Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1228 OF 2021 (FILING)
WITH
MISC. CIVIL APPLICATION NO. 1673 OF 2021 (FILING)
AND
WRIT PETITION NO. 1530 OF 2021 (FILING)

WRIT PETITION NO. 1228 OF 2021 (FILING)

Girish Chodankar, son of Raya Chodankar, 52 years of age, India National, President of Goa Pradesh Congress Committee of Indian National Congress, resident of LAROM E-1, Nilkanth Enclave Cupangale Housing Colony, Gogol, Margao, Fatorda, Goa, 403 602.

…Petitioner

V e r s u s

1. The Speaker, Goa Legislative Assembly, Porvorim, Goa.

2. Shri Chandrakant Kavalekar, Member iof Legislative Asembly (Quepem Constituency) Goa State Legislative Assembly, Porvorim, Goa.

3. Shri Isidore Fernandes, Member of Legislative Assembly (Cancona Constituency) Goa State Legislative Asembly, Porvorim, Goa.

4. Shri Nilkanth Halarnkar, Member of Legislative Assembly (Tivim Constituency) Goa State Legislative Assembly, Porvorim, Goa.

5. Jennifer Monserrate, Member of

Legislative Assembly (Taleigao Constituency) Goa State Legislative Assembly, Porvorim, Goa.

6. Shri Antonio Fernandes, Member of Legislative Assembly (St. Cruz Constituency) Goa State Legislative Assembly, Porvorim, Goa.

7. Shri Francisco Silveira, Member of Legislative Assembly (St. Andre Constituency) Goa State Legislative Assembly, Porvorim, Goa.

8. Shri Wilfred D'Sa, Member of Legislative Assembly (Nuvem Constituency) Goa State Legislative Assembly, Porvorim, Goa.

9. Shri Clafasio Dias, Member of Legislative Assembly (Cuncolim Constituency) Goa State Legislative Assembly, Porvorim, Goa.

10. Shri Filipe Rodrigues, Member of Legislative Assembly (Velim Constituency) Goa State Legislative Assembly, Porvorim, Goa.

11. Shri Antanasio Monserrate, Member of Legislative Assembly (Panaji Constituency) Goa State Legislative Assembly, Porvorim, Goa. …Respondents

Mr. Vivek Tankha, Senior Advocate *with Mr. Sahil Tagotra and Mr. Abhijit Gosavi, Mr. Ujjwal Sharma, Mr. Athnain Naik, Mr. Tushar Saigal and Mr. Ankur Das, Advocates for the Petitioner.*

Mr. Devidas Pangam *with Mr. Parikshit Sawant, Advocates for the Respondent no.1.*

Mr. Darius J. Khambata, Senior Advocate *with Mr. Nikhil Vaze*

and Mr. Luis Fernandes, Advocates for the Respondent no.2.

Mr. V. R. Dhond, Senior Advocate *with Mr. Nikhil Vaze and Mr. Luis Fernandes, Advocates for the Respondent nos. 3, 8, 9 and 10.*

Mr. Prasad Dhakephalkar, Senior Advocate *with Mr. Vibhav Amonkar, Advocate for the Respondent nos. 4, 5, 6, 7 and 11.*

WITH

MISC. CIVIL APPLICATION NO. 1673 OF 2021
(FILING)

Goa Forward Party, Thr. Its Vice President Durgadas Kamat … Applicant-Intervenor

Versus

Girish Chodankar …Respondent

Mr. D. Lawande, Advocate *with Mr. Jay Mathew, Mr. Sanjay Sardesai and Mr. Gauravvardhan Nadkarni, Advocates for the Applicant-Intervenor.*

Mr. Vivek Tankha, Senior Advocate *with Mr. Sahil Tagotra and Mr. Abhijit Gosavi, Mr. Ujjwal Sharma, Mr. Athnain Naik, Mr. Tushar Saigal and Mr. Ankur Das, Advocates for the Petitioner.*

A N D

WRIT PETITION NO. 1530 OF 2021

Ramkrishna @ Sudin Madhav Dhavalikar, Son of late Madhav Dhavlikar, Aged 62 years, Indian National, Member of the Goa Legislative Assembly, Residing at Mahalaxcmi, Bandora, Ponda, Goa. …Petitioner

Versus

1. The Hon'ble Speaker, Goa Legislative

Assembly, Having Office at Secretariat, Porvorim, Bardez, Goa.

2. Shri Manohar Trimbak Ajgaonkar, Major of age, Indian National, Member of the Goa Legislative Assembly, Through Goa Legislative Assembly Secretariat, Porvorim, Bardez, Goa.

3. Shri Deepak Pauskar, Major of age, Indian National, Member of the Goa Legislative Assembly, Through Goa Legislative Assembly, Through Goa Legislative Assembly Secretariat, Porvorim, Bardez, Goa. …Respondents

Mr. Dhaval Zaveri, Advocate *for the Petitioner.*

Mr. Devidas Pangam *with Mr. Parikshit Sawant, Advocates for the Respondent no.1.*

Mr. Ravi Kadam, Senior Advocate *with Mr. V. A. Lawande and Mr. P. Redkar, Advocates for the Respondent nos. 2 and 3.*

CORAM: MANISH PITALE &
R. N. LADDHA, JJ

Reserved on : 11th February, 2022
Pronounced on : 24th February, 2022

JUDGMENT (***Per Manish Pitale, J.***)

These two Writ Petitions challenge orders passed by the Speaker of the Goa Legislative Assembly dismissing petitions filed for disqualification of respondent Members of the Legislative Assembly. The Speaker has held that the said respondents did not invite disqualification, as the deeming fiction under paragraph 4(2) of the Tenth Schedule to the Constitution operated in their

favour. The Petitioners have, *inter alia*, raised the question of political morality and as to whether the orders passed by the Speaker are in furtherance of the object with which the Tenth Schedule was introduced in the Constitution. In order to appreciate the contentions raised on behalf of the rival parties, it is necessary to first refer to the factual background.

FACTUAL BACKGROUND :

Writ Petition No. 1228 of 2021

1. This Writ Petition is filed by the President of the Goa Pradesh Congress Committee (GPCC), which is a State unit of the political party Indian National Congress (INC), for the State of Goa. The Petitioner has challenged order dated 20.04.2021 passed by the Respondent no.1-Speaker of the Goa State Legislative Assembly, whereby Disqualification Petition No. 3 of 2019 filed by the Petitioner seeking disqualification of Respondent nos. 2 to 11, was dismissed by the Respondent no.1.

2. On 11.03.2017, election was held for the State of Goa and as per the results declared by the Election Commission of India, the following was the tally of elected members belonging to various political parties and independent candidates:

1	Indian National Congress (INC)	17
2	Bharatiya Janata Party (BJP)	13
3	Maharashtra Gomantak Party	3

	(MGP)	
4	Goa Forward Party (GFP)	3
5	National Congress Party (NCP)	1
6	Independents	03
	T O T A L	**40**

3. The elected members of the BJP along with MGP, the GFP and the independents, formed the Government in the State of Goa. Later, one of the Members of the Legislative Assembly (MLA), representing the INC from the Valpoi Constituency resigned from membership of the INC and gave up membership of the Legislative Assembly also. Thereafter, in October 2018, two members of the Legislative Assembly belonging to the INC, resigned from the assembly and joined BJP. In this process, the MLAs belonging to the INC, were reduced to 14. Thereafter, on 17.03.2019, the then Chief Minister of Goa passed away and an MLA of the BJP was appointed as the Chief Minister along with two Deputy Chief Ministers belonging to the MGP and GFP. In the election conducted for the seat that fell vacant due to demise of the then Chief Minister, Respondent no.11 contested and won as an INC candidate. Thus, tally of INC rose to 15.

4. On 10.07.2019, Respondent nos. 2 to 11, claiming to be two-thirds of the legislative party of the INC in the assembly, decided to join the BJP and informed the Respondent no.1-Speaker. On this

basis, the Respondent no.1-Speaker allotted them seats in the Assembly along with the members of the BJP. The office of the Goa Legislative Assembly issued bulletin dated 10.07.2019, recording that INC Legislature Party in the Goa Assembly decided to merge with the BJP and that, accordingly, the ten members i.e. Respondent nos. 2 to 11 herein, were allotted seats along with the members of the BJP in the house.

5. On 08.08.2019, the Petitioner instituted Disqualification Petition no. 3 of 2019, against Respondent nos. 2 to 11 before the Respondent no.1 on the basis of a Resolution dated 24.07.2019, passed by the Goa Pradesh Congress Committee authorizing the Petitioner to file such a Petition. According to the Petitioner, the Respondent nos. 2 to 11 deserved to be declared as disqualified from holding membership of the house, as they had voluntarily given up membership of their original party i.e. INC, thereby attracting disqualification under the Tenth Schedule to the Constitution.

