

KARNATAKA JUDGMENT

6 CORE ISSUES IN THE PRESENT:

1. Maintainability of the writ petitions under Article 32,
2. Scope of inquiry of the Speaker while deciding resignation
3. Interplay between resignation and disqualification under the Tenth Schedule
4. Validity of the Disqualification
5. Power of the Speaker under the Tenth Schedule
6. Whether there is any necessity to refer this matter to a larger bench.

ON MAINTAINABILITY

1. [Paragraph 22] We may note that writ jurisdiction is one of the valuable rights provided under Article 32 of the Constitution, which in itself forms part of the basic structure of the Constitution. After the decision in the *Kihoto Hollohan* case (*supra*), the Speaker, while exercising the power to disqualify, is a Tribunal and the validity of the orders are amenable to judicial review. On a perusal of the judgment in the *Kihoto Hollohan* case (*supra*), we do not find any explicit or implicit bar to adjudicate the issue under the writ jurisdiction of this Court.
2. [Paragraph 26] Reliance can be placed on the constitutional provisions and debates thereupon which show that this Court can inquire into the legitimacy of the exercise of the power. Dr. B.R. Ambedkar has described Article 32 as the very soul of the Constitution - very heart of it - most important Article. Moreover, the jurisdiction conferred on this Court by Article 32 is an important and integral part of the basic structure of the Constitution of India and no act of Parliament can abrogate it or take it away except by way of impermissible erosion of fundamental principles of the constitutional scheme are settled propositions of Indian jurisprudence.
3. [Paragraph 27] This Court, as the highest Constitutional Court, has to, and has always, functioned in accordance with the applicable judicially determined parameters while performing its constitutional duty to judicially review the acts of constitutional functionaries. It has examined questions of both fact and law, so long as it has been vested with the power to do so. The scrupulous discharge of duties by all guardians of the Constitution include the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what is properly the domain of other constitutional organs.
4. [Paragraph 30] Despite the fact that this Court has sufficient jurisdiction to deal with disqualification cases under the writ jurisdiction, a party challenging a disqualification order is required to first approach the High Court as it would be appropriate, effective and expeditious remedy to deal with such issues. This Court would have the benefit of a considered judicial verdict from the High Court. If the parties are still aggrieved, then they may approach this Court.

ON RESIGNATION

5. **[Paragraph 35]** ...It is true that 33rd Constitutional Amendment changes the constitutional position by conferring discretion on the Speaker to reject the resignation. However, such discretion is not unqualified; as the resignation can only be rejected if the Speaker is “satisfied that such resignation is not voluntary or genuine”. Determination of whether the resignations were “voluntary” or “genuine” cannot be based on the *ipse dixit* of the Speaker, instead it has to be based on his “satisfaction”. Even though the satisfaction is subjective, it has to be based on objective material showing that resignation is not voluntary or genuine....This satisfaction of the Speaker is subject to judicial review.
6. **[Paragraph 39]**...as a starting principle, it has to be accepted that a member of the Legislature has a right to resign. Nothing in the Constitution, or any statute, prevents him from resigning. A member may choose to resign for a variety of reasons and his reasons may be good or bad, but it is his sole prerogative to resign. An elected member cannot be compelled to continue his office if he chooses to resign. The 33rd Constitutional Amendment does not change this position. On the contrary, it ensures that his resignation is on account of his free will.
7. **[Paragraph 42]**...the word “genuine”... simply mean(s) that a writing by which a member chooses to resign is by the member himself and is not forged by any third party. The word “genuine” only relates to the authenticity of the letter of resignation.
8. **[Paragraph 43]** ... the word “voluntary” ... would mean the resignation should not be based on threat, force or coercion.
9. **[Paragraph 45]** ... Once it is demonstrated that a member is willing to resign out of his free will, the Speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any other extraneous factors while considering the resignation.

INTERPLAY BETWEEN RESIGNATION AND DISQUALIFICATION

10. **[Paragraph 51]** The intent of the [91st Constitutional] Amendment is crystal clear. The constitutional amendment sought to create additional consequences resultant from the determination that a person was disqualified under the Tenth Schedule. If we hold that the disqualification proceedings would become infructuous upon tendering resignation, any member who is on the verge of being disqualified would immediately resign and would escape from the sanctions provided under Articles 75(1B), 164(1B) and 361B. Such an interpretation would therefore not only be against the intent behind the introduction of the Tenth Schedule, but also defeat the spirit of the 91st Constitutional Amendment.
11. **[Paragraph 55]**...there is no doubt that the disqualification relates to the date when such act of defection takes place. The tendering of resignation does not have a bearing on the jurisdiction of the Speaker in this regard.... the taint of disqualification does not vaporise, on resignation, provided the defection has happened prior to the date of resignation
12. **[Paragraph 56]**... resignation and disqualification are distinct mechanisms provided under the law which result in vacancy. Further, the factum/manner of resignation may be a relevant consideration while deciding the disqualification petition. We do not agree with the submission of the Petitioners that the disqualification proceedings cannot be continued if the resignations are tendered. Even if the resignation is tendered, the act resulting in disqualification arising prior to the resignation does not come to an end. The pending or impending disqualification action in the present case would not have been impacted by the submission of the resignation letter, considering the fact that the act of disqualification in this case have arisen prior to the members resigning from the Assembly.

