithal, Tehsil Tijara, District Alwar,
Rajasthan.
8. Shri Wajib Ali,
Member Legislative Assembly, Rajasthan,
Nagar (Bharatpur), Resident of House No.468,
Fakiran Mohallan, Sikari Patti, Ansick Nagar,
Bharatpur, District Bharatpur, Rajasthan.

.....Respondents.

S.B. CIVIL WRIT PETITION UNDER ARTICLE 226
OF THE CONSTITUTION OF INDIA QUESTIONING
THE LEGALITY, VALIDITY AND CORRECTNESS
OF ORDER DATED 18.9.2019 PASSED BY
RESPONDANT NO.1 THEREBY MERGING THE
RESPONDANTS NO.3 TO 8 WHO WERE ELECTED

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ON THE SYMBOL OF BAHUJAN SAMAJ PARTY,
WITH THE INDIAN NATIONAL CONGRESS,
WHICH IS WITHOUT JURISDICTION AND
AGAINST THE SETTLED LAW:

To,

The Hon'ble the Chief Justice and

His other Hon'ble Companion Judges

of the Rajasthan High Court at Jaipur.

MAY I PLEASE YOUR HONOUR:

The humble petitioners most respectfully submit as under:-

1. That the petitioners of present writ petition seek for quashing of the merger order dated 18.9.2019 passed by the respondent No.1 and seek for disqualification of Respondent Nos. 3 to 8 under Para 2(1)(a) of Tenth Schedule of the Constitution of India for having voluntarily given up the membership of Bahujan Samaj Party and for having defected to 'Congress Party' from 'Bahujan Samaj Party' (hereinafter referred to as 'BSP') thereby incurring disqualification under the provisions of Schedule X of the Constitution of India read with Article 102 and Article 191 of the Constitution of India. A true typed copy of the impugned order dated 18.9.2019 passed by respondent No.1 is being annexed herewith as Annexure No.1 to this writ petition.

2. That the petitioners are approaching this Hon'ble Court under Article 226 of the Constitution of India against the impugned order as the petitioners does not have any alternative remedy for challenging same. Because the disqualification petition of the petitioners before the Hon'ble Speaker is likely to be rejected on technical ground that the same is not maintainable in view of Rule-6 of the Rajasthan Legislature Assembly Members (Disqualification on the grounds of Changing Party (Rules 1989) as it permits only a Member of the House to be eligible to file disqualification petition.

3. That the 'Bahujan Samaj Party'/Petitioner No.1 herein is the registered political party and is recognized as National Political Party by the Election Commission of India. The Petitioner No.2 is the State President of Bahujan Samaj Party in Rajasthan and since all six MLAs Respondent No.3 to 8 are alleged to have merged with Indian National Congress (hereinafter referred to as 'Congress Party') the present Petitioners are filing the present Writ Petition. The Respondent

Nos. 3 to 8 herein have been elected as Member of Rajasthan Legislative Assembly as a candidate set up by National party viz. BSP.

4. That the facts and circumstances of the case are that the General Elections to the 15th Rajasthan State Legislative Assembly were held in the month of December, 2018. Respondent Nos. 3 to 8 were elected as the members of Rajasthan Legislative Assembly on the Symbol/ticket of BSP which is a recognized National Political Party by the Election Commission of India. As per the result declared by the Election Commission of India the total strength of the Assembly Seats in the House is 200 out of which 199 went to polls on December 7, 2018. the Party wise strength in the Rajasthan Vidhan Sabha is as under:-

1.	Congress Party	100
2.	B.J.P.	73
3.	Independents	13
4.	B.S.P	6
5.	B.T.P	2
6.	C.P.M	2
7.	R.L.P	3
8.	R.L.D	1

	TOTAL	200
--	-------	-----

5. That subsequent to the declaration of the results of elections to the 15th Rajasthan State Legislative Assembly, the Party wise list of the Members of the Legislative Assembly of Rajasthan has been issued by the Secretary of the Rajasthan State Legislative Assembly which shows that the name of Respondent Nos.3 to 8 as B.S.P MLAs in the list. Thus, theBSP is the original political party of respondent nos.3 to 8 under the provisions of Tenth Schedule of the Constitution of India.

6. That the Petitioners respectfully submit that immediately after the declaration of the result in 2018, Indian National Congress (hereinafter referred to as "Congress Party") as it was feeling difficulties in forming stable government, approached BSP to give its support through six elected members, respondent Nos.3 to 8. The Bahujan Samaj Party (hereinafter referred to as 'BSP') agreed to extend its support which was given to the Congress Party for forming government in Rajasthan, as a result of which its Government was formed and Sri Ashok Gahlot became the Chief Minister. However, after few months several dissents started appearing within the Independents and others including certain

electd MLAs of the Congress Party itself on account of actions of the Leadership.

7. That instead of keeping all Legislature of different parties including Congress Party itself in confidence to continue with the support of the Government, the Congress Party started resorting to undemocratic, unethical, illegal and unconstitutional sources of defection of Respondent Nos.3 to 8 by alluring the MLAs belonging to BSP to defect from BSP their original political party and join Congress Party.

8. That on being allured by the Congress Party with the benefits, best known to the Respondent Nos. 3 to 8 they had allegedly unilaterally made a joint application secretly before the Hon'ble Speaker, Rajasthan State Legislative Assembly stating that they have decided to merge into Congress Party which fact itself clearly indicates that they have voluntarily given up the membership of BSP. The copy of said application for merger has not been furnished to the petitioners till date in spite of written request made for it. The respondents No.3 to 8 did not disclose anywhere as to where, when and how the BSP which is a recognized National Political Party, has merged with Indian National Congress. The Petitioners herein which

is the Original Political Party in terms of Tenth Schedule was not even made a party to the said proceedings.

9. That pursuant to the aforesaid application of Respondent Nos.3 to 8, the Speaker of the Rajasthan State Legislative Assembly vide his ex-parte Order dated 18.09.2019 accepted the claim of respondent nos.3 to 8 and permitted them to be the Member of the Congress party by giving the benefit of para 4 of the Tenth Schedule of the Constitution of India without even issuing any notice to the Petitioners and without hearing or granting any opportunity of hearing to the Petitioner /National Party viz. BSP which is the Original Political Party in terms of Para 4 of the Tenth Schedule, which nullifies the entire proceedings and order of Hon'ble Speaker being in gross violation of natural justice and Xth Schedule. Even the copy of the alleged application dated 16.9.2019 of respondents No.3 to 8 nor copy of the order dated 18.9.2019 was ever given or sent to the Petitioner No.1.

10. That for proper appreciation of the matter in controversy, it would be necessary refer to para 1, para 2, and para 4 of the Tenth Schedule of the Constitution of India. The relevant paragraphs of the Tenth Schedule are quoted below:-

"TENTH SCHEDULE

[Articles 102(2) and 191(2)]

Provisions as to disqualification on ground of defection

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

(a) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or 2 *** paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

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

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

2. *Disqualification on ground of defection.* —

(1) Subject to the provisions of [paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House —

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

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. 1 Added by the Constitution (Fifty-second Amendment) Act, 1985, s. 6 (w.e.f. 1-3-1985). 2 Certain words omitted by the Constitution

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(Ninety-first Amendment) Act, 2003, s. 5. 3 Sub. by s. 5, *ibid*, for "paragraphs 3, 4 and 5".