6. Respondent no.1 issued notice and conducted a preliminary hearing on 15.10.2019. On 31.12.2019, the Petitioner filed an application seeking expeditious disposal of the disqualification Petition. On 13.02.2020, when the Respondent nos.2 to 11 sought time of five weeks to file replies, the Respondent no.1 granted time of four weeks. At this hearing, the Petitioner relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Keisham Meghachandra Singh vs. Hon'ble Speaker Manipur Legislative Assembly and Others***[1] to impress upon Respondent no.1 that the

1 2020 SCC OnLine SC 55

outer limit of deciding the Disqualification Petition was three months.

7. The Petitioner was aggrieved by the slow pace at which the Respondent no.1 was proceeding in the matter and hence, he filed Writ Petition (Civil) No. 525 of 2020, before the Supreme Court seeking a direction to the Respondent no.1 for deciding the Disqualification Petition in a time bound manner. The Supreme Court issued notice in the aforesaid Writ Petition, wherein the Respondents entered appearance. The Disqualification Petition remained pending before the Respondent no.1, when on 04.02.2021, the Respondent no.1 fixed the hearing of the Disqualification Petition on 26.02.2021 at 11.00 a.m. On 10.02.2021, the Supreme Court recorded the statement of the learned Solicitor General of India, appearing for the Respondent no.1-Speaker, that the Disqualification Petition was listed for final disposal on 26.02.2021.

8. On 26.02.2021, when the Respondent no.1 took up the Petition for hearing, the Respondent nos. 2 to 11 filed their written statements and claimed that they could not be disqualified under Tenth Schedule to the Constitution, by relying upon paragraph 4(2) of the aforesaid Schedule. The Respondent no.1 reserved the matter for judgment.

9. The Disqualification Petition was then listed on 12.03.2021 when the Petitioner filed an application to produce additional documents, but the same was dismissed. On 05.04.2021, the Respondent no.1 passed orders on three applications. The said Respondent allowed an application for grant of extension of time to

the Respondent nos. 2 to 11 to file written statement. The application for leading evidence was dismissed and an application filed by Respondent nos. 2 to 11 for cross examination was also dismissed. The Respondent no.1 informed the parties that judgment in the matter would be pronounced on 29.04.2021. At this stage, on 06.04.2021, when the aforesaid Writ Petition was listed before the Supreme Court, a statement was made on behalf of Respondent no.1 that final order in the matter would be passed on 20.04.2021. Accordingly, on 20.04.2021, the Respondent no.1 passed the impugned order, dismissing the Disqualification Petition filed by the Petitioner, holding that paragraph 4(2) of the Tenth Schedule to the Constitution applied to the facts of the present case and since two-thirds members of the legislature party of INC had decided to merge with the BJP, the deeming fiction operated, thereby saving Respondent nos. 2 to 11 from disqualification.

10. Upon receiving a certified copy of the impugned Order, on 01.06.2021, the Petitioner filed the present Writ Petition. On 07.06.2021, the Presiding Judge of the Division Bench of the High Court of Bombay at Goa, recused in the matter. Accordingly, since an alternative Division Bench was not available at Goa, the Petition was transferred to the Principal Seat at Bombay. After being adjourned on a few occasions, on the availability of the alternative bench at Goa, in October 2021, the Petition was re-transferred to the High Court of Bombay at Goa. It is in this manner that the said Petition came up for hearing and final disposal along with the companion Writ Petition.

Writ Petition No. 1530 of 2021

11. The facts stated herein above as regards the elections conducted for the Legislative Assembly of Goa in the year 2017 and the tally of elected members belonging to various political parties and independents, applies to the facts of the present Petition also.

12. In the present Petition, it is the case of the Petitioner, who is an elected MLA belonging to the MGP, that the Respondent nos. 2 and 3 deserved to be disqualified under the Tenth Schedule to the Constitution, for having voluntarily given up membership of their original political party i.e. MGP, to join the BJP. The documents filed with the Petition show that, on 20.03.2019, a meeting of the MLAs belonging to the MGP was held, wherein it was resolved that the MGP would merge with the BJP. On this basis, on 26.03.2019, Respondent nos. 2 and 3 sent a letter to the Respondent no.1-Speaker, claiming that the legislature party of the MGP had merged with the BJP, as two-thirds MLAs of the MGP had agreed to merge with the BJP. Relying on paragraph 4(2) of the Tenth Schedule to the Constitution, the Respondent nos. 2 and 3 claimed that the merger had deemed to have taken place. On 27.03.2019, in the early morning hours, the Respondent no.1 accepted the said communication for further steps to be taken in the matter. Accordingly, an order was issued by the Secretariat of the Legislative Assembly of Goa regarding such merger of the Legislature Party of MGP with the BJP, as per paragraph 4 of the Tenth Schedule to the Constitution. This was also published in the Official Gazette.

13. On 03.05.2019, the Petitioner i.e. the lone remaining MLA of the MGP filed Disqualification Petition No. 1 of 2019, challenging the said merger and prayed for disqualification of Respondent nos.2 and 3 under the Tenth Schedule to the Constitution. On 10.05.2019, the Petitioner filed another Disqualification Petition, as there were some technical defects in the earlier Petition. It is an admitted position that the Respondent no.1 eventually passed the impugned Order in the Disqualification Petition No. 1 of 2019. After the Respondent nos. 2 and 3 filed their written statements before the Respondent no.1, the matter remained pending for consideration. In this background, on 10.07.2020, the Petitioner filed Writ Petition (Civil) No. 667 of 2020, before the Supreme Court for early hearing and disposal of the Disqualification Petition by relying upon the aforesaid judgment of the Supreme Court in the case of ***Keisham Meghachandra Singh vs. Hon'ble Speaker Manipur Legislative Assembly and Others*** (supra). The said Writ Petition was tagged along with the Writ Petition (Civil) No. 525 of 2020 filed by the Petitioner in Writ Petition No. 1228 of 2021 before the Supreme Court.

14. On 26.02.2021, the Respondent nos. 2 and 3 filed two applications for production of documents and for cross-examination of Petitioner and examination of fifteen witnesses. This was on the basis of their assertion that the original political party MGP had itself decided to merge with the BJP on 20.03.2019.

15. On 22.03.2021, Respondent no.1 dismissed the application of Respondent nos. 2 and 3 for cross-examination of the Petitioner and for examination of other witnesses. On 05.04.2021, the Respondent no.1 allowed the application of Respondent nos. 2 and 3 for

production of documents and the matter was kept for final disposal on 29.04.2021. It is an admitted position that Respondent nos. 2 and 3 challenged order dated 22.03.2021 passed by the Respondent no.1 dismissing their aforesaid application and the said Writ Petition bearing no.1033 of 2021 (F) is still pending before this Court.

16. On 20.04.2021, the Respondent no.1 passed the impugned order, dismissing the Disqualification Petition, by holding that there was a deemed merger of the political party MGP with the BJP as per paragraph 4(2) of the Tenth Schedule to the Constitution, and that, therefore, the Respondent nos. 2 and 3 could not be disqualified. On 12.07.2021, the Petitioner filed the present Writ Petition, wherein notice was issued for final disposal.

17. The present Writ Petition was heard along with the aforesaid companion Writ Petition No. 1228 of 2021.

SUBMISSIONS/CONTENTIONS OF PARTIES

18. Mr. Tankha, learned Senior Counsel appearing for the Petitioner in Writ Petition No.1228 of 2021, made the following submissions:

> (a) The Respondent no.1-Speaker erred in interpreting paragraph 4 of the Tenth Schedule to the Constitution by treating sub-paragraph (1) in a disjunctive manner from sub-paragraph (2) thereof. The learned Senior Counsel emphasised that paragraph 4 of the said Schedule

contemplates 'twin test' for arriving at a conclusion regarding merger of the original political party. According to him, such merger would be complete and protect a member of a House from being disqualified when there was merger of the original political party and two-thirds members of the legislature party agreed with such merger. According to him, the 'twin test' is contemplated under paragraph 4 of the said Schedule to ensure that the objects and reasons for introducing the Tenth Schedule to the Constitution by the 52nd Amendment to the Constitution in 1985, were achieved.

