

A SPEAKER, ORISSA LEGISLATIVE ASSEMBLY

v.

UTKAL KESHARI PARIDA
(Civil Appeal No. 469 of 2013)

JANUARY 17, 2013

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[ALTAMAS KABIR, CJI, J. CHELAMESWAR AND
VIKRAMAJIT SEN, JJ.]

C *Orissa Legislative Assembly (Disqualification on Ground
of Defection) Rules, 1987:*

D *rr. 6(1) and (2) – Petition for disqualification of Members
of Legislative Assembly on ground of defection, filed by a
person, who was President of State Unit of political party but
was not a Member of Legislative Assembly – Held: Is
maintainable – Although, sub-r.(2) of r. 6 provides that a
petition in relation to a Member for the purposes of sub-r. (1)
may be made in writing to the Speaker by any other Member,
such a provision is neither contemplated nor provided for in
the Tenth Schedule itself – In a case where all the four
E Members elected to the Assembly from the political party
concerned, changed their allegiance from the said party to the
ruling party, there would be no one to bring such fact to the
notice of the Speaker and ask for disqualification of the said
Members – Therefore, provisions of sub-rr. (1) and (2) of r. 6
F have 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 – Constitution of India, 1950 – Tenth Schedule –
G Para 2(1)(a), 6 and 8 – Interpretation of Statutes – Reading
down a provision – Locus standi.*

Constitution of India, 1950:

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Tenth Schedule – Provisions as to disqualification on ground of defection – 52nd Amendment – Intent and objects of – Explained. A

Administrative Law:

Delegated legislation – Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 – Held: Being subordinate legislation, the Rules could not make any provision which could have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule to the Constitution of India, as otherwise, the very object of the introduction of the Tenth Schedule to the Constitution would be rendered meaningless – Constitution of India, 1950 – Tenth Schedule – Para 2(1)(a), 6 and 8 – Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 – rr. 6(1) and (2) – Doctrine of reading down. B
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Consequent upon all the four elected members of the National Congress Party (NCP) in the Orissa Legislative Assembly joining the Biju Janata Dal (BJD), i.e., the ruling party in the State, the respondent-President of the State Unit of NCP filed four petitions before the appellant-Speaker of the House seeking disqualification of the said elected members of NCP on ground of defection. According to the respondent, since the matter was being delayed, he filed a writ petition before the High Court for a direction to the Speaker to dispose of the disqualification petitions expeditiously. On the strength of sub-r. (2) of r. 6 of the Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987, an objection was taken regarding the maintainability of the writ petition at the instance of the respondent, who though being the President of the State Unit of the NCP, was not a Member of the Legislative Assembly. The High Court overruled the objection. E
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A Dismissing the appeals, the Court

HELD: 1.1. Although, sub-r. (2) of r. 6 of the Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 provides that a petition in relation to a Member for the purposes of sub-r. (1) may be made in writing to the Speaker by any other Member, such a provision is neither contemplated nor provided for in the Tenth Schedule to the Constitution of India. In a case such as this, where all the four Members elected to the Assembly from the National Congress Party had changed their allegiance from the National Congress Party to the Biju Janata Dal, there would be no one to bring such fact to the notice of the Speaker and ask for disqualification of the said Members. This was not the intent of or the object sought to be achieved by the 52nd Amendment by which the Tenth Schedule was introduced in the Constitution. The Statement of Objects and Reasons of the Bill, which finally became the Constitution (52nd Amendment) Act, 1985, whereby the Tenth Schedule was added to the Constitution with effect from 1st March, 1985, *inter alia*, indicated that the evil of political defection had become a matter of national concern and if it was not checked, it could very well undermine the very foundation of our democracy and the principles which sustain the same. In such event, if the provisions of the Tenth Schedule are interpreted to exclude the right of any person interested to bring to the notice of the Speaker of the House the fact that any or some of its Members had incurred disqualification from the membership of the House on any of the eventualities indicated in paragraphs 2 and 4 therein, it would render the inclusion of the Tenth Schedule to the Constitution *otiose* and defeat the objects and intent of the 52nd Amendment of the Constitution. [para 16-17] [359-C-H; 360-A-C]