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

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

(b) a nominated member of a House shall, –

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

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

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

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

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall, –

(i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a

member of such House as a candidate set up by such political party;

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

* * * * * Paragraph 3 omitted by the Constitution (Nienty-first Amendment) Act, 2003, s. 5. THE CONSTITUTION OF INDIA (Tenth Schedule)

4. Disqualification on ground of defection not to apply in case of merger. —

(1) A member of a House shall not be disqualified under subparagraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party —

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall

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be deemed to have taken place, if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger."

11. That the claim of Respondent Nos.3 to 8 was accepted by the Hon'ble Speaker without even ascertaining as to whether there was a split in the Original political party viz., BSP which is National Party or the Original Party (BSP) had merged with Congress Party at National Level or State's Level and what was the procedure followed for same where and when was the meeting held, what were the proceedings dated, who were those who attended the meeting and whether any resolution was passed and prepared for the said purpose. No such material was placed to prove that there was split in the Original Political party or its merger at the National level which is mandatory in the case of a recognized National Political Party. The Hon'ble Speaker vide his Ex-Parte Order dated 18.9.2019 proceeded to accept the case of split and merger merely on the claim of Respondent Nos.3 to 8, when undisputedly there was no merger of National Party nor was it even claimed by the respondents. Consequently, the Respondent Nos.3 to 8 were permitted to be the members of Congress party in gross violation of the provisions of Tenth Schedule to the Constitution of India.

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12. That it is respectfully submitted that the power to recognize a separate group or merger in Parliament or Assembly may rest with the Speaker on the basis of the Rules of Business of the House. Such power if any, which the Speaker may otherwise exercise independently to recognize a group or a merger, cannot be traced to Schedule X. The Speaker gets jurisdiction to render a decision in terms of Schedule X to the Constitution only when in terms of para 6 thereof a question of disqualification arose before him. Considering the scheme of Schedule X in the context of Articles 102 and 191 of the Constitution and the wording of para 6 and the conferment of jurisdiction on the Speaker there under, the Speaker is not expected to simply entertain a claim under paras 3 and 4 of the Schedule without first acquiring jurisdiction to decide a question of disqualification in terms of para 6 of the Schedule. The power under Schedule X to do so accrues only when he is called upon to decide the question referred to in para 6 of that Schedule and does not confer any power to give a declaration of merger without any question of disqualification arising before him.

13. That it is respectfully submitted that the Respondent Nos. 3 to 8 were set up as candidates for election to the 15th Rajasthan State Legislative Assembly by the National Party viz. BSP which is the 'Original Political Party' in terms of Tenth Schedule of the

Constitution of India. Consequently, they had contested the elections on the party symbol of 'Elephant', which was allotted to them by the National President of BSP and all of them were elected as members of the Rajasthan Legislative Assembly as a candidate set up by National Party viz. BSP.

14. That the Respondent Nos. 3 to 8 herein having been elected as member of Rajasthan Legislative Assembly as candidates set up by the national party, they represent a national party viz. BSP and the "merger" contemplated in paragraph 4 of the Tenth Schedule has to be a merger at the national level at every place including Central and all States, and it cannot take place selectively in any one State.

15. That it is respectfully submitted that the BSP which is a recognized national political party has never merged with any other political party at any given point of time. The BSP is functioning as a National Party and its members who are elected either to the Parliament or various State Legislative Assemblies are functioning as members in their respective Houses as belonging to the BSP. There was no act "overt or covert" which can even remotely suggest that the BSP has merged with any other political party. The alleged merger of 6 B.S.P. MLAs with Indian National Congress is non-est in the eyes of law and is void ab-initio.

16. That the Petitioners further submit that BSP which is a national political party is the 'Original Political Party' in terms of para 4 of the Tenth Schedule, was not made a party to the proceedings before the Hon'ble Speaker in an alleged application moved by Respondent Nos. 3 to 8 unilaterally. The Hon'ble Speaker of the Rajasthan State Legislative Assembly vide his ex-parte Order dated 18.09.2019 accepted the claim of respondent nos.3 to 8 and permitted them to be the Member of the Congress party by giving the benefit of para 4 of the Tenth Schedule of the Constitution of India without issuing any notice or giving any hearing or granting opportunity of hearing to the Petitioner/National Party viz. BSP which is the Original Political Party in terms of Para 4 of the Tenth Schedule. The Hon'ble Supreme Court in Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641 at page 653 was pleased to hold under:

"20... An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rule of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not case in a rigid mould and they cannot be put in a legal straitjacket. Whether the requirements

of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case."

In the present case there was no notice to the BSP at national level. Entire proceeding of merger were therefore legally vitiated. The Hon'ble Speaker ought to have issued notice to BSP to bring it to its notice about the alleged move of six BSP MLA's. Thus, the entire proceedings relating to merger are in violation of principles of natural justice and Xth Schedule of the Constitution of India.

17. That here it would be relevant to submit that prior to the insertion of new paragraph 4 in the Tenth Schedule, the earlier paragraph contemplated "split" instead of "merger". Rest of the provisions of the said paragraph were identical, *parimateria* and verbatim same. From a bare perusal of Paragraph 4 of the Tenth Schedule, it is abundantly clear that for claiming protection under para 4, two conditions are required to be satisfied and both the conditions are to be satisfied simultaneously i.e.

- (i) The "Original Political Party" should be shown to have merged with another political party with satisfactory evidence; AND
- (ii) The members claim either to have accepted merger and joined such other political party or having not accepted the

merger and opted to function as a separate group must be established after first mandatory condition is satisfied.

18. That it would also be relevant to submit that the Constitution Bench of the Hon'ble Supreme Court of India in the case of Rajendra Singh Rana & Ors Vs. Swami Prasad Maurya 2007 (4) SCC 270, has considered the question of "split" [which, mutatis mutandis, apply to merger] and has overruled the plea that a split in the original political party need not separately be established if a split in the legislature party is shown. It was held that by acceding to such a plea, one of the limbs of para 3 would be made redundant or otiose. The relevant paragraphs of the judgment are reproduced as under:-

"36. The question whether for satisfying the requirements of para 3, it was enough to make a claim of split in the original political party or it was necessary to at least prima facie establish it, fell to be considered in the decision in Jagjit Singh v. State of Haryana (2006) 11 SCC 1, rendered by a Bench of three Judges to which one of us, (Balasubramanian, J.) was a party. Dealing with an argument that a claim of split in the original political party alone is sufficient in addition to showing that one-third of the Members of the legislature party had formed a separate group, the learned Chief Justice has explained the position as follows: (SCC p. 33, paras 67-69)

"67. Learned counsel for the petitioner, however, relies upon para 37 in Ravi S. Naik case, 1994 supp (2) SCC 641, in support of the submission that only a claim as to split has to be made and it is not necessary to prove the split. The said observations are: (SCC p. 660)

'37. In the present case the first requirement was satisfied because Naik has made such a claim. The only question is whether the second requirement was fulfilled.'

68. The observations relied upon are required to be appreciated in the light of what is stated in the next paragraph i.e. para 38, namely: (SCC p. 661)

'As to whether there was a split or not has to be determined by the Speaker on the basis of the material placed before him.'

69. Apart from the above, the acceptance of the contention that only a claim is to be made to satisfy the requirements of para 3 can lead to absurd consequences besides the elementary principle that whoever makes a claim has to establish it. It will also mean that when a claim as to split is made by a Member before the Speaker so as to take benefit of para 3, the Speaker, without being satisfied even prima facie about the genuineness and bona fides of the claim, has to accept it. It will also mean that even by raising a frivolous claim of split of original political party, a Member can be said to have satisfied this stipulation of para 3. The acceptance of such a broad proposition would defeat the object of defection law, namely, to deal with the evil of political defection sternly. We are of the view that for the purposes of para 3, mere making of claim is not sufficient. The prima facie proof of such a split is necessary to be produced before the Speaker so as to satisfy him that such a split has taken place."