(b) Attention of this Court was invited to the statement of objects and reasons of the Constitution (Fifty Second Amendment) Act, 1985, emphasising upon the fact that the Amendment was brought about to lay down provisions in respect of splits and mergers of political parties. It was submitted that the whole object of introducing the Tenth Schedule to the Constitution to address the evil of defections would stand frustrated if the order passed by the Respondent no.1 in the present case was upheld. It was submitted that the entire purpose of introducing Tenth Schedule to the Constitution was to address the mischief of defection and hence, it was necessary to hold that Respondent nos. 2 to 11 had attracted disqualification by

voluntarily leaving their original political party, in the absence a merger of the original political party with the other political party. Emphasis was also placed on the objects and reasons for introduction of Amendment in the Tenth Schedule by the Constitution (Ninety First Amendment) Act 2003, as it was introduced to address the problem of bulk defections. It was sought to be ensured that defectors ought not to enjoy remunerative political positions for at least the remaining term of the existing Legislature. Paragraph 3 of the Tenth Schedule to the Constitution was deleted by the said amendment, however, paragraph 4 pertaining to mergers was retained.

(c) The learned Senior Counsel referred to Judgment of the Hon'ble Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu***[2] to contend that the Supreme Court had observed that unprincipled defections were a political and social evil, perceived as such by the Legislature, leading to introduction of the Tenth Schedule to the Constitution. It was emphasized that the Legislature thought it fit to enact paragraph 4 in the Tenth Schedule to the Constitution to provide for the manner in which merger of political parties could be ascertained, so that immoral political defections could be prohibited. It was submitted that small political parties are extremely

2 1992 Supp (2) SCC 651

vulnerable to such moves of dominating larger political parties in the context of mergers and it is the immoral act of unprincipled merger of political parties, having completely different political philosophies, which is sought to be addressed by introduction of paragraph 4 in the Tenth Schedule to the Constitution.

(d) The learned Senior Counsel invited attention of this Court to the impugned judgment and order passed by the Respondent no.1, submitting that the true purpose of paragraph 4 of the Tenth Schedule to the Constitution was not properly understood by the Respondent no.1, while dismissing the Disqualification Petition filed by the Petitioner. It was submitted that the Respondent no.1 erred in holding that since two-thirds members of the legislature party of the INC had decided to merge with the BJP, there was a deeming fiction which operated, and that this situation granted protection to Respondent nos. 2 to 11 from being disqualified as MLAs. It was submitted that material to show merger of the original political party was a *sina qua non* before sub-paragraph (2) of paragraph 4 of the Tenth Schedule could come into operation, which the Respondent no.1 completely failed to appreciate.

(e) The learned Senior Counsel submitted that it was unimaginable that a National Political Party

like the INC could be held to have merged with the other National Party i.e. BJP, only because ten MLAs i.e. Respondent nos. 2 to 11, who constituted two-thirds of the members of the legislature party of the INC, decided to crossover and join the BJP. It was further submitted that the Respondent no.1 erred in drawing an adverse inference against the Petitioner for having opposed the attempt on the part of Respondent nos. 2 to 11 to lead evidence to show merger of the original political party. This was because the material sought to be brought on record was not worth the paper on which it was written and that, in any case, there was not an iota of material to believe that the original political party i.e. the National Party of the stature of INC had merged with the BJP.

(f) The learned Senior Counsel relied upon Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.***[3]**,** to contend that the legal position as regards interpretation of paragraph 4 of the Tenth Schedule to the Constitution was completely covered in favour of the Petitioner as per the ratio of the said Full Bench Judgment. The learned Senior Counsel submitted that the aforesaid Full Bench was concerned with the Maharashtra Local Authority Members'

3 2016 (5) Mh LJ 436

Disqualification Act, 1986 (herein after referred to as the *'Act of 1986*'), which has *pari materia* provisions as compared to the Tenth Schedule to the Constitution. In fact, the aforesaid Act of 1986, is based on the provisions of the said Schedule. By referring to various paragraphs of the Full Bench Judgment, the learned Senior Counsel submitted that it was authoritatively laid down that a merger as claimed by Respondent nos. 2 to 11 to avoid disqualification, would occur only when the aforesaid 'twin test' stood satisfied. It was categorically held in the said Full Bench Judgment that what applied to the case of split of political party, equally applied to the case of merger. On this basis, it was submitted that the Respondent no.1 in the present case committed a grave error in holding that there was a deemed merger on the basis of deemed fiction under paragraph 4(2) of the aforesaid Schedule. It was submitted that since the Full Bench Judgment was binding on this Court, the impugned Order deserved to be set aside.

(g) The learned Senior Counsel appearing for the Petitioner, submitted that if the interpretation adopted by the Respondent no.1 in the impugned order was to be accepted, sub-paragraph (2) would obliterate sub-paragraph (1) of paragraph 4 of the said Schedule. It was submitted that the requirement of the merger of the original political

party would be rendered meaningless if sub-paragraph (2) of paragraph 4 of the said Schedule was to be read in the manner in which the Respondent no.1 had held. The learned Senior Counsel submitted that the Judgment of the Full Bench of the Punjab and Haryana High Court, in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha***[4] and Judgment of the Division Bench of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.***[5]**,** did not lay down the correct position of law. It was emphasized that if the ratio of the said Judgments was to be upheld, it would militate against the very objects and reasons for inclusion of the Tenth Schedule to the Constitution. It was submitted that paragraph 3 of the said Schedule pertaining to split of political parties, which was deleted in the year 2003, applied a similar 'twin test' as contemplated under paragraph 4 of the said Schedule. On this basis, it was submitted that what applied to split of a political party under the erstwhile paragraph 3 of the Schedule, equally applied to merger of political party under paragraph 4 thereof. In this regard, the learned Senior Counsel relied upon the Judgments of the Supreme Court in the case of ***Ravi S. Naik vs. Union of India & Ors.***[6]***, Jagjit***

4 1997 SCC OnLine P&H 788

5 2014 SCC OnLine Gau 610

6 1994 Supp (2) SCC 641

Singh vs. State of Haryana and Ors.[7] and ***Rajendra Singh Rana & Ors. vs. Swami Prasad Maurya & Ors.***[8]

On this basis, the learned Senior Counsel submitted that the impugned Order deserved to be set aside and Respondent nos. 2 to 11 deserved to be disqualified.

19. Mr. Zaveri, learned Counsel appearing for the Petitioner, in Writ Petition No. 1530 of 2021-F, submitted as follows:

(a) The learned Counsel appearing for the Petitioner submitted that he would emphasize upon three aspects relevant for the present case, firstly, the aims and objects of introduction of Tenth Schedule to the Constitution, secondly, true and correct position of the Tenth Schedule and thirdly, whether Respondent no.1-Speaker in the present case had upheld the high traditions of his office.

(b) In support of the first proposition, the learned Counsel laid emphasis upon the Judgment of the Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra), to submit that if the impugned order passed by the Respondent no.1 was to be upheld, political and Constitutional morality will be victims. It was submitted that the

7 (2006) 11 SCC 1

8 (2007) 4 SCC 270

Supreme Court in the said Judgment emphasized that unprincipled defections in the political field were a social evil and the Tenth Schedule to the Constitution was introduced to address the evil of such defections. The learned Counsel submitted that political parties with disparate philosophies and manifestoes, reach out to the people for electing representatives to the Legislature in order to provide governance in consonance with their respective philosophies and programs. The Tenth Schedule addresses the evil of elected members voluntarily giving up membership of their political parties for the lure of office or other extraneous reasons. Keeping the said object of the Tenth Schedule in mind, if the action of Respondent nos. 2 and 3 in the present case is analyzed, it becomes clear that the said Respondents attracted disqualification as the 'twin test' contemplated under paragraph 4 for the merger of political parties, was clearly not satisfied in the present case.

(c) In support of the second proposition pertaining to the interpretation of the Tenth Schedule to the Constitution, the learned Counsel relied upon recent Judgment of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly***[9]**,** wherein the purpose of introduction of Tenth

9 (2020) 2 SCC 595

Schedule as recognized in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra) was reiterated. It was emphasized that in the said recent Judgment also it was held that the Tenth Schedule must be given a wider interpretation to cure the evil of unprincipled defections of elected members. The learned Counsel submitted that the interpretation placed by the Respondent no.1 on the Tenth Schedule, particularly paragraph 4 thereof, operated against the very purpose of introduction of the Tenth Schedule, thereby demonstrating the grave error committed by Respondent no.1. It was submitted that the Tenth Schedule to the Constitution was nothing but a code of ethics, which ought not to be breached by the elected members and in case of such breach, the only consequence that must follow is disqualification from membership of the house.