H 1.2. Although, paragraph 8 of the Tenth Schedule to

the Constitution of India vests the Speaker of the House with powers to make rules for giving effect to the provisions of the Tenth Schedule, the Rules framed under such powers would amount to delegated legislation which cannot override the substantive provisions of the Constitution contained in the Schedule itself. The provisions of sub-rr. (1) and (2) of r. 6 of the 1987 Rules cannot override the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution or for that matter, paragraph 6 which vests the Speaker of the House with the authority to decide the question as to whether a Member of a House had become subject to disqualification under the Schedule. The Rules being in the domain of procedure, were intended to facilitate the holding of an inquiry and not to frustrate or obstruct the same by the introduction of innumerable technicalities. Being subordinate legislation, the Rules could not make any provision which could have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule, as otherwise, the very object of the introduction of the Tenth Schedule to the Constitution would be rendered meaningless. [para 16,18 and 19] [359-A-C; 360-F-H; 361-A]

Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council and Others 2004 (5) Suppl. SCR 692 = (2004) 8 SCC 747– relied on.

Kihoto Hollohan v. Zachillhu and Others, 1992 (1) SCR 686 = 1992 Supp (2) SCC 651; *Rajendra Singh Rana and Others v. Swami Prasad Maurya and Others* 2007 (2) SCR 591= (2007) 4 SCC 270; *Prakash Singh Badal v. Union of India*, AIR 1987 P & H 263 – referred to.

1.4. The provisions of sub-rr. (1) and (2) of r. 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

A notice of the Speaker the fact that a Member of the House had incurred disqualification under the Tenth Schedule to the Constitution. On receipt of such information, the Speaker of the House would be entitled to decide under paragraph 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. The judgment of the High Court is upheld. [para 19-20] [361-A-C]

Case Law Reference:

C	2004 (5) Suppl. SCR 692	Relied on	Para 5
	1992 (1) SCR 686	referred to	para 5
	2007 (2) SCR 591	referred to	para 5
D	AIR 1987 P & H 263	referred to	para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 469 of 2013.

E From the Judgment & Order dated 27.09.2012 of the High Court of Orissa at Cuttack in W.P. (C) No. 14869 of 2012.

WITH

C.A. Nos. 470, 471 & 472 of 2013.

F K.K. Venugopal, Pitamber Acharya, Raj Kumar Mehta, Antaryami Upadhyay, Rajiv Ranjan Pathak, David, Ankur Talwar for the Appellant.

G Amrendera Sharan, Amit Anand Tiwari, Rajiv Yadav, Ashutosh Jha for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, CJI. 1. Leave granted.

H 2. These Appeals raise an interesting issue relating to the

powers of the Speaker of the Orissa Legislative Assembly under Rule 6(1) and (2) of the Members of Orissa Legislative Assembly (Disqualification On Ground Of Defection) Rules, 1987, hereinafter referred to as "the 1987 Rules", in the wake of paragraphs 2(1)(a) and 8 of the Tenth Schedule to the Constitution of India and are taken up together for disposal. The facts giving rise to the said legal question are set out hereinbelow.

3. The Appellant herein is the Speaker of the Orissa Legislative Assembly. There were four elected members of the National Congress Party (NCP) in the Orissa Legislative Assembly. All the said four elected members of the NCP joined the Biju Janata Dal (BJD), which is the Ruling Party in the State of Orissa. On account of such defection, Respondent, Shri Utkal Keshari Parida, who is the President of the State Unit of the NCP in the State of Orissa, filed four separate Disqualification Petitions before the Appellant for disqualification of the said four elected members of the NCP. The Disqualification Petitions were placed before the Appellant on 24.07.2012 and copies thereof were forwarded to the concerned Members of the Legislative Assembly, in terms of Rule 7(3) of the 1987 Rules.