38. Acceptance of the argument that the legislators are wearing two hats, one as members of the original political party and the other as members of the legislature and it would be sufficient to show that one-third of the legislators have formed a separate group to infer a split or to postulate a split in the original party, would militate against the specific terms of para 3. That paragraph speaks of two requirements, one, a split in the original party and two, a group comprising of one-third of the legislators separating from the legislature party. By acceding to the two hat theory one of the limbs of para 3 would be made redundant or otiose. An interpretation of that nature has to be avoided to the extent possible. Such an interpretation is not warranted by the context. It is also not permissible to assume that Parliament has used words that are redundant or meaningless. We, therefore, overrule the plea that a split in the original political party need not separately be established if a split in the legislature party is shown."

19. That the Respondent Nos. 3 to 8 had consistently acted in such a manner that they have voluntarily given up their membership which attracted their disqualification under para 2(1)(a) of the Tenth Schedule of the Constitution of India. The Respondent Nos. 3 to 8 by their various acts of commission and omissions and their own

declaration that they have left their original political party (BSP) and have joined Congress by act of alleged merger have lead to an inevitable inference that they have voluntarily given up their membership of BSP as contemplated in paragraph 2(1)(a) of the Tenth Schedule.

20. That the national executive of the BSP on having come to know about their continuous acts of commission and omission, they were publicly warned and informed them that their activities may lead to their disqualification under para 2(1)(a) of the Tenth Schedule. However, the Respondent Nos. 3 to 8 have failed to desist from their conduct, which leads to the only inference that they have voluntarily given up their membership of BSP and thus stand disqualified under para 2(1)(a) of the Tenth Schedule of the Constitution of India.

21. That in view of the facts and circumstances of the case stated above, the acts and omissions of Respondent Nos.3 to 8 lead to an inevitable inference that they had voluntarily given up their membership of BSP as contemplated in paragraph 2(1)(a) of the Tenth Schedule and therefore are liable to be disqualified from being the members of Rajasthan State Legislative Assembly with effect from 16.9.2019 the date on which they left their original party (BSP). The protection under paragraph 4 of the Tenth Schedule cannot be extended to Respondent Nos. 3 to 8 as there is no merger of 'Original

Political Party' i.e. BSP which is a national political party with any other political party.

22. That the petitioners left with no other alternative remedy are compelled to approach this Hon'ble Court by filing this Writ Petition amongst others on the following grounds;

GROUNDS

A. BECAUSE the national executive of the BSP on having come to know about the continuous acts of commission and omission of the Respondents No.3 to 8 were publicly warned and informed that their activities may lead to their disqualification under para 2(1)(a) of the Tenth Schedule. However, the Respondent Nos. 3 to 8 have failed to desist from their conduct, which leads to only inference that they have voluntarily given up their membership of BSP and thus stand disqualified under para 2(1)(a) of the Tenth Schedule of the Constitution of India.

B. BECAUSE the claim of Respondent Nos.3 to 8 in their application allegedly moved on 16.9.2019 for merger was exparte accepted by the Hon'ble Speaker vide Order dated 18.09.2019 and the benefit of paragraph 4 of the Tenth Schedule was given to Respondent Nos. 3 to 8 without even ascertaining as to whether there was a split or merger of the Original political party viz., BSP which is National Party at the National

Level with the Indian National Congress. No material was placed to prove that there was split or merger in the Original Political party at the National level which is mandatory in the case of a recognized National Political Party. The Hon'ble Speaker vide his Ex-Parte Order dated has proceeded to accept the case of merger merely on the claim of Respondent Nos.3 to 8, when undisputedly there was no merger of National Party nor was it even claimed by the respondents. Consequently, the Respondent Nos.3 to 8 were permitted to be the members of Indian National Congress party in gross violation of the provisions of Tenth Schedule to the Constitution of India.

- C. BECAUSE the Respondent Nos. 3 to 8 are not entitled to the benefit of paragraph 4 of the Tenth Schedule as there was no merger of Original Political Party with any other political party as claimed by Respondent Nos. 3 to 8. The BSP which is a recognized national political party has never merged with any other political party at any given point of time. The BSP is functioning as a National Party and its members who are elected either to the Parliament or various State Legislative Assemblies are functioning as members in their respective Houses as belonging to the BSP. There was no act "overt or covert" which can even remotely suggest that the BSP has

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merged with any other political party including Indian National Congress Party.

D. BECAUSE Respondent Nos. 3 to 8 herein having been elected as member of Rajasthan Legislative Assembly as candidates set up by the national party, they represent a national party viz. BSP and the "merger" contemplated in paragraph 4 of the Tenth Schedule has to be a merger at the national level. Paragraph 4 of the Tenth Schedule, clearly provides that for claiming the protection under para 4, two conditions are required to be satisfied and both the conditions are to be satisfied simultaneously i.e.

(i) The "Original Political Party" should be shown to have merged with another political party with satisfactory evidence; AND

(ii) The members claim either to have accepted merger and joined such other political party or having not accepted the merger and opted to function as a separate group must be established after first mandatory condition is satisfied.

E. BECAUSE the Constitution bench of the Hon'ble Supreme Court of India in the case of Rajendra Singh Rana & Ors Vs. Swami Prasad Maurya, 2007 (4) SCC 270, has considered the

question of "split" [which, mutatis mutandis, apply to merger] and has overruled the plea that a split in the original political party need not separately be established if a split in the legislature party is shown. It was held that by acceding to such a plea, one of the limbs of para 3 would be made redundant or otiose. The relevant paragraphs of the judgment are reproduced as under:-

"36. The question whether for satisfying the requirements of para 3, it was enough to make a claim of split in the original political party or it was necessary to at least prima facie establish it, fell to be considered in the decision in Jagjit Singh v. State of Haryana (2006) 11 SCC 1, rendered by a Bench of three Judges to which one of us, (Balasubramanyan, J.) was a party. Dealing with an argument that a claim of split in the original political party alone is sufficient in addition to showing that one-third of the Members of the legislature party had formed a separate group, the learned Chief Justice has explained the position as follows: (SCC p. 33, paras 67-69)

"67. Learned counsel for the petitioner, however, relies upon para 37 in Ravi S. Naik case, 1994 supp (2) SCC 641, in support of the submission that only a claim as to split has to be made and it is not necessary to prove the split. The said observations are: (SCC p. 660)

'37. In the present case the first requirement was satisfied because Naik has made such a claim. The only question is whether the second requirement was fulfilled.'

68. The observations relied upon are required to be appreciated in the light of what is stated in the next paragraph i.e. para 38, namely: (SCC p. 661)

'As to whether there was a split or not has to be determined by the Speaker on the basis of the material placed before him.'

69. Apart from the above, the acceptance of the contention that only a claim is to be made to satisfy the requirements of para 3 can lead to absurd consequences besides the

elementary principle that whoever makes a claim has to establish it. It will also mean that when a claim as to split is made by a Member before the Speaker so as to take benefit of para 3, the Speaker, without being satisfied even prima facie about the genuineness and bona fides of the claim, has to accept it. It will also mean that even by raising a frivolous claim of split of original political party, a Member can be said to have satisfied this stipulation of para 3. The acceptance of such a broad proposition would defeat the object of defection law, namely, to deal with the evil of political defection sternly. We are of the view that for the purposes of para 3, mere making of claim is not sufficient. The prima facie proof of such a split is necessary to be produced before the Speaker so as to satisfy him that such a split has taken place."