(d) In support of the third proposition, as to whether the Respondent no.1-Speaker in the present case had upheld the high traditions of his office, the learned Counsel relied upon the Judgment of the Supreme Court in the case of ***Mahachandra Prasad Singh vs. Chairman Bihar Legislative Assembly***[10]. It was emphasized that the Speaker is expected to rise above political affiliations and to apply the provisions of the Constitution, particularly Tenth Schedule thereof,

10 (2004) 8 SCC 747

for the purpose for which the said Schedule was introduced by amendment of the Constitution in the year 1985. The learned Counsel further submitted that it was for the Respondent nos. 2 and 3 to prove that there was a merger of the original political party and that the Petitioner could not be asked to prove the negative. It was submitted that the said Respondents proceeded on the fallacious basis that they were not required to prove that there was merger of the original political party under sub-paragraph (1) of paragraph 4 of the said Schedule, which the Respondent no.1-Speaker also wrongly accepted while passing the impugned Order. The learned Counsel submitted that the impugned order of the Speaker deserved to be judicially reviewed by this Court on the well-established tests to examine whether it suffered from the vice of perversity and malice.

On this basis, it was submitted that the Writ Petition deserved to be allowed and the Respondent nos. 2 and 3 ought to be declared as disqualified.

20. Mr. D. Pangam, learned Counsel, appeared on behalf of the Respondent no.1-Speaker in both the Writ Petitions and made the following submissions:

(a) It was submitted that the 'twin test' being read in paragraph 4 of the Tenth Schedule to the

Constitution on behalf of the Petitioners, was wholly misplaced and that Respondent no.1 was justified in dismissing the Disqualification Petitions.

(b) It was submitted that there was a clear difference between the erstwhile paragraph 3 of the Tenth Schedule to the Constitution pertaining to split of political party and paragraph 4 thereof, which pertains to merger of political parties. It was submitted that what applied to split of a political party does not apply to merger under paragraph 4 of the said Schedule, because the words of the two paragraphs are distinct. It was submitted that there was no deemed fiction in paragraph 3 of the said Schedule, while under sub-paragraph (2) to paragraph 4 of the said Schedule, there is a clear deeming fiction regarding merger of political parties and consequent protection of the members of the house from disqualification.

(c) It was submitted that paragraph 4 of the said Schedule is an exception to disqualification under paragraph 2 thereof and this is clear from the fact that paragraph 2(1) opens with the words "S*ubject to the provisions of the paragraphs 4 and 5*". It was further submitted that sub-paragraph (1) of paragraph 4 in the Tenth Schedule operates as a complete code in itself.

(d) It was further submitted that under the erstwhile paragraph 3 of the Tenth Schedule, there had to be a factual split of the political party, while under sub-paragraph (2) of paragraph 4 of the Schedule, a deeming fiction operates regarding merger. It was further submitted that under such deeming fiction, even if there is no factual merger of the original political party, it has to be deemed that such a merger has taken place, so long as two-thirds members of the legislature party concerned, agree for the merger.

(e) It was further submitted that the theory propounded on behalf of the Petitioners as regards the twin requirement in paragraph 4 of the Tenth Schedule, was wholly unworkable. It was submitted that if merger of the original political party contemplated under sub-paragraph (1) of paragraph 4 could be said to be complete only if two-thirds members of the legislature party concerned agree to such a merger under sub-paragraph (2), it would result in an incongruous situation. It was submitted that if there was factual merger of two National Parties at the National level, such merger would be frustrated if only two-thirds members of legislature party of even one Legislature in the country would not agree with such a merger. On this basis, it was submitted that the interpretation canvassed on

behalf of the Petitioners is illogical and unworkable.

(f) It was further submitted that while much emphasis was placed by the learned Counsel appearing for the Petitioner on the Full Bench Judgment of this Court, in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), the same was never placed before the Respondent no.1-Speaker when the Disqualification Petitions were argued. On this basis, it was submitted that the Petitioners were not justified in claiming that the impugned Orders passed by the Respondent no.1-Speaker were erroneous. It was further submitted that Full Bench Judgment stood impliedly overruled by the recent Judgment of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra). In this regard, reliance was placed on paragraphs 183 to 189 of the said Judgment.

(g) As regards alleged delay on the part of Respondent no.1 in deciding the Disqualification Petitions, it was submitted that the House could not meet for long durations due to the Covid-19 pandemic and, therefore, it could not be said that the Respondent no.1 had deliberately delayed decision on the Disqualification Petitions.

21. Mr. Khambata, learned Senior Counsel appearing for the Respondent no.2 in Writ Petition No. 1228 of 2021, submitted as follows:

(a) In the face of undisputed facts, in the present case, by operation of the deeming fiction under paragraph 4(2) of the Tenth Schedule to the Constitution, Respondent no.2 was clearly saved from disqualification. The learned Senior Counsel emphasized on the admitted position that ten out of fifteen MLAs of the INC i.e. the Respondent nos. 2 to 11 in the Petition, admittedly, comprising of two-thirds of the legislature party, had agreed to merge with the BJP. Consequently, the deeming fiction under paragraph 4(2) of the aforesaid Schedule came into operation, thereby protecting the said Respondents from disqualification.

(b) The learned Senior Counsel submitted that sub-paragraph (1) and (2) of paragraph 4 of the said Schedule operated in different fields and since a deeming fiction came into operation under sub-paragraph (2), even if there was no factual merger of the original political party, it had to be assumed that such a merger had taken place.

(c) It was further submitted that the opening words of sub-paragraph (2) of paragraph 4 of the said Schedule, i.e. "*For the purpose of sub-paragraph (1) of this paragraph*" are significant

for the reason that the purpose of sub-paragraph (1) is to protect a member of the House from disqualification, and not to lay down provisions for merger of the original political party. It was submitted that when the purpose of sub-paragraph (1) was to provide for protection of a member from disqualification, despite voluntarily giving up membership of the original political party, the deeming fiction under sub-paragraph (2) would operate for affording such a protection, if and only if, not less than two-thirds of the members of the legislature party concerned, agreed for merger. On this basis, it was submitted that the Respondent no.1 had correctly applied the deeming fiction under sub-paragraph (2) of paragraph 4 of the said Schedule to hold that the Disqualification Petition deserved to be dismissed.

(d) It was emphasised by the learned Senior Counsel, by referring to Judgment of the Supreme Court in the case of ***M. Venugopal vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. & anr.***[11], that under a deeming fiction, an imaginary state of affairs is to be treated as real. Accordingly, under sub-paragraph (2) of paragraph 4 of the said Schedule, even if there is no merger of the original political party, it has to be deemed or assumed that such a merger has taken place, the consequence of which

11 (1994) 2 SCC 323

would be that the protection contemplated under paragraph 4(1)(a)(b) of the said Schedule would come into operation. The learned Senior Counsel relied upon Full Bench Judgment of the Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.***(supra), to support the aforesaid interpretation placed on paragraph 4 of the said Schedule.

(e) In the context of the contention regarding political and Constitutional morality raised on behalf of the Petitioner, by placing reliance on the judgment in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra), the learned Senior Counsel relied upon paragraphs 49 to 51 thereof to contend that it was for the Legislature to assess the extent of standards of political proprieties and morality. It was emphasized that the Parliament itself in its wisdom had drawn a line under sub-paragraph (2) of paragraph 4 of the Tenth Schedule that when two-thirds members of the legislature party agreed for a merger, it had to be deemed that such a merger had occurred, thereby affording protection to the members from disqualification. It was submitted that as per the Supreme Court in the

judgment of ***Kihoto Hollohan vs. Zachillhu*** (supra), in such a situation, there was a presumption of *bona-fides* on the part of such elected members.

(f) It was submitted that if the interpretation canvassed by the Petitioners was to be accepted, sub-paragraph (2) of paragraph 4 would be rendered otiose. The submission made on behalf of Respondent no.1 about the unworkable nature of the interpretation regarding 'twin test' in paragraph 4 of the said Schedule, was reiterated and emphasized on behalf of Respondent no.2 also.

(g) The learned Senior Counsel submitted that the Full Bench of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), was not concerned with the interpretation of the deeming fiction specified in sub-paragraph (2) of Paragraph 4 of the said Schedule. Attention of this Court was invited to the two questions referred to the Full Bench, none of which concerned interpretation and applicability of the said deeming fiction. The learned Senior Counsel emphasized upon the facts of the case in which the Full Bench had rendered its opinion, seeking to distinguish the same from the facts of the case before this Court. It was

submitted that the passing observations made by the Full Bench of this Court, in respect of the provisions of the Act of 1986, *pari materia* to sub-paragraph (2) of paragraph 4 of the said Schedule, were not even *obiter dicta*, much less the *ratio decidendi* of the said Full Bench judgment.