4. Inasmuch as, the matter was being delayed, the Respondent filed Writ Petition (C) No. 14869 of 2012, before the Orissa High Court, *inter alia*, for a direction to the Speaker of the Assembly to dispose of the Disqualification Petitions expeditiously. Before the Division Bench of the said High Court, an objection was taken regarding the maintainability of the Writ Petition at the instance of the Respondent, who though being the President of the State Unit of the NCP, was not a Member of the Legislative Assembly, in view of the provisions of Sub-rule (2) of Rule 6 of the 1987 Rules. Rule 6 of the 1987 Rules, which is relevant for our purpose, is extracted hereinbelow:

"6 (1) No reference of any question as to whether a Member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in

A relation to such Member made in accordance with the provisions of this rule.

(2) A petition in relation to a Member may be made in writing to the Speaker by any other Member:

B Provided that a petition in relation to the Speaker shall be addressed to the Secretary.

(3) The Secretary shall:-

C (a) as soon as may be after the receipt of a petition under the proviso to sub-rule (2) make a report in respect thereof to the House ; and

D (b) as soon as may be after the House has elected a Member in pursuance of the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule place the petition before such Member.

E (4) Before making any petition in relation to any Member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such Member has become subject to disqualification under the Tenth Schedule.

(5) Every petition:

F (a) shall contain a concise statement of the material facts on which the petitioner relies; and

G (b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person.

H (6) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil

Procedure, 1908 (5 of 1908), for the verification of pleadings. A

(7) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition." B

5. Relying on the interpretation of the aforesaid Rule in the judgment delivered by this Court in *Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council and Others*, [(2004) 8 SCC 747], the High Court came to the conclusion that the Writ Petition was maintainable at the instance of the Respondent herein. While arriving at such conclusion, the High Court also took into consideration the decision in *Kihoto Hollohan v. Zachillhu and Others*, [1992 Supp (2) SCC 651] and the provisions of Article 191 read with paragraph 2 of the Tenth Schedule to the Constitution of India. C D

6. Interpreting the provisions of Rule 6 of the 1987 Rules, the High Court also took into consideration the judgment of this Court in *Rajendra Singh Rana and Others v. Swami Prasad Maurya and Others*, [(2007) 4 SCC 270], in which reference had been made to another decision in the case of *Prakash Singh Badal v. Union of India*, [AIR 1987 P&H 263]. On a consideration of the said two decisions and the other decisions already referred to hereinbefore, the High Court came to the conclusion that it was abundantly clear that if any Member of the House belonging to a political party had joined another political party, which is a disqualification under paragraph 2(1) of the Tenth Schedule, any person interested could make a reference to the Speaker under Rule 6 of the 1987 Rules and it was not necessary that such a reference had to be made by a Member of the Legislative Assembly. On its aforesaid finding, the High Court rejected the contentions made on behalf of the Appellant and held that the same were maintainable under Rule 6 of the 1987 Rules. E F G

7. This Appeal has been preferred by the Speaker of the H

A Orissa Legislative Assembly questioning the aforesaid decision of the High Court.

B 8. Appearing in support of the Appeals, Mr. K.K. Venugopal, learned Senior Advocate, submitted that the High Court had wrongly interpreted the provisions of Sub-rules (1) and (2) of Rule 6 of the 1987 Rules in arriving at the erroneous conclusion that the Disqualification Petitions under Rules 6 and 7 of the 1987 Rules could be made not only by Members of the House, but by any interested person also. Mr. Venugopal urged that the language of Sub-rule (2) of Rule 6 of the 1987 Rules clearly indicates that it is only a Member of the House, who in relation to a petition for disqualification of another Member, could apply to the Speaker. Mr. Venugopal urged that giving any other interpretation to the said provisions would do violence to and be contrary to the intention contained in Rule 6 of the 1987 Rules. Mr. Venugopal urged that after the impugned judgment was delivered by the High Court, the matter was referred by the Speaker to the Committee of Privileges of the House on 15.10.2012 under Rule 7(4) of the 1987 Rules. The meeting of the said Committee was convened on 22.12.2012, but no business could be conducted in the meeting on account of lack of quorum.