38. Acceptance of the argument that the legislators are wearing two hats, one as members of the original political party and the other as members of the legislature and it would be sufficient to show that one-third of the legislators have formed a separate group to infer a split or to postulate a split in the original party, would militate against the specific terms of para 3. That paragraph speaks of two requirements, one, a split in the original party and two, a group comprising of one-third of the legislators separating from the legislature party. By acceding to the two hat theory one of the limbs of para 3 would be made redundant or otiose. An interpretation of that nature has to be avoided to the extent possible. Such an interpretation is not warranted by the context. It is also not permissible to assume that Parliament has used words that are redundant or meaningless. We, therefore, overrule the plea that a split in the original political party need not separately be established if a split in the legislature party is shown."

BECAUSE the Constitution Bench of the Hon'ble Supreme Court in the case of Rajendra Singh Rana, (2007) 4 SCC 270, approved the law laid down by the full Bench of the Punjab High Court wherein the Full Bench of the High Court held that

the original political party in relation to the member of the House is a political party to which he belongs. It is well settled law that parliament never intended to treat the state unit of a political party as a separate entity for the purpose of benefit of para 3. There is no reason to why the same yardstick may not be applied in the case of para 4 as well. Merger of a party will have to take place at national level. Since the Petitioner/BSP is the original Political Party of Respondent No. 3 to 8, and they have voluntarily given up the membership of the BSP without there being any merger at the National Level, they consequently stood disqualified from continuing as the member of the House of the Rajasthan State Legislature.

- G. BECAUSE the Petitioners(BSP) which is a national political party is the 'Original Political Party' in terms of para 4 of the Tenth Schedule, was not even made a party to the proceedings before the Hon'ble Speaker in an application moved by Respondent Nos. 3 to 8 unilaterally. The Hon'ble Speaker of the Rajasthan State Legislative Assembly without even furnishing a copy of the alleged application dated 16.9.2019 vide his ex-parte Order dated 18.09.2019 accepted the claim of respondent nos.3 to 8 and permitted them to be the Member of the Congress party by giving the benefit of para 4 of

the Tenth Schedule of the Constitution of India without hearing or granting opportunity of hearing to the Petitioner /National Party viz. BSP which is the Original Political Party in terms of Para 4 of the Tenth Schedule. The Hon'ble Supreme Court in Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641 at page 653 was pleased to hold under:

"20... An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and , therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rule of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not case in a rigid mould and they cannot be put in a legal straitjacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case."

In the present case there was no notice was given to the BSP. The entire proceeding of merger was legally vitiated. The Hon'ble Speaker ought to have issued notice to BSP to bring it to its notice about the alleged move of six BSP MLAs and any order could have been passed only thereafter.

H. BECAUSE the order of merger dated 18.09.2019 is legally bad and unconstitutional as it runs contrary to law laid down by the Hon'ble Supreme Court in the case of Jagjit Singh Vs. State of Haryana 2006 (11) SCC 1 para 69, 70, 71, 72 75, 78 and 79 which are reproduced below:-

"69. Apart from the above, the acceptance of the contention that only a claim is to be made to satisfy the requirements of para 3 can lead to absurd consequences besides the elementary principle that whoever makes a claim has to establish it. It will also mean that when a claim as to split is made by a Member before the Speaker so as to take benefit of para 3, the Speaker, without being satisfied, even prima facie about the genuineness and bona fides of the claim, has to accept it. It will also mean that even by raising a frivolous claim of split of original political party, a Member can be said to have satisfied this stipulation of para 3. The acceptance of such a broad proposition would defeat the object of defection law, namely, to deal with the evil of political defection sternly. We are of the view that for the purposes of para 3, mere making of claim is not sufficient. The prima facie proof of such a split is necessary to be produced before the Speaker so as to satisfy him that such a split has taken place.

70. In the present case, the Speaker has held that the petitioner has failed to satisfy that split in the original party, namely, NCP had taken place. According to the petitioner, he had formed/joined a new political party on 20-12-2003 having been elected on the ticket of NCP in February 2000. On 20-12-2003, a new political party by the name of Democratic Congress Party of Haryana was formed. The petitioner voluntarily gave up membership of NCP on 20-12-2003 and joined this newly formed party. On these facts, the disqualification of voluntarily giving up membership of NCP stands attracted subject to the claim of the petitioner under para 3. The petitioner had to prove ³⁴ that the stipulations of para 3 are satisfied. The Speaker has held that no valid proof or evidence was placed on record to show that split had indeed taken place in NCP on 20-12-2003 or at any other time. It has further been noted by the Speaker that the respondent had several times been asked the names and addresses of the office-bearers of the original political

party at the national and State level as well as the names and addresses of the office-bearers of NCP who attended the meeting in which resolution dated 20-12-2003 was passed. The petitioner, despite the opportunity, did not give any satisfactory response or reply in this regard. The Speaker further held that it is only in the original party of NCP, that the split had to be proved and not in the legislative party of Haryana. The complainant had specifically taken the plea in the complaint that no such split in NCP had taken place. The reply of the petitioner to the said assertion is that he is only claiming that a split was caused by the party workers in the original political party on 20-12-2003 and that information had been sent to the Speaker as well as to the Election Commission of India. The Speaker, on the basis of material on record, has come to the conclusion that the petitioner was wanting to treat his own defection allegedly supported, according to the petitioner, by some party workers at local level as a split in his original political party. Such a plea was not accepted by the Speaker. We think the Speaker is right. Such a split, if held to be valid for the purposes of para 3, would defeat the very purpose of the law. The requirement is not the split of the local or State wing of original political party but is of the original political party as defined in para 1(c) of the Tenth Schedule read with the Explanation in para 2(1) to the effect that "an elected Member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such Member".

71. In support of the contention that for the purposes of para 3 of the Tenth Schedule, the split in a State unit is the requirement, reliance has been placed on a Full Bench decision of the Punjab High Court in *Madan Mohan Mittal v. Speaker, Punjab Vidhan Sabha* (1997) 3 Punj LR 374 (FB). In the said case, it was held: (Punj LR p. 378, para 8)

"8. A reading of these provisions clearly indicate that importance was given to the House of the Legislative Assembly of the State. The original political party in relation to a member of the House is the political party to which he belongs. Thus, it is clear that Parliament intended to treat the State unit of a political party as a separate entity for the purpose of determining whether there is any disqualification of a member of the House of that State Legislature. It is

further made clear that in the case of split one-third members of the State Legislature belonging to that political party must form a group to make the split effective within the State Legislature. Likewise for the purpose or (sic of) merger within the meaning of para 4, two-thirds of the members of the State Legislature party must have agreed to such merger. Thus, while deciding the disqualification of the member of the State Legislature the events that have taken place at the national level have no concern to decide whether there is a split of (sic or) merger. To elucidate this point one may take the case of split of a national political party at the national level but in a particular State the members of that political party do not want to split and they want to continue the State unit intact. In such an event the split or events that have taken place at the national level of the political party will have no effect on the State unit of that political party and the political party at the State level continues to be in the original form. Likewise there may not be a split at the national level but at the State level there may be a split in the State unit of that political party and one-third of the members of the State Legislature constitute the group representing the faction as a result of the split in the State unit of the political party. Then the split comes into existence even though there is no split as such at the national level. The scheme of Tenth Schedule is to be looked from the point of view of State units of political parties when the question of disqualification arises within the State Legislative Assembly. Thus, according to us if there is a split of a political party at the State level and one-third members of the legislature party of that political party at the State level consists of the group representing that faction which splits away from the original political party then the split comes into existence and is effective."