(h) The learned Senior Counsel submitted that the recent Judgment of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra), impliedly overruled the aforesaid judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra). By referring to the facts of the lone member of the Assembly of a political party in respect of whom the Supreme Court had considered the said aspect of merger, it was submitted that the deeming fiction given full emphasis and operation in the impugned Order passed by the Respondent no.1-Speaker, was accepted as the correct interpretation of paragraph 4 of the said Schedule in the said recent Judgment of the Supreme Court.

22. Mr. Ravi Kadam, learned Senior Counsel, appearing for Respondent nos. 2 and 3 in Writ Petition No. 1530 of 2021, supported the contentions raised by Mr. Khambata, learned Senior Counsel, who appeared for Respondent no.2 in Writ Petition No. 1228 of 2021. The learned Senior Counsel submitted as follows:

(a) Additionally, Mr. Kadam, learned Senior Counsel, highlighted the factual difference between the two Writ Petitions, by stating that the aforesaid Respondents in Writ Petition No. 1530 of 2021 had, in fact, sought to lead evidence to show merger of the original political party itself. There was material available with the said Respondents to support the said assertion. The Respondent no.1-Speaker had rejected the attempt on the part of the said Respondents to lead evidence on the basis of specific objection raised on behalf of the Petitioner. It was submitted that a perusal of the impugned Order passed by the Respondent no.1-Speaker would show that the Petitioner himself had stridently opposed leading of evidence on the said aspect of the matter, even when such material was indeed available with the said Respondents.

(b) The learned Senior Counsel further submitted that sub-paragraphs (1) and (2) of paragraph 4 of the Schedule to the Constitution were disjunctive and operated in distinct fields. Paragraph 4 was sought to be distinguished from the erstwhile paragraph 3 of the said Schedule, wherein conjunctive language was used and it was clear that split of a political party was a different concept as compared to merger. It was further submitted that sub-paragraph (2) of paragraph 4 of

the said Schedule was neither a rider nor an additional condition to sub-paragraph (1).

(c) The learned Senior Counsel relied upon the Judgment of the Supreme Court in the case of ***Mahadeolal Kanodia vs. Administrator General WB***[12], which deals with what could be said to be a substantive proximate. By applying the said concept to the use of the word "*merger*" towards the end of sub paragraph (2) of paragraph 4 of the said Schedule, it was emphasized that it was substantively proximate to the words in the said sub-paragraph pertaining to the deemed merger of the political party.

(d) The learned Senior Counsel then invited attention of this Court to the parliamentary debates pertaining to the Fifty Second Amendment to the Constitution, whereby the Tenth Schedule was introduced. It was submitted that a perusal of the same would show that the members of the House were aware about the manner in which the language of paragraph 4 of the said Schedule pertaining to merger, would be interpreted. Yet, it was submitted that the Parliament chose to continue with the same language, which clearly indicates that sub-paragraph (2) is distinct and operates in a separate field as compared to sub-paragraph (1) of

12 AIR 1960 SC 936

paragraph 4 of the said Schedule. In order to support the contention that debates of the House could be placed before the Court while interpreting a Constitutional provision, the learned Senior Counsel relied upon the judgments of the Supreme Court in the case of ***Fagu Shaw vs. State of West Bengal***[13] and ***SR Chaudhari vs. State of Punjab***[14]. According to the learned Senior Counsel, it was necessary to elucidate the purpose for which the Constitutional provision was brought into existence.

(e) The learned Senior Counsel then referred to paragraphs 50 to 52 of the Judgment of the Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra), emphasising that the Parliament in its wisdom had thought it fit to provide that there shall be deemed merger of original political party if not less than two-thirds members of the legislature party agreed to the merger. According to the learned Senior Counsel, the threshold of Constitutional morality was fixed in terms of paragraph 4 (2) of the aforesaid Schedule and that the arguments made on behalf of the Petitioners regarding political and Constitutional morality or the object for which the Tenth Schedule was introduced in the

13 (1974) 4 SCC 152

14 (2001) 7 SCC 126

Constitution, could be of no avail.

(f) As regards the Full Bench Judgement of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), the learned Senior Counsel invited attention to paragraphs 2 to 6 and 75 of the Full Bench judgment to emphasize that the questions for considerations before the Full Bench had nothing to do with paragraph 4(2) of the aforesaid Schedule, which concerned the concept of deeming fiction in the context of merger of a political party.

23. Mr. Dhakephalkar, learned Senior Counsel appearing for the Respondent nos. 4 to 7 and 11 in Writ Petition No. 1228 of 2021, supported the above mentioned contentions raised on behalf of the other Respondents and added that a perusal of paragraph 4(2) of the aforesaid Schedule to the Constitution would show that the Speaker has control over only the Legislature Party and he can certainly not have any control over political parties. In this context, it was submitted that the Speaker was only concerned with the applicability of the deemed fiction in paragraph 4(2) to the aforesaid Schedule, provided not less than two-thirds members of a legislature party agreed to the merger, which would then protect the elected members from disqualification. It was emphasized that only the Speaker could decide as to whether the deeming fiction would operate in a particular factual scenario or not.

24. The learned Senior Counsel reiterated that the concept of split of a political party was distinct from its merger. He emphasised upon the words "*if and only if*" to focus on the manner in which the deeming fiction would operate under paragraph 4(2) of the Schedule.

25. The learned Senior Counsel invited attention of this Court to the 170th Report of the Law Commission of India to contend that it was specifically observed therein that the Tenth Schedule to the Constitution governs only membership of the House and splits and mergers among the members of the political party in the House and further that it does not purport to govern or regulate the political process outside the House. On this basis, it was submitted that the sub-paragraphs (1) and (2) of paragraph 4 of the aforesaid Schedule operated in distinct fields.

26. Mr. Dhond, learned Senior Counsel appearing for Respondent nos. 3 ,8, 9 and 10 in Writ Petition No.1228 of 2021, submitted as follows:

> (a) The position of law laid down in the Judgment of the Full Bench of the Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.*** (supra), was the correct position of law as regards interpretation of paragraph 4 (2) of the aforesaid Schedule.

(b) As regards the Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), the learned Senior Counsel submitted that a perusal of the questions referred to the Full Bench would indicate that the questions regarding deeming fiction under Section 5(2) of the Act of 1986, which is *pari materia* with paragraph 4(2) of the aforesaid Schedule, did not arise for consideration at all. The Full Bench of this Court was concerned with a post-poll "a*ghadi*" and there was no argument on deeming fiction under Section 5(2) of the Act of 1986.

(c) It was further emphasized that the reference in the Full Bench Judgment of this Court to the judgment of the Supreme Court in the case of ***Mayavati vs. Markandeya Chand & Ors***[15]**,** was wholly misplaced because in the said Judgment of the Supreme Court, there were two different opinions expressed by the Hon'ble Judges and ultimately the matter was referred to a larger Bench.

(d) The learned Senior Counsel referred to various paragraphs of the aforesaid Full Bench Judgment of this Court and submitted that the observations made in paragraph 36 of the said Judgment, upon which the Petitioners had placed

15 (1998) 7 SCC 517

much emphasis, were not referable to the questions being considered by the Full Bench. It was further submitted that the observations made in paragraph 36 were based on an assumption that split of a political party is the same as merger, which is not the position in law at all and it did not even fall for consideration of the Full Bench. It was further submitted that the concept of deeming fiction was not even noticed by the Full Bench, because that was not an issue in the matter. It was further submitted that the said observations made by the Full Bench cannot be said to be findings or ratio which would be binding on this Court. As an alternative and in the worst-case scenario, the learned Senior Counsel submitted that this Court could consider placing the papers before the Hon'ble Chief Justice, for being placed before a larger Bench in terms of the relevant Rules.

27. Mr. Lawande, learned Counsel appearing for the Intervenor in Writ Petition No. 1228 of 2021, supported the contentions raised on behalf of the Respondents. He emphasised that paragraph 4 of the said Schedule concerned protection of a member of a House from disqualification and not merger of political parties.

28. Mr. Tankha, the learned Senior Counsel appearing for the Petitioner in Writ Petition No.1228 of 2021, made brief submissions in rejoinder, emphasizing upon the objects and reasons for introduction of the Tenth Schedule in the Constitution. He invited

attention of this Court to paragraph 2(2) of the aforesaid Schedule to state that an independent candidate would stand disqualified, but if the contentions of the Respondents were to be accepted, two-thirds members of the legislature party would be saved from disqualification under paragraph 4(2) of the said Schedule, which was incongruous and unacceptable. It was also emphasised that under paragraph 2(3) of the said Schedule, what applied to an independent candidate also applied to a nominated candidate, thereby highlighting the incongruity of the submissions made by the learned Counsel for the respondents. As regards the alleged unworkability of the 'twin test', in respect of paragraph 4 of the said Schedule, it was submitted that the same was clearly workable because when members of the Legislature Party chose not to merge despite a merger of the original political party under paragraph 4(1) of the said Schedule, they would form a separate group.