Validity of Disqualification Order

13. [Paragraph 69]... the finality which is attached to the order of Speaker cannot be meant to take away the power of this Court to review the same. In the *Kihoto Hollohan* case (*supra*) this Court recognized the Speaker's role as a tribunal and allowed judicial review of the orders of the same on the grounds provided therein. The Speaker, being a constitutional functionary, is generally presumed to have adjudicated with highest traditions of constitutionalism. In view of the same, a limited review was allowed for the courts to adjudicate upon the orders passed by the Speaker under the Tenth Schedule....
14. [Paragraph 72] Principles of natural justice cannot be reduced into a straitjacket formula. The yardstick of judging the compliance of natural justice, depends on the facts and circumstances of each case...
15. [Paragraph 83]... the scope of judicial review is limited to only grounds elaborated under the *Kihoto Hollohan* case (*supra*).
16. [Paragraph 151] Our findings on allegations of not granting specific time in all the above cases are based on the unique facts and circumstances of each case. It should not be understood to mean that the Speaker could cut short the hearing period. The Speaker should give sufficient opportunity to a member before deciding a disqualification proceeding and ordinarily follow the time limit prescribed in the Rules of the Legislature.

POWER OF SPEAKER

17. [Paragraph 97] However, the provisions do not provide for and deal with disqualification under the Tenth Schedule. Clearly, Section 36 of the Representation of the People Act, 1951 also does not contemplate such disqualification. Therefore, neither under the Constitution nor under the statutory scheme is it contemplated that disqualification under the Tenth Schedule would operate as a bar for contesting re-elections. The language of clauses (1) and (2) of Article 191, Articles 164(1B) and 361B are contrary to the contention of the Respondents.
18. [Paragraph 100] We are unable to agree with the contention of the learned Senior Counsel, Mr. Kapil Sibal, that the power of the Speaker to bar a disqualified member from contesting re-election is inherent to his role and is required to be read into the Constitution to prevent the Speaker from becoming toothless. When the express provisions of the Constitution provide for a specific eventuality, it is not appropriate to read an "inherent" power to confer additional penal consequences. To do so, and accept the contention of the respondents, would be against the express provisions of the Constitution.
19. [Paragraph 103] It is clear that nothing can be added to the grounds of disqualification based on convenience, equity, logic or perceived political intentions.
20. [Paragraph 104 and 105] It is the contention of the Respondents that the Court should consider desirability of having a stricter model of disqualification wherein a person who has jumped the party lines should not be encouraged and should be punished with severe penal consequences for attempting to do so. Further, learned Senior Counsel, Mr. Kapil Sibal, has termed the actions of the Petitioners as a constitutional sin.

We do not subscribe to such an extreme stand taken by the learned Senior Counsel, considering the fact that such extreme stand could have a chilling effect on legitimate dissent. In any case, such a change in the policy cannot be looked into by this Court, as the same squarely falls within the legislative forte. Any attempt to interfere is better termed as reconstruction, which falls beyond the scope of legal interpretation by the Courts. [refer to *G. Narayanaswami* case (*supra*)]

21. [Paragraph 110] From the above, it is clear that the Speaker, in exercise of his powers under the Tenth Schedule, does not have the power to either indicate the period for which a person is disqualified, nor to

bar someone from contesting elections. We must be careful to remember that the desirability of a particular rule or law, should not in any event be confused with the question of existence of the same, and constitutional morality should never be replaced by political morality, in deciding what the Constitution mandates. [refer to *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217]

REFERENCE TO CONSTITUTION BENCH

22. [Paragraph 122] Any question of law of general importance arising incidentally, or any ancillary question of law having no significance to the final outcome, cannot be considered as a substantial question of law. The existence of substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the question of law will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as “Substantial Question of Law”. In any case, no substantial question of law exists in the present matter, which needs reference to a larger bench. The cardinal need is to achieve a judicial balance between the crucial obligation to render justice and the compelling necessity of avoiding prolongation of any *lis*.