72. The Full Bench, in the above case, was considering the legality of the order of the Deputy Speaker of the Punjab Legislative Assembly whereby he declined to declare Respondents 3 and 4 as disqualified under para 2 of the Tenth Schedule. The said respondents were candidates put up by Bhartiya Janata Party in assembly elections held in February 1992 in which they were elected. According to the petitioner, these Members joined Congress (I) Party. The petitioner before the High Court was a

leader of the original political party i.e. Bhartiya Janata Party. The legislature party made a complaint to the Speaker to disqualify these Members and stated that there was no split in the party as claimed by Respondents 3 and 4. The Deputy Speaker, however, held that there was split in the party and the original party had six seats and Respondents 3 and 4 constituted one-third members of the legislature party and, therefore, they were not disqualified in view of para 3 of the Tenth Schedule and their original political party would be Bhartiya Janata Party (Punjab). The Full Bench, after rightly holding that "the original political party in relation to a Member of the House is a political party to which he belongs" erroneously held that:

"Parliament intended to treat the State unit of a political party as a separate entity for the purpose of determining whether there is any disqualification of a Member of the House of that State Legislature." (Punj LR p. 378, para 8)

In the case of split, one-third Members of the State Legislature belonging to that political party must form a group to make the split effective within the State Legislature but it does not lead to the conclusion that Parliament intended to treat the State unit of a political party as a separate entity for the purposes of the benefit of para 3. Para 1(c) defining original political party and Explanation as given in para 2(1) have already been noticed hereinbefore. It is clear from a bare reading thereof that the elected Member belongs to the political party by which he is set up as a candidate for election as such Member. From the plain language of these provisions, it cannot be held that for the purposes of the split, it is the State Legislature party in which split is to be seen. If a Member is set up by a national party, it would be no answer to say that events at national level have no concern to decide whether there is a split or not. In case a Member is put up by a national political party, it is split in that party which is relevant consideration and not a split of that political party at the State level.

75. On the facts of the present case, the Speaker was justified in coming to the conclusion that there was no split in the original political party of the petitioner Jagjit Singh (Writ Petition No. 287 of 2004). Likewise, in Writ Petition No. 292 of 2004, the Speaker on consideration of relevant material placed before him came to the

conclusion that there was no split as contemplated by para 3 of the Tenth Schedule. The finding of the Speaker cannot be faulted. In fact, letter of the petitioner dated 17th June sent to the Speaker itself shows that what was claimed was that the Haryana unit of the Republican Party of India effected a split in the original party on 21-12-2003. The finding that the claim of split was made as an afterthought to escape disqualification under para 2(1)(a) of the Tenth Schedule cannot be held to be unreasonable or perverse. The Speaker was justified in coming to the conclusion that despite various opportunities, no valid proof or evidence was placed on record by the petitioner to show that indeed a split had taken place in the original political party i.e. Republican Party of India on 21-12-2003.

78. The words "he and any other person" and the words "the group" in para 3 on the plain reading show that the benefit of para 3 is not available to a single-member legislature party. It was, however, contended that the words "he and any other person", in the context of a recognised single-member legislature party should be read and understood as "he or he and any other members of his legislature party constitute the group". We cannot read words in the Constitution which do not exist. The contention is that once a single-member legislature party is recognised by the Speaker, the benefit of para 3 has to be given to the sole member representing that party as it would be a case of 100% representing breakaway group. Undoubtedly, para 2(1)(a) is subject to the provisions of paras 3, 4 and 5 and if para 3 applies and ingredients thereof are satisfied the Member would not attract disqualification under para 2(1)(a). In that sense para 3 overrides para 2(1)(a). The factor that a single-member legislature party is recognised by the Speaker is of no relevance in interpreting para 3 of the Tenth Schedule. In the context of the language of para 3 of the Tenth Schedule, Section 13(2) of the General Clauses Act, 1897, which requires that unless there is anything repugnant in the subject of context, "words in the singular shall include the plural, and vice-versa" has no applicability. It is, ordinarily, not the function of the court to read words into a statute. The court must proceed on the assumption that the legislature did not make a mistake and it intended to say what it said. It is well settled that:

"The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result." (See P.K. Unni v. Nirmala Industries, (1990) 2 SCC 378, SCC pp. 383-84, para 15.)

The contention is that when para 3 protects when there is defection of a group consisting of not less than one-third of the members of a legislature party, the intention of law can never be to deprive such a benefit where group is 100%. We are unable to accept this contention for more than one reason. Firstly, there is no contradiction or ambiguity or defect or omission in para 3; secondly, there are no manifest contradictions insofar as the apparent object of the defection law is concerned in para 3 depriving the benefit of (sic to) single-member legislature party; thirdly, the legislature is assumed to have known the existence of single-member legislature party; and finally from the language of para 3, it is evident that Parliament did not intend to grant the benefit of para 3 to a single-person legislature party, having regard to the object of the constitutional amendment dealing with the evil of defection. Advisedly, the words are "he and other members" instead of the words "he or he and other members".

79. The object of the Tenth Schedule is to discourage defection. Para 3 intended to protect a larger group which, as a result of split in a political party which had set up the candidates, walks off from that party and does not treat it as defection for the purposes of para 2 of the Tenth Schedule. The intention of Parliament was to curb defection by a small number of Members. That intention is clear from para 3 which does not protect a single-member legislature party. It may be noted that by the Constitution (Ninety-first Amendment) Act, 2003, para 3 has been omitted from the Tenth Schedule."

- I. **BECAUSE** the Hon'ble Speaker of the House of Rajasthan State Legislative Assembly ought to have rejected the application of merger moved by Respondent Nos. 3 to 8, once they had voluntarily given up their membership of BSP by their conduct. The question of merger does not arise in the facts and

circumstances of the case. Paragraph 2 of the Tenth Schedule clearly provides as under:-

"2. Disqualification on ground of defection.-

(1) Subject to the provisions of paragraphs 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-

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

(b) If he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention."

The Hon'ble Speaker can disqualify a member belonging to any political party if he has voluntarily given up his membership of such political party or if he votes against the wishes of his party. It is in this regard that an appropriate meaning needs to be given to the term disqualification.

BECAUSE the six BSP MLA's arrayed as Respondent No. 3 to 8, have gone against the will of the people of the State of Rajasthan who had voted for them as the member of BSP which is committed for the welfare of Scheduled Caste, Scheduled Tribes, Other backward classes and Other people belonging to

the dalit and downtrodden Committee. They have deceived the electorate. In this regards apposite to refer to the book , Griffith and Ryle on Parliament Function, Practice and Procedure (1989 edn., p. 119) say:

"Loyalty to party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for Members to accept the opinion of their Leaders and Spokesmen on the wide variety of matters on which those Members have no specialist knowledge. Generally Members will accept majority decisions in the party even when they disagree. It is understandable therefore that a Member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy. To abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other side of conspiracy."

K. BECAUSE the Hon'ble Supreme Court in the case of Kihoto Hollohan Vs. Zachillhu 1992 Supp. (2) SCC 651, has clearly enunciated the purpose behind the introduction of the Tenth Schedule, wherein it is stated that "the main purpose underlying the constitutional amendment and introduction of the Tenth Schedule is to curb the evil of defection which was causing immense mischief in our body politic." The extract of relevant paragraph reads as under:

"9. This brings to the fore the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the Member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the tenth Schedule."