29. It was contended that the contentions raised on behalf of the Petitioner could have been accepted in the context of paragraph 4(2) of the said Schedule if sub-paragraph (2) had opened with the words "*Notwithstanding anything in sub-paragraph (1)",* instead of the words "*For the purposes of sub-paragraph (1)".*

30. It was submitted that the Full Bench Judgment of Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) relied upon by the learned Counsel appearing for the Respondents was based on an erroneous interpretation of paragraph 4 of the said Schedule. It was submitted that surprisingly, the very same Bench on the very same day, pronounced Judgment in the case of ***Ram Bilas Sharma vs. The***

Speaker, Haryana Vidhan Sabha[16] holding the position of law to the contrary. On the aspect of reliance placed by the Petitioner on the Judgment of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra), it was submitted that if the facts were properly appreciated, the observations of the Supreme Court supported the contentions raised on behalf of the Petitioner, as there was merger of the original political party in that case.

31. The learned Senior Counsel emphasised that ratio of the Full Bench of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), was binding on this Court and that the Writ Petitions deserved to be allowed.

32. Mr. D. Zaveri, learned Counsel appearing for the Petitioner in Writ Petition No. 1530 of 2021, also made submissions in rejoinder, in the same manner in which submissions were made for the Petitioner in Writ Petition No. 1228 of 2021.

33. **QUESTIONS FOR CONSIDERATION**

(1) What is the true scope and purport of paragraph 4 of the Tenth Schedule to the Constitution and whether sub-paragraphs (1) and (2) thereof operate in distinct and independent fields and whether there is a 'twin test' contemplated under the said paragraph for merger of political party to afford protection from disqualification of Member of a House?

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16 1997 SCC OnLine 785

(2) Whether sub-paragraphs (1) and (2) of paragraph 4 of the Tenth Schedule to the Constitution are disjunctive, wherein sub-paragraph (1) is a complete code in itself and sub-paragraph (2) concerns only a deeming fiction?

(3) Whether the concept of split of a political party contemplated under paragraph 3 (now deleted) of the Tenth Schedule to the Constitution, is the same as the concept of merger of a political party under paragraph 4 of the said Schedule?

(4) Whether the Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), is a binding precedent for interpretation of paragraph 4(2) of the Tenth Schedule to the Constitution?

(5) Whether the Judgment of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra), impliedly overrules the Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra) and whether it effectively supports the case of the Respondents?

(6) Whether the Full Bench Judgment of Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan***

Sabha (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.***(supra), lay down the correct position of law as regards paragraph 4(2) of the Tenth Schedule to the Constitution ?

(7) Whether the Petitioners are justified in contending that if the interpretation canvassed on behalf of the Respondents concerning paragraph 4(2) of the Tenth Schedule to the Constitution is accepted, it would militate against the object for which the Tenth Schedule was introduced in the Constitution, thereby encouraging defections, ignoring the political and Constitutional morality sought to be encouraged by the very introduction of the said Schedule?

(8) Whether the impugned Orders passed by the Respondent no.1-Speaker deserve interference?

CONSIDERATION AND FINDINGS :

34. In re: Questions 1 and 2 : -

Before proceeding to consider the aforesaid questions 1 and 2, it would be pertinent to consider the scope of judicial review of orders and decisions of the Speaker under writ jurisdiction. In the case of ***Kihoto Hollohan vs. Zachillhu*** (supra), the Supreme Court

has laid down that the scope of such judicial review would be confined to jurisdictional errors only, pertaining to infirmities based on violation of Constitutional mandate, malafides, non-compliance of rules of natural justice and perversity. In the present case, considering the nature of contentions raised on behalf of the Petitioners, it is found that judicial review of the impugned orders passed by the Respondent no.1-Speaker in these two Petitions, is sought on alleged violation of the Constitutional mandate and perversity. Keeping the aforesaid limited scope of judicial review in mind, while examining the correctness of the impugned orders passed by the Speaker, we proceed to consider the aforesaid questions.

35. It would be appropriate to refer to relevant portions of the Tenth Schedule to the Constitution for considering questions 1 and 2 framed above. The relevant portions of the Tenth Schedule to the Constitution read as follows:

> *"**1. Interpretation.**—In this Schedule, unless the context otherwise requires:*
>
> *(a) ...*
>
> *(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{3-deleted*}, 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;

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.

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.

3. *(Para 3, deleted- vide 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."

36. A perusal of the above-quoted provisions shows that Legislature Party and original political party are two distinct entities recognized in the Tenth Schedule itself. Paragraph 2 of the said Schedule provides for contingencies in which a Member of a House stands disqualified. It is relevant that the said paragraph is subject to the provisions of paragraphs 4 and 5, and for the controversy in the present cases, paragraph 4 is relevant. In other words, the Member of a House would invite disqualification under paragraph 2 of the said Schedule if the contingencies contemplated therein occur, but such member would be protected from disqualification if paragraph 4 of the said Schedule comes into operation.

37. Paragraph 2(1)(a) provides that a Member of a House belonging to any political party would stand disqualified if he voluntarily gives up his membership of such political party. The other contingency is stated in paragraph 2(1)(b), with which we are not concerned in the present Petitions.

38. Explanation (a) to paragraph 2(1) of the said Schedule specifically states that an elected Member of a House shall be deemed to belong to the political party which sets him up as a candidate for election. Therefore, when a candidate contests

election on the ticket of a political party and gets elected as a Member of a House, under the aforesaid explanation, he is deemed to be belonging to that political party.

39. Under paragraph 4 of the said Schedule, an exception to disqualification under paragraph 2 is carved out in the context of merger of the original political party to which an elected member is deemed to belong. Sub-paragraph (1) of paragraph 4 of the said Schedule starts with the words "*A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2*". These opening words are of immense significance, because they point towards the exception to paragraph 2(1) of the said Schedule being carved out to protect a member of a House from disqualification.

40. Sub-paragraph (1) of paragraph 4 of the said Schedule provides that when the original political party of a member of a House, meaning thereby that the political party that had set him up as a candidate for the election, merges with another political party, such a member will not be disqualified under sub-paragraph (1) of paragraph (2) of the said Schedule, if he becomes member of such other political party or of a new political party formed by such merger or having not accepted the merger, he opts to function along with the other like minded members as a separate group. It is further laid down in the said provision that after such merger, for the purpose of sub-paragraph (1) of paragraph 2, such an elected member would be deemed to be belonging to the political party into which his original political party has merged or the new political party that may be formed by such merger. If the elected member disagrees with the merger and sits separately either himself or with other like minded members who have chosen to disagree with the

merger, the separate group so formed shall be deemed to be the political party of such member/members for the purpose of sub-paragraph (1) of paragraph 2.

41. In simple words, upon the merger of the original political party of the elected member with another political party, the elected member will not face disqualification in either contingency i.e. whether he chooses to go with the merger or disagrees with the same. But, sub-paragraph (2) of paragraph 4 of the said Schedule speaks of a deemed merger of the original political party to which an elected member of the House belongs, if and only if, not less than two-thirds members of the legislature party agree to such merger. It is crucial that sub-paragraph (2) of paragraph 4 specifically refers to "*legislature party*" and that this expression is not contained in sub-paragraph (1) of paragraph 4 of the said Schedule.

42. It is equally significant that sub-paragraph (2) of paragraph 4 of the said Schedule opens with the words "*For the purposes of sub paragraph (1) of this paragraph".* It is necessary to examine as to what can be said to be the purpose of sub-paragraph (1) of paragraph 4. As noted above, the opening words of sub-paragraph (1) of paragraph 4, provide that a member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2, thereby indicating that the said sub-paragraph (1) of paragraph 4 of the said Schedule aims at carving out an exception to disqualification of the elected member under sub-paragraph (1) of paragraph 2, when the member voluntarily gives up his membership of the political party to which he belongs. The purpose is to ensure protection from disqualification of the member of the House in respect of which

specific contingency is spelt out in sub-paragraph (1) of paragraph 4. The said contingency pertains to merger of the original political party with another political party. Such merger pertains to factual merger of such political party, which is an event necessarily outside the House. It is left open under the said provision for a member of the House to agree or disagree with such merger and it is in this context that sub-paragraph (1) of paragraph 4 of the said Schedule contains clauses (a) and (b).