IN PARTING

23. [Paragraph 112]...(The) regret this bench has, is with respect to the conduct and the manner in which all the constitutional functionaries have acted in the current scenario. Being a constitutional functionary, the Constitution requires them and their actions to uphold constitutionalism and constitutional morality. In this regard, a functionary is expected to not be vacillated by the prevailing political morality and pressures. In order to uphold the Constitution, we need to have men and women who will make a good Constitution such as ours, better.
24. [Paragraph 114] In view of the same, we can only point out that merely taking the oath to protect and uphold the Constitution may not be sufficient, rather imbibing the Constitutional values in everyday functioning is required and expected by the glorious document that is our Constitution. Having come to conclusion that the Speaker has no power under the Constitution to disqualify the members till the end of the term, we are constrained to make certain observations.
25. [Paragraph 115] In the end we need to note that the Speaker, being a neutral person, is expected to act independently while conducting the proceedings of the house or adjudication of any petitions. The constitutional responsibility endowed upon him has to be scrupulously followed. His political affiliations cannot come in the way of adjudication. If Speaker is not able to disassociate from his political party and behaves contrary to the spirit of the neutrality and independence, such person does not deserve to be reposed with public trust and confidence.
26. [Paragraph 116] In any case, there is a growing trend of Speakers acting against the constitutional duty of being neutral. Additionally, political parties are indulging in horse trading and corrupt practices, due to which the citizens are denied of stable governments. In these circumstances, the Parliament is required to re-consider strengthening certain aspects of the Tenth Schedule, so that such undemocratic practices are discouraged.
27. **CONCLUSIONS:**
- a. The Speaker, while adjudicating a disqualification petition, acts as a *quasi-judicial* authority and the validity of the orders thus passed can be questioned before this Court under Article 32 of the Constitution. However, ordinarily, the party challenging the disqualification is required to first approach the High Court as the same would be appropriate, effective and expeditious.

- b. The Speaker's scope of inquiry with respect to acceptance or rejection of a resignation tendered by a member of the legislature is limited to examine whether such a resignation was tendered voluntarily or genuinely. Once it is demonstrated that a member is willing to resign out of his free will, the speaker has no option but to accept the resignation. It is constitutionally impermissible for the Speaker to take into account any extraneous factors while considering the resignation. The satisfaction of the Speaker is subject to judicial review.
- c. Resignation and disqualification on account of defection under the Tenth Schedule, both result in vacancy of the seat held by the member in the legislature, but further consequences envisaged are different.
- d. Object and purpose of the Tenth Schedule is to curb the evil of political defection motivated by lure of office or rather similar considerations which endanger the foundation of our democracy. By the 91st Constitutional Amendment, Articles 71 (1B), 164(1B) and 361B were enacted to ensure that a member disqualified by the Speaker on account of defection is not appointed as a Minister or holds any remunerative political post from the date of disqualification or till the date on which his term of office would expire or he/she is re-elected to the legislature, whichever is earlier.
- e. Disqualification relates back to the date when the act of defection takes place. Factum and taint of disqualification does not vaporise by tendering a resignation letter to the Speaker. A pending or impending disqualification action does not become infructuous by submission of the resignation letter, when act(s) of disqualification have arisen prior to the member's resignation letter.
- f. In the earlier Constitution Bench judgment of *Kihoto Hollohan (supra)*, the order of the Speaker under Tenth Schedule can be subject to judicial review on four grounds: *malafide*, perversity, violation of the constitutional mandate and order passed in violation of natural justice.
- g. Our findings on allegations of not granting specific time in all the above cases are based on the unique facts and circumstances of the case. It should not be understood to mean that the Speaker could cut short the hearing period. The Speaker should give sufficient opportunity to a member before deciding a disqualification proceeding and ordinarily follow the time limit prescribed in the Rules of the Legislature.
- h. In light of the existing Constitutional mandate, the Speaker is not empowered to disqualify any member till the end of the term. However, a member disqualified under the Tenth Schedule shall be subjected to sanctions provided under Articles 75(1B), 164(1B) and 361B of Constitution, which provides for a bar from being appointed as a Minister or from holding any remunerative political post from the date of disqualification till the date on which the term of his office would expire or if he is re-elected to the legislature, whichever is earlier.
- i. There is a growing trend of the Speaker acting against the constitutional duty of being neutral. Further horse trading and corrupt practices associated with defection and change of loyalty for lure of office or wrong reasons have not abated. Thereby the citizens are denied stable governments. In these circumstances, there is need to consider strengthening certain aspects, so that such undemocratic practices are discouraged and checked.
- j. The existence of a substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the "question of law" will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as "substantial questions of law". In any case, no substantial question of law exists in the present matter, which needs reference to a larger bench.