L. Because in view of the submissions made above, the orders dated 18.9.2019 passed by the learned Speaker deserves to be recalled and declare non-est in the eyes of law being totally against the principles of natural justice and Xth Schedule of the Constitution of India.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to grant the following reliefs:-

- I. To quash the impugned order dated 18.9.2019 passed by the Hon'ble Speaker, Respondent No.1 as contained in Annexure No.1 to this writ petition.
- II. Disqualify Respondent Nos. 3 to 8 from being the member of Rajasthan State Legislative Assembly under Paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India for having voluntarily given up the

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(7)

membership of Bahujan Samaj Party and for having defected to Indian National Congress Party; and

III. Pass such other Orders as may be considered just and proper in the facts and circumstances of the case

Place: Jaipur

Advocate,

Dated:

Counsel for the Petitioners

Annexure A-3



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

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S.B. Civil Writ Petition No. 8056/2020

Bahujan Samaj Party and Anr.

----Petitioners

Versus

Honble Speaker, Rajasthan Legislative Assembly and Ors.

----Respondents



For Petitioner(s)

: Mr. Satish Chandra Mishra, Sr. Adv.
(through Video Conferencing)
assisted by
Mr. Dinesh Kumar Garg

For Respondent(s)

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

Order

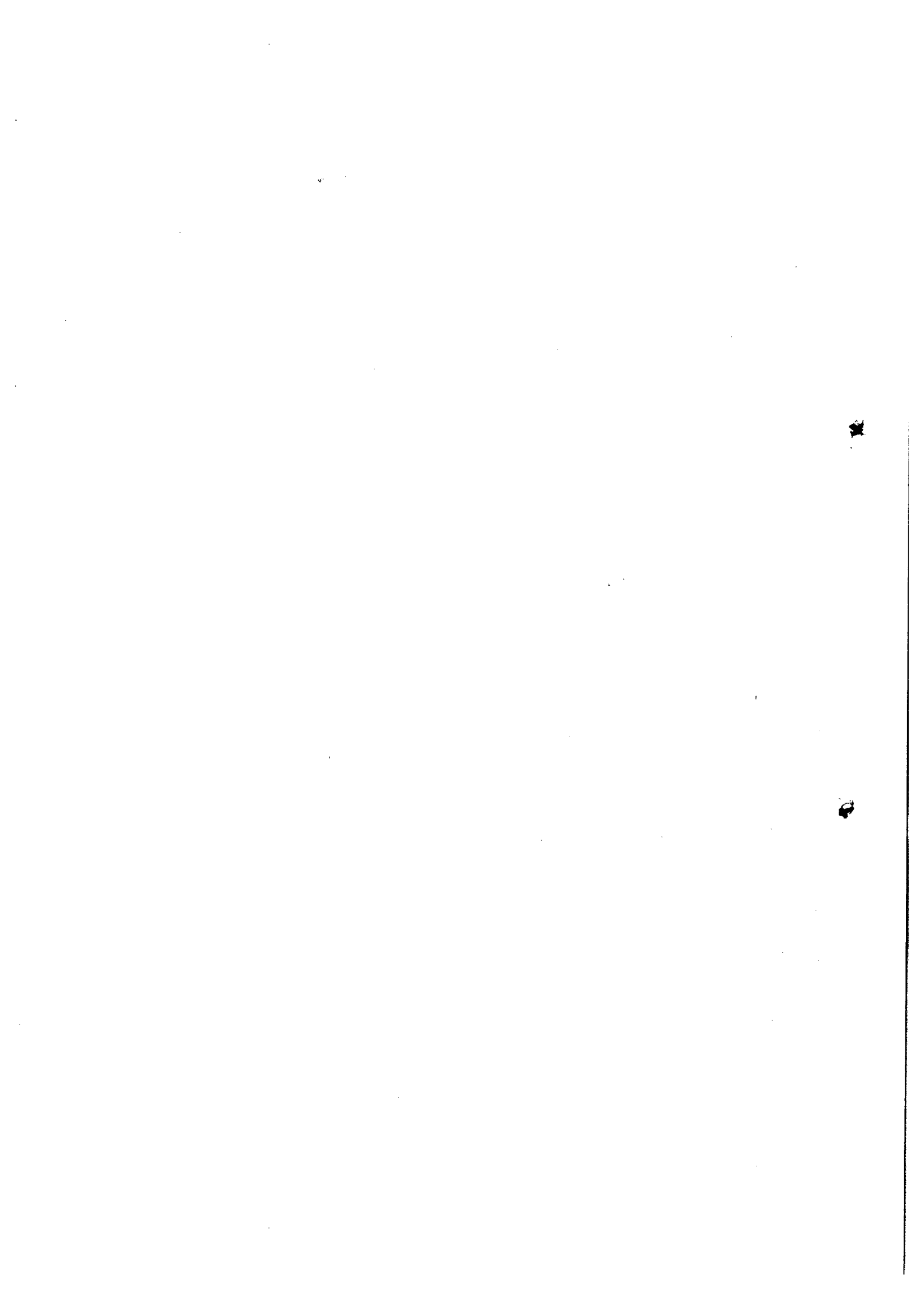
30/07/2020

Issue notice of the writ petition as well as stay application to the respondents. Rule is made returnable by 11.08.2020.

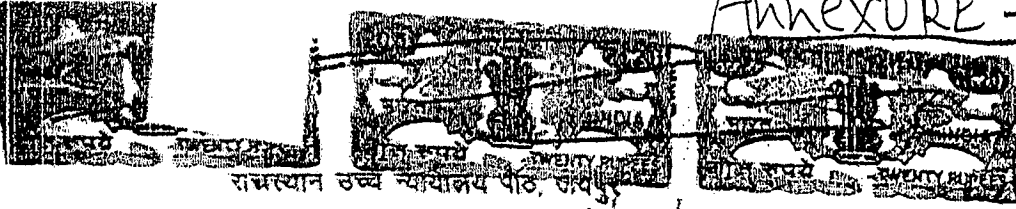
Notices may be given "dasti" to the learned counsel for the petitioners for service.

(MAHENDAR KUMAR GOYAL), J

Sudha/90



Annexure - P - H



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राजस्थान उच्च न्यायालय पीठ, जयपुर

Certified Copy of Order Dated 06/08/2020

IN THE HON'BLE HIGH COURT OF JUDICATURE FOR
RAJASTHAN, JAIPUR BENCH AT JAIPUR.

D.B. SPECIAL APPEAL (WRIT) NO. 510 /2020

IN

S.B. CIVIL WRIT PETITION NO. 8004/2020

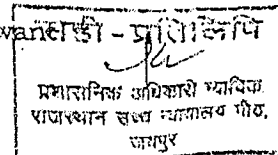
IN THE MATTER OF:

Sh. Madan Dilawar, S/o Sh. Madholal
MLA, H.No.4-E-7,
Rangbari Yojna,
Kota (Raj.)

...Petitioner/Appellant

Versus

1. The Hon'ble Speaker
Rajasthan Legislative Assembly, Jaipur
Rajasthan.
2. Sh. Lakhansingh, Karoli (155), S/o Jagan
R/o House No.464,
Sarya Ka Pura Khadkhad,
Teh. Hindon, District Karoli (Raj.)
3. Sh. Rajender Singh Guda, S/o Madho Singh
Udyapurvati (139),
R/o Ward No.2 Guda,
Teh. Udyapurvati,
District Jhunjhunu, Rajasthan
4. Sh. Deepchand, Kishangadbas (71), S/o Baluram
R/o Gram Jatka, Post-Mahund,
Teh. Kishangarh Bas,
District Alwar, Rajasthan
5. Sh. Joginder Singh Avana, S/o Girwar Singh
Nadbai (62)
R/o B-256, Sector 50,
Noida, Gautam Budh Nagar,
Uttar Pradesh.
6. Sh. Sandeep Kumar, Tijara (174), S/o Balwan
R/o Gram Thada, Post-Sital,



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Teh. Tijara, District Alwar,
Rajasthan.