43. A perusal of sub-paragraph (2) of paragraph 4 of the said Schedule shows that a specific deeming fiction is provided in the context of merger of the original political party of a member of a House for the purpose of sub-paragraph (1) of paragraph 4. When the purpose of sub-paragraph (1) of paragraph 4 is to carve out an exception to disqualification of a member of a House under sub-paragraph (1) of paragraph 2 of the said Schedule, then the deeming fiction has to be examined on the touchstone of the said purpose. It is specifically provided in sub-paragraph (2) of paragraph 4 that 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. It is clear from the said wordings that the deeming fiction comes into operation on the stringent condition that not less than two-thirds members of the legislature party agree to such merger. This clearly indicates that sub-paragraph (2) of paragraph 4 of the said Schedule operates in a field distinct and independent of sub-paragraph (1) of paragraph 4. This distinct and independent field contemplates a situation where there is no merger of the original political party and yet, it has to be deemed that such merger has taken place, if and only if, not less than two-thirds of the

members of the legislature party agree to such a merger. Once the said condition is satisfied, the deeming fiction operates under sub-paragraph (2) of paragraph 4 of the said Schedule for the purpose of sub-paragraph (1) thereof, which is protecting the member of a House from disqualification under sub-paragraph (1) of paragraph 2.

44. Reading paragraph 4 in its entirety, it becomes clear that the contention raised on behalf of the Respondents that sub-paragraphs (1) and (2) are disjunctive in nature, is correct and it is based on proper interpretation of the said provision. A bare reading of sub-paragraph (1) of paragraph 4 shows that it is indeed a complete code in itself, providing for protecting from disqualification of members of the House in case of merger of the original political party with another political party, whether they go with such merger or disagree with the same. Sub-paragraph (1) of paragraph 4 and sub-paragraph (2) thereof operate in distinct fields. Sub-paragraph (2) of paragraph 4 of the said Schedule, by its very language, cannot be said to be in addition to or being an additional condition for operation of sub-paragraph (1) of paragraph 4.

45. In fact, sub-paragraph (2) of paragraph 4 comes into operation to protect a member of a House from disqualification when only the members of the legislature party, being not less than two-thirds in number, agree amongst themselves for merger of the political party. The need for providing a deeming fiction in sub-paragraph (2) of paragraph 4 of the said Schedule clearly indicates that it cannot be an additional condition to sub-paragraph (1) of paragraph 4. If any other interpretation is placed upon paragraph 4

in its entirety, the existence of sub-paragraph (2) of paragraph 4 of the said Schedule would appear to be meaningless.

46. The learned Senior Counsel appearing for the Respondents are justified in relying upon the judgment of the Supreme Court in the case of ***M. Venugopal vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. & anr*** (supra), wherein the dictum laid down in the case of ***East End Dwellings Co. Ltd. vs. Finsbury Borough Council***[17]**,** has been accepted and followed. In the context of deeming fiction, the Supreme Court in the said judgment has recognized and emphasized upon the position of law that when there is a deeming fiction incorporated in a provision, the Court has to proceed by treating an imaginary state of affairs as real and then also imagining as real the consequences that would inevitably flow on the basis that the state of affairs imagined in fact exist. In the present case, as per sub-paragraph (2) of paragraph 4 of the said Schedule, the deeming fiction comes into operation the moment not less than two-thirds members of the legislature party agree for merger and the moment such deeming fiction operates, the Court has to proceed on the basis that in fact there has been a merger of the original political party, as a result of which, the real consequences must inevitably follow. Once such deeming fiction comes into operation, the real consequences specifically spelt out in sub-paragraph (1) of paragraph 4 of the said Schedule, particularly elaborated in clauses (a) and (b) thereof, must follow. It is correct that once the deeming fiction comes into operation, even when there is, in fact, no merger of the original political party, we have to proceed on the basis that such merger has taken place by operation

17 1952 AC 109 (HC)

of the deeming fiction, so long as not less than two-thirds members of the legislature party agree to such a merger.

47. In this context, the contention raised on behalf of the Respondents pertaining to the concept of substantive proximate becomes relevant. The reliance placed on the judgment of the Supreme Court in the case of ***Mahadeolal Kanodia vs. Administrator General WB*** (supra), is justified, where rules of grammar were applied to a specific provision to elaborate the concept of substantive proximate and the manner in which a particular provision is to be read and interpreted. Applying the said concept to sub-paragraph (2) of paragraph 4 of the said Schedule, the words "*have agreed to such merger"* are substantively proximate to the words "*deemed to have taken place",* indicating that such merger of the political party refers to deemed merger in sub-paragraph (2) of paragraph 4 and not merger of the original political party as specified and contemplated under sub-paragraph (1) of paragraph 4 of the said Schedule.

48. Viewed from this angle, it becomes clear that the Petitioners are not justified in contending that sub-paragraphs (1) and (2) of paragraph 4 of the said Schedule are interlinked, interdependent and the necessity of not less than two-thirds members of the legislature party agreeing to the merger is an additional condition for merger of the original political party under sub-paragraph (1) of paragraph 4. As noted above, sub-paragraph (1) of paragraph 4 addresses the fall out of merger of a political party on members of the House, whether they agree or disagree with the same. The same is clearly disjunctive from the specific situation of deemed merger

contemplated under sub-paragraph (2) of paragraph 4. Moreover, the Speaker under sub-paragraph (2) of paragraph 4 of the said Schedule, can decide only about the legislature party and whether two-thirds members of the legislature party have agreed for merger.

49. The learned Counsel appearing for the Respondents are also justified in highlighting the unworkable nature of paragraph 4 of the said Schedule, if the contentions raised on behalf of the Petitioners are accepted. It is correctly pointed out that merger of an original political party, which is a National Party with another political party which is also a National Party, would not take place, even if factually both political parties have agreed for a merger, only because not less than two-thirds members of legislature party of such political parties in even one legislature in the entire Country have not agreed for such merger. The contention raised on behalf of the Petitioners that this does not indicate unworkable nature of paragraph 4, by stating that such members of the legislature party would sit as a separate group, cannot be accepted because it would render sub-paragraph (2) of paragraph 4 completely otiose. In fact, if such an interpretation is accepted, there would have been no need for the Parliament to have incorporated sub-paragraph (2) in paragraph 4 of the Tenth Schedule to the Constitution. The interpretation sought to be placed on paragraph 4 of the said Schedule on behalf of the Petitioners by emphasizing on the '*twin test*' for merger of the original political party with another political party, proceeds on the fallacious basis that the purpose of paragraph 4 of the said Schedule is concerned only with merger of political parties. As noted above, the purpose of paragraph 4 of the said Schedule is to protect a member of the House from disqualification,

which otherwise he would have suffered under sub-paragraph (1) of paragraph 2 because of having voluntarily given up membership of his original political party. When the purpose of sub-paragraph (1) of paragraph 4 of the said Schedule is understood in the correct perspective, it becomes clear that the sub-paragraph (2) thereof addresses a distinct situation, when a member of a House is protected from disqualification in a situation where there is no merger of the original political party with another political party, but two-thirds or more members of the legislature party agree for merger, thereby bringing into operation the deeming fiction, which in turn triggers the protection from disqualification available to members under clauses (a) and (b) of sub-paragraph (1) of paragraph 4 of the said Schedule.

50. The learned Senior Counsel appearing for Respondent nos. 2 and 3 in Writ Petition No. 1530 of 2021, is justified in relying upon Judgments of the Supreme Court in the cases of ***Fagu Shaw vs. State of West Bengal*** (supra) and ***SR Chaudhari vs. State of Punjab*** (supra) to highlight that even debates in the Parliament show that sub-paragraph (2) of paragraph 4 of the said Schedule operates in a distinct field. The debates are external aids in understanding the true purport of paragraph 4 of the said Schedule. The Full Bench of the Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.***(supra), have also proceeded on the aforesaid basis.

51. A contention was also raised on behalf of the Petitioners that if the interpretation placed on paragraph 4 of the Tenth Schedule to the Constitution by the Respondents is upheld, it would create an anomalous situation in the context of an independent member or a nominated member of a House under paragraph 2(2) and 2(3) of the aforesaid Schedule. The short answer to the said contention is that under the scheme of the aforesaid Schedule to the Constitution, in so far as an independent and nominated member are concerned, the question pertaining to merger of the original political party under paragraph 4 of the said Schedule would not arise for consideration at all. Therefore, the said contention raised on behalf of the Petitioners, cannot be accepted.

52. Hence, question 1 is answered by holding that sub-paragraphs (1) and (2) of paragraph 4 of the Tenth Schedule operate in distinct and independent fields and that the '*twin test*' for merger of the original political party canvassed on behalf of the Petitioners, cannot be accepted. Question 2 is answered by holding that sub-paragraphs (1) and (2) of paragraph 4 of the Tenth Schedule are disjunctive and sub-paragraph (2) addresses a situation where the deeming fiction as contemplated therein comes into operation.