F 9. On 2.1.2013, a meeting of the Committee of Privileges was convened to finalise the modalities for hearing of the Disqualification Petitions filed on behalf of the Respondent. However, before the matter came to be decided by the Committee of Privileges, the Special Leave Petition was filed to set aside the judgment of the Division Bench of the Orissa High Court holding that the Disqualification Petitions were maintainable at the instance of a non-Member of the House.

G 10. Mr. Venugopal urged that in the light of the explicit language used in Sub-rule (2) of Rule 6 of the 1987 Rules, framed by the Speaker of the Assembly under paragraph 8 of the Tenth Schedule to the Constitution, the High Court was clearly wrong in interpreting the said provisions so as to allow

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an application for disqualification of a Member of the House to be made by a person who was not a Member thereof. Mr. Venugopal submitted that the Order of the High Court was contrary to the provisions of law and was liable to be set aside.

11. On the other hand, Mr. Amarendra Sharan, learned Senior Advocate, who appeared for the sole Respondent who had made the application for disqualification of the four Members before the Speaker, submitted that the four MLAs who had been elected on the nomination of the NCP, joined the Biju Janata Dal on 5.6.2012, without giving any prior notice of their intention to do so and that they had voluntarily given up the membership of the NCP by joining the BJD, thereby incurring disqualification as Members of the Assembly under paragraph 2(1)(a) of the Tenth Schedule to the Constitution.

12. Mr. Sharan also submitted that the action of the said four MLAs did not amount to a merger of the NCP Legislature Party with the Biju Janata Dal on account of the fact that a merger could only be of a political party with any other political party. Mr. Sharan submitted that the legislature party of a political party by itself had no authority or power to merge with any other political party, without the merger of its original political party. In such circumstances, the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution were squarely attracted to the facts of this case and the same had merely to be brought to the notice of the Speaker for him to hold that the said four MLAs stood disqualified from the membership of the House.

13. On the question of the *locus standi* of the Respondent to maintain the writ petition in his capacity as the President of the State unit of the NCP in the State of Orissa, Mr. Sharan submitted that the said question was no longer *res integra* in view of the decision rendered by this Court in the case of *Dr. Mahachandra Prasad Singh* (supra), in which reference had been made to a Full Bench decision of the Punjab and Haryana High Court in the case of *Prakash Singh Badal* (supra). Mr.

A Sharan submitted that the Full Bench of the Punjab & Haryana High Court had considered the question, which has also arisen in this case, and it had held that paragraph 2(1)(a) of the Tenth Schedule did not contemplate or visualize that the disqualification incurred by a Member of the House would have to be brought to the notice of the Speaker only by a Member of the House. Mr. Sharan submitted that the Full Bench had also indicated that in relation to paragraph 6 of the Tenth Schedule, the only prerequisite is the existence of a question of disqualification of a Member. Such a question could be raised before the Speaker by an interested person for declaring that the said Member stood disqualified from being a Member of the House. It was in that context that in the instant case the Speaker had held that when any Member belonging to a political party joined another political party, which amounted to disqualification under paragraph 2(1)(a) of the Tenth Schedule, any person interested could make a reference to the Speaker under Rule 6 and it was not necessary that such reference would have to be made only by a Member of the Legislative Assembly. Mr. Sharan submitted, that as indicated by this Court in *Dr. Mahachandra Prasad Singh's* case, as President, NCP, the Respondent had the *locus standi* to maintain his application, both before the Speaker, as well as before the High Court.

14. Mr. Sharan submitted that any other interpretation given to the provisions of paragraph 2(1)(a) read with Rule 6 (1) and (2) of the 1987 Rules, would defeat the very object and purpose of the Tenth Schedule to the Constitution.