7. Sh. Vajib Ali, Nagar (158), S/o Sher Mohammad
R/o House No.468,
Fakiraj Mohala, Sikari Patti,
Anshik 4, Nagar,
District Bharatpur,
Rajasthan.
8. The Secretary,
Rajasthan Legislative Assembly
Jaipur
Rajasthan
9. Mr. C.P. Joshi, M.L.A S/o Late Sh. Ram Chandra Joshi,
At Present Hon'ble Speaker
Rajasthan Legislative Assembly
49, Civil Lines,
Jaipur - 302 006
10. Bahujan Samaj Party
through its
National General Secretary,
Shri. Satish Chand Mishra,
having its Central Office at
4, Gurudwara Rakab Ganj Road,
New Delhi.

...Respondents

APPEAL UNDER RULE 134 OF THE
RAJASTHAN HIGH COURT RULES,
1952;

IN THE MATTER OF:

ORDER DATED 30.07.2020 PASSED BY
HON'BLE MR. JUSTICE MAHENDAR
KUMAR GOYAL IN S.B. CIVIL WRIT
PETITION NO. 8004/2020 TITLED AS



सहायक न्यायाधिकारी
प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय पीठ,
जयपुर

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D.B. Special Appeal Writ No. 511/2020

Sh. Madan Dllawar, S/o Sh. Madholal, Mia, H.no. 4-E-7,
Rangbari Yojna, Kota (Raj.)

----Appellant

Versus

1. The Hon'ble Speaker, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
2. Sh. Lakhan Singh S/o Jagan, Karoli (155), R/o House No. 464, Sarya Ka Pura Khadkhad, Teh. Hindon, District Karoli (Raj.)
3. Sh. Rajender Singh Guda S/o Madho Singh, Udyapurvati (139), R/o Ward No. 2, Guda, Teh. Udyapurvati, District Jhunjhunu, Rajasthan.
4. Sh. Deepchand S/o Baluram, Kishangadbas (71), R/o Gram Jatka, Post- Mahund, Teh. Kishangarh Bas, District Alwar, Rajasthan.
5. Sh. Joginder Singh Avana S/o Girwar Singh, Nadbal (62) R/o B-256, Sector-50, Noida, Gautam Budh Nagar, Uttar Pradesh.
6. Sh. Sandeep Kumar S/o Balwant, Tijara (174), R/o Gram Thada, Post- Sital, Teh.- Tijara, District- Alwar, Rajasthan.
7. Sh. Vajit Ali S/o Sher Mohammad, Nagar (158), R/o House No. 468, Fakiraj Mohala, Sikari Patti, Anshik 4, Nagar, District Bharatpur, Rajasthan.
8. The Secretary, Rajasthan Legislative Assembly, Jaipur, Rajasthan.
9. Mr. C.p. Joshi, Mia S/o Late Sh. Ram Chandra Joshi, At Present Hon'ble Speaker Rajasthan Legislative Assembly 49, Civil Lines, Jaipur-302 006.
10. Bahujan Samaj Party, Through Its National General Secretary, Shri Satish Chand Mishra, Having Its Central Office At 4, Gurudwara Rakab Ganj Road, New Delhi.

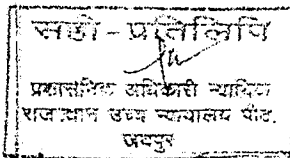
----Respondents

For Appellant(s)

: Mr. S.C. Misra, Senior Advocate
through Video Conferencing
assisted by Mr. D.K. Garg

Mr. Harish Salve, Senior Advocate
through Video Conferencing
assisted by Mr. Ashish Sharma

Mr. Satyapal Jain, Senior Advocate
assisted by Mr. Dheeraj Jain through
Video Conferencing



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[SAW-510/2020]

For Respondent(s) : Mr. Kapil Sibal, Senior Advocate
Mr. Salman Khurshid, Senior Advocate
through Video Conferencing
assisted by Mr. Prateek Kasliwal,
Ms Supriya Saxena
Mr. Sunil Fernandes)
Mr. Nizam Pasha)
Ms. Nupur Kumar) through V.C.
Mr. Rohit Jain)
Ms. Priyanka Pareek)

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRAKASH GUPTA

Order

06/08/2020

1. The aforesaid two special writ appeals came to be filed by the appellants, noted hereinabove, essentially seeking to challenge the order dated 30.07.2020 passed by the Hon'ble Single Judge in S.B.Civil Writ Petition Nos.8056/2020 and 8004/2020. Following orders were passed by the Hon'ble Single Judge on 30.07.2020:-

S.B.Civil Writ Petition No.8056/2020:-

"Issue notice of the writ petition as well as stay application to the respondents. Rule is made returnable by 11.08.2020.

Notices may be given "dasti" to the learned counsel for the petitioners for service."

S.B.Civil Writ Petition No.8004/2020:-

"Issue notice of the writ petition as well as stay application barring respondent No.9. Rule is made returnable by 11.08.2020.

Notices may be given "dasti" to the learned counsel for the petitioner for service."

2. Notices of both the writ-appeals were issued to the Hon'ble Speaker (respondent No.1) vide order dated 05.08.2020.

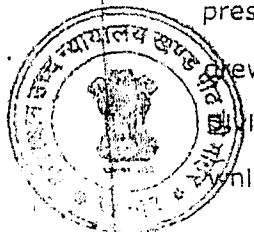


सद्वी-प्रतिलिपि
प्रशासनिक सहायता के लिए
सहायक सचिव, न्यायिक
सहायता विभाग, न्यायालय, दिल्ली

3. Mr. S.C.Misra, learned Senior Advocate appearing for the appellant Bahujan Samaj Party as well as Mr. Harish Salve, learned Senior Advocate appearing on behalf of appellant Mr. Madan Dilawar submitted that though they had made oral submissions before the Hon'ble Single Judge seeking 'ex-parte' stay of the order of the Hon'ble Speaker impugned before the learned Single Judge, but the Hon'ble Single Judge did not find favour with such a prayer and merely directed notices to be issued on the writ-applications as well as stay-applications and fixed the next date to 11.08.2020.

4. Mr. Misra, learned Senior Advocate further submitted that although directions were issued for service of notices on the respondents "dasti", but since private respondent Nos. 3 to 8 are not available at their official residences and are learnt to be residing in a hotel at Jaisalmer, they have been unable to serve the said private respondents and there is every possibility that on the next date fixed by the Hon'ble Single Judge, the private respondents may avoid service.

5. Mr. Kapil Sibal, learned Senior Advocate appearing for the Hon'ble Speaker (respondent No.1) raised a preliminary objection regarding maintainability of the present writ-appeals. He placed reliance on the judgment of the Division Bench of the Rajasthan High Court in P.B.Sogani & Ors. Vs. Akhli Bharatiya Bank of Rajasthan Karmchari Sangh & Ors., reported in 2000 SCC Online Raj. 53, in support of his contention that the present writ-appeals are not maintainable and in particular he drew attention of the Court to the finding arrived at by the Division Bench of this Court in answer to Question No.2 and in which conclusion in para 26 is quoted herein below:-



राजस्थान न्यायालय
अधीनस्थ न्यायालय
जयपुर

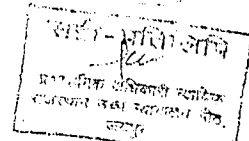
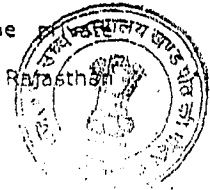
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"26. From reading of the operative portion of order impugned quoted hereinabove, we are satisfied that by impugned order, learned Single Judge has not determined the rights and liabilities of the parties finally, therefore, no special appeal lies against such an order under sub-section (1) of Section 18 of the Rajasthan High Court Ordinance, 1949. In our considered opinion, the order impugned under appeal dated 27.9.99, is not a judgment within the meaning of sub-section (1) of Section 18 of Rajasthan High Court Ordinance, 1949, therefore, the appeal is not entertainable. The objection of the office of the Registry of the Court dated 1.10.99, to the effect that the instant special appeal which is preferred against interim order, is not maintainable, is hereby sustained and upheld."

6. Mr. Harish Salve, learned Senior Advocate on the other hand, submitted that the present writ-appeals are maintainable and placed reliance on the judgment of the Hon'ble Apex Court in the case of Shah Babulal Khemji Vs. Jayaben D. Kania & Anr. Reported in (1981) 4 SCC 8. He submits that whether a particular order decides the important rights would depend upon the nature of the order. The principle is that wherever the controversy affects the valuable rights of the parties and the trial Judge decides the same, it must be treated as a judgment. He also referred to Section 18 of the Rajasthan High Court Ordinance, 1949. He further submits that judgment can be of three kinds:- (i) Final judgment (ii) preliminary judgment and (iii) Interlocutory judgment. Mr. Salve submits that in the judgment of Rajasthan High Court, which Mr. Sibal has cited, it was not a case where interim relief was refused.

7. The Court in the course of hearing suggested to the learned counsel for the parties that notices on the respondents may be served through Secretary of the Rajasthan Legislative Assembly.

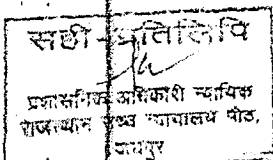
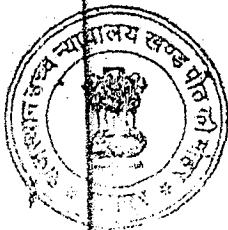


8. To this suggestion, Mr. Kapil Sibal, learned Senior Advocate raised objection and submitted that since the Government of India has issued instructions to the authorities concerned to the effect that Courts of law should not seek to serve a legal process, civil or criminal, on members of Parliament through the Speaker of the Secretariat, the appropriate procedure is for the summons to be served direct on the members concerned outside the precincts of Parliament i.e. at their residence or at some other place.

9. After hearing learned counsel for respective parties physically as well as through Video Conferencing, as noted hereinabove, we are of the considered view that the ends of justice would be best sub-served by the following directions:-

(i) The appellants are directed to take out the notices of S.B.Civil Writ Petition Nos.8056/2020 and 8004/2020 for service by Special Messenger, to ensure service on the private respondents on or before 08.08.2020. The District Judge, Jaisalmer is directed to provide all necessary assistance to the Special Messenger to effect service of such notices, and if required, the District Judge may seek necessary assistance of the Superintendent of Police, Jaisalmer for effecting service on the private respondents who are said to be residing at Jaisalmer.

(ii) We further direct the appellants/writ-petitioners to publish a notice in daily newspaper 'Rajasthan Patrika', Barmer-Jaisalmer Edition. The notice shall indicate the directions issued by the Hon'ble Single Judge dated 30.07.2020.



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(iii) We make it clear that the directions which we are issuing are in the aid of directions issued by the Hon'ble Single Judge and keeping the serious consequences pleaded before us by the appellants' Counsel. We remain confident that the Hon'ble Single Judge will deal with the matter appropriately.

(iv) We remain confident that the Hon'ble Single Judge will hear and dispose of the stay applications filed by the appellants on the same day in accordance with law and without, in any manner, being prejudiced by any directions/observations issued by us hereinabove.

(v) The contentions raised by either parties on the issue of maintainability of the writ-appeals are left open for consideration at appropriate time/case.

10. Both the writ-appeals are accordingly disposed of. All pending applications also stand disposed of.

Sd
(PRAKASH GUPTA), J

Sd
(INDRAJIT MAHANTY), CJ

KAMLESH KUMAR/HARSHIT/5-75-76



लक्ष्मी अलिहाथि
प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय बीए
जयपुर

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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I.A. NO...../2020

IN

SPECIAL LEAVE PETITION (C) NO.

OF 2020

IN THE MATTER OF:-

Bahujan Samaj Party & Anr.

...Petitioners

Versus

Hon'ble Speaker,
Rajasthan Legislative Assembly & Ors.

...Respondents

APPLICATION FOR EXEMPTION
FROM FILING OFFICIAL TRANSLATION

To,

Hon'ble The Chief Justice of India

And his lordship's other Hon'ble Companion Judges

Of the Supreme Court of India.

THE HUMBLE PETITION OF THE

PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners above named have filed the accompanying Special Leave Petition under Article 136 of the Constitution of India against final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur.

All the facts of the case are set out in detail in the Synopsis and List

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of Dates and Memo of Special Leave Petition. Therefore, same are not being repeated for the sake of brevity.

2. That along with Special Leave Petition, the Petitioners are also filing Annexure Nos. P-1, which are in Hindi and under the rules, same are required to be officially translated into English.

3. That the Petitioners have got the Annexure Nos. P-1 translated into English privately and crave leave of this Hon'ble Court to exempt the Petitioners from getting the same officially translated.

4. That the Petitioners are filing true and correct English translation of the copies of Annexure Nos. P:1, which may kindly be taken on record.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- I. Exempt the Petitioners from getting the Annexure Nos. P-1.. officially translated into English and take on record their true and correct English translation being filed along with S.L.P. and /or
- II. Pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

DRAWN AND FILED BY

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(Shail Kumar Dwivedi)
Advocate for the Petitioners

Drawn on: 31.08.2020

Filed on: 04.09.2020

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO...../2020

IN

SPECIAL LEAVE PETITION (C) NO. OF 2020

IN THE MATTER OF:-

Bahujan Samaj Party & Anr.

....Petitioners

Versus

Hon'ble Speaker,
Rajasthan Legislative Assembly & Ors.

...Respondents'

APPLICATION FOR EXEMPTION FROM FILING
CERTIFIED COPY OF IMPUGNED JUDGMENT

To,

Hon'ble the Chief Justice of India,
and his Lordship's other Hon'ble Companion Judges
of the Supreme Court of India.

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners above named have filed accompanying Special Leave Petition under Article 136 of the Constitution of India against final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur. All the facts of the case are set out in detail in the Synopsis and List of Dates and

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Memo of Special Leave Petition. Therefore, same are not being repeated for the sake of brevity.

2. That Petitioners have applied for the certified copy of the impugned final judgment and order dated 24.08.2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench in S.B. Civil W.P. No. 8056 of 2020. However, due to the Pandemic of Covid-19, the certified copy of impugned judgment could not be obtained. The Petitioners undertake to file the certified copy of impugned judgment immediately after receipt from copying section of the High Court on resumption of normal functioning of the High Court.

3. That the Petitioners are filing true and correct typed copy of the impugned final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur, which may kindly be taken on record.

PRAYER :-

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

I. Exempt the Petitioners from filing certified copy of the impugned final Judgment and Order dated 24.08.2020 in S.B. Civil Writ Petition No. 8056 of 2020 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur.

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II. Pass such other order or orders as may be deemed fit and proper in the circumstances of the case.

DRAWN AND FILED BY

Drawn on: 31.08.2020

(Shail Kumar Dwivedi)

Filed on: 01.09.2020

Advocate for Petitioners