15. On a consideration of the submissions made on behalf of the respective parties, we are unable to agree with the interpretation sought to be given by Mr. Venugopal to the provisions of Rule 6 of the 1987 Rules read with paragraph 2(1)(a) of the Tenth Schedule to the Constitution on the question of *locus standi* of the Respondent, as the President of the State unit of the National Congress Party in the State of Orissa, to

file the application seeking disqualification of the four Members of the National Congress Party who had switched their loyalties to the Biju Janata Dal.

16. Although, paragraph 8 of the Tenth Schedule vests the Speaker of the House with powers to make rules for giving effect to the provisions of the Tenth Schedule, the Rules framed under such powers would amount to delegated legislation which cannot override the substantive provisions of the Constitution contained in the Schedule itself. The provisions of Sub-Rules (1) and (2) of Rule 6 of the 1987 Rules cannot override the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution or for that matter, paragraph 6 which vests the Speaker of the House with the authority to decide the question as to whether a Member of a House had become subject to disqualification under the Schedule. Although, Rule 6(2) of the 1987 Rules provides that a petition in relation to a Member for the purposes of Sub-Rule (1) may be made in writing to the Speaker by any other Member, such a provision is neither contemplated nor provided for in the Tenth Schedule itself. As has been submitted by Mr. Amarendra Sharan, learned Senior Advocate for the Respondent, in a case such as this, where all the four Members elected to the Assembly from the National Congress Party had changed their allegiance from the National Congress Party to the Biju Janata Dal, there would be no one to bring such fact to the notice of the Speaker and ask for disqualification of the said Members who clearly stood disqualified under the provisions of the Tenth Schedule. In other words, although, disqualified under paragraph 2(1)(a) of the Tenth Schedule, in the absence of any application for disqualification to the Speaker, they would continue to function as Members of the Assembly, which was not the intent of or the object sought to be achieved by the 52nd Amendment by which the Tenth Schedule was introduced in the Constitution.

17. The Statement of Objects and Reasons of the Bill, which finally became the Constitution (52nd Amendment) Act,

A 1985, whereby the Tenth Schedule was added to the
Constitution with effect from 1st March, 1985, *inter alia*,
indicated that the evil of political defection had become a matter
of national concern and if it was not checked, it could very well
undermine the very foundation of our democracy and the
principles which sustain the same. In such event, if the
provisions of the Tenth Schedule are interpreted to exclude the
right of any person interested to bring to the notice of the
Speaker of the House the fact that any or some of its Members
had incurred disqualification from the membership of the House
on any of the eventualities indicated in paragraphs 2 and 4
therein, it would render the inclusion of the Tenth Schedule to
the Constitution *otiose* and defeat the objects and intent of the
52nd Amendment of the Constitution.

18. The conundrum presented on account of the provisions
of the Tenth Schedule in addition to Rules 6(1) and (2) of the
1987 Rules had fallen for consideration in *Dr. Mahachandra
Prasad Singh's* case (*supra*). Speaking for the Bench, G.P.
Mathur, J. (as His Lordship then was), observed in paragraph
16 of the judgment that the purpose and object of the Rules
framed by the Chairman in exercise of power conferred by
paragraph 8 of the Tenth Schedule was to facilitate the
Chairman in discharging his duties and responsibilities in
resolving any dispute as to whether the Member of the House
had become subject to disqualification under the Tenth
Schedule. It was also observed that the Rules being in the
domain of procedure, were intended to facilitate the holding of
an inquiry and not to frustrate or obstruct the same by the
introduction of innumerable technicalities. Being subordinate
legislation, the Rules could not make any provision which could
have the effect of curtailing the content and scope of the
substantive provision, namely, the Tenth Schedule.

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 A
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 B
India. On receipt of such information, the Speaker of the House
would be entitled to decide under paragraph 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. C

20. We, accordingly, dismiss all the appeals and uphold
the judgment of the High Court impugned therein.

21. In the facts and circumstances of the case, there will
be no order as to costs. D

R.P.

Appeals dismissed.