53. <u>In Re: Question 3 :</u>

The said question has come up for consideration because of the emphasis placed on behalf of the Petitioners on paragraph 3 of the Tenth Schedule, pertaining to split of a political party, which stood omitted w.e.f. 01.01.2004 in pursuance of the Constitution (Ninety First Amendment) Act, 2003. According to the Petitioners,

what applied to interpretation of paragraph 3 of the said Schedule, which now stands deleted, equally applies to paragraph 4 of the said Schedule, which refers to merger of parties. It is contended that the position of law as laid down by the Supreme Court and this Court, while considering the question of disqualification of a member of a House in a situation of split of the political party, applies with equal force when the concept of merger is examined under paragraph 4 to the Tenth Schedule. In other words, simply stated, according to the Petitioners, what applies to split, equally applies to merger of a political party. To analyse the said contention raised on behalf of the Petitioners, it would be appropriate to quote paragraph 3 of the said Schedule, which stood omitted w.e.f. 01.01.2004. The same reads as follows:

> *"Paragraph 3 omitted by Constitution (Ninety-first Amendment) Act, 2003, S. 5(c). Prior to omission it read as:*
>
> *"3. Disqualification on ground of defection not to apply in case of split.—Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party,—*
>
> *(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground —*

> *(i) that he has voluntarily given up his membership of his original political party; or*
>
> *(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and*
>
> *(b) from the time of such split, such faction 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 paragraph."*

54. We have examined the contents of the above quoted paragraph 3 of the said Schedule in juxtaposition to paragraph 4 of the said Schedule quoted herein above. A bare perusal of the two provisions would show that under paragraph 3, as it existed, a member of a House would not be disqualified where such a member and any other members of the legislature party constituted a group which had arisen as a result of the split of the original political party and such group consisted of not less than one-third members of such legislature party. It is significant that paragraph 3 referred to split in the original political party and a member of the House and any other members of legislature party consisting of not less than

one-third thereof had become a faction or group which had split from the original political party. Clause (b) of paragraph 3 provided that from the time of such split, the faction was deemed to be a political party to which the member or members belonged for the purposes of sub-paragraph (1) of paragraph 2 and it was to be treated as his/their original political party. Thus, what was deemed under clause (b) was that upon such a split, the faction would be deemed to be a political party to which the member would belong. In paragraph 3 as it existed in the Schedule, there was no deeming fiction regarding split of the original political party. It is in the context of the specific words used in the paragraph that the Courts have interpreted it to mean that there has to be a split in the original political party and at least one-third members of the legislature party form a faction, which would then be deemed to be the political party to which the member(s) belonged. It is in such a situation, that the necessity of the factual split in the original political party was contemplated.

55. As opposed to this, a perusal to the above-quoted paragraph 4 of the said Schedule, particularly sub-paragraph (2) thereof, shows that when at least two-third members of the legislature party agree for merger, it is deemed that merger of the original political party has taken place. The distinction between paragraphs 3 and 4 of the said Schedule becomes clear on a bare reading of the two paragraphs and hence the position of law elucidated in the context of paragraph 3 of the said Schedule would not *ipso facto* apply to situations contemplated under paragraph 4 of the said Schedule.

56. We are of the opinion that split of a political party as contemplated under paragraph 3 of the Schedule, as it existed, and merger of the original political party with another political party as contemplated under paragraph 4 of the said Schedule are distinct concepts, not to be confused with each other. Therefore, reliance placed on behalf of the Petitioners on the judgments in the case of ***Ravi S. Naik vs. Union of India & Ors.*** (supra), ***Jagjit Singh vs. State of Haryana and Ors.*** (supra) and ***Rajendra Singh Rana & Ors. vs. Swami Prasad Maurya & Ors.*** (supra), is misplaced and they can be of no assistance for them to show any error committed by the Respondent no.1-Speaker while passing the impugned Orders.

57. In Re: Questions 4 and 5 :

The learned Counsel appearing for the Petitioners placed much reliance on the Full Bench Judgment of this Court, in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), to contend that it was a *sina qua non* for the Respondents to have proved merger of the original political party with the other political party to claim protection from disqualification under paragraph 4 of the said Schedule. Much emphasis was placed on some portions of the Full Bench Judgment, particularly paragraph 36 thereof, to claim that the view canvassed on behalf of the Petitioners was accepted in totality by the Full Bench and the same being a binding precedent on this Court, the Writ Petitions ought to be allowed and the impugned Orders passed by the Respondent no.1-Speaker deserve to be set aside, thereby disqualifying the contesting Respondents as members of the House.

58. Since elaborate submissions were made on behalf of the rival parties in the context of the aforesaid Full Bench Judgment, it is necessary to refer to the same in detail and to examine whether the Petitioners are justified in their aforesaid contentions.

59. A perusal of the aforesaid Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), shows that the following specific questions arose for consideration before the Full Bench :

> *"I. Whether the term aghadi or front as defined under section 2(a) of the Disqualification Act of 1986 would mean the party or aghadi on whose candidature the councillor is elected or would also include the aghadi of two or more municipal parties coming into existence after the elections are held ?*
>
> *II. Whether the term original political party or aghadi appearing in Sec. 5 would mean the party at its National level or would mean a municipal party ?"*

60. The factual background in the said case wherein the aforesaid questions arose for consideration, is stated in paragraphs 3 and 4 of the said Judgment, which read as follows :

> *"3. The facts in nutshell, giving rise to the reference, are as under:*
>
> *Petitioners are the elected councillors of*

Municipal Council, Navapur. General elections to the Municipal Council took place to elect total 19 councillors and candidature of petitioners was set up by Nationalist Congress Party (NCP). The post election aghadi came to be formed consisting of 09 councillors belonging to Nationalist Congress Party (NCP), 02 councillors set up by Bhartiya Janata Party (BJP) and 01 councillor set up by Shivsena, on 1st December, 2007. Respondent No. 1-Govindrao Ramu Vasave was chosen as a leader of the aghadi. An application came to be presented to the Collector for registration of aghadi on 2-12-2007. Respondent No. 1 informed the Collector that he is elected as leader of NCP municipal party as also of aghadi. Respondent No. 1 came to be elected as President of the Municipal Council for the term of two and half year on 24-12-2007 with the support of councillors of aghadi.

4. *On 18-6-2010, an application came to be presented by petitioners along with Shri Nilesh Prajapat and Smt. Lalita Gavit to the Collector seeking approval to a separate group. A whip was issued by Respondent No. 1 on 18-6-2010 and also by the President of the Nandurbar District Nationalist Congress Party on 21-6-2010, calling upon members of the aghadi and members set up by NCP to cast vote in favour of Respondent No. 1*

during the to the post of President which was scheduled to be held on 23-6-2010. Petitioners violated the whip and a candidate viz. Mr. Damu Vana Birhade, belonging to Indian National Congress (Congress I), was elected as the President and petitioner No. 1 came to be elected as Vice President. Petitioners were sought to be disqualified in view of provisions of section 3(1)(a) and 3(1)(b) of the Maharashtra Local Authority Members' Disqualification Act, 1986 (hereinafter referred to as the "Disqualification Act"). The Collector allowed the disqualification petition and held petitioners disqualified under section 3(1)(a) and 3(1)(b) of the Disqualification Act. The said judgment is assailed in the writ petition."

61. After an elaborate discussion in the context of the above-quoted questions that specifically arose for consideration before the Full Bench in paragraph 75 of the said Judgment, the questions were answered as follows:

*"*75. *In the result,*

(I) The answer to the first Issue, Whether the term aghadi or front as defined under section 2(a) of the Disqualification Act of 1986, would mean the party or aghadi on whose candidature the councillor is elected or would

also include the aghadi of two or more municipal parties coming into existence after the elections are held, shall have to be recorded as the party or aghadi on whose candidature the councillor is elected. As a necessary consequence, the aghadi or front, within contemplation to section 2(a) of the Disqualification Act of 1986, is a pre-poll aghadi or front.

(II) Similarly, in view of the judgment of the Supreme Court in the matter of of Mayawati v. Markandeya Chand, reported in (1998) 7 SCC 517 (supra), as well as in view of the reasons set out in this judgment, it has to be concluded that that the term "original political party" or "aghadi", appearing in section 5, would mean the party at its National level and would not mean "municipal party". The Issue No. (II), referred for consideration is answered accordingly."

62. The Full Bench answered the questions after taking into consideration the meaning of the term "a*ghadi*" defined under the Act of 1986, as also 'front' defined therein and finally came to the conclusion that the 'a*ghadi*' as contemplated under Section 2(a) of the Act of 1986 is a pre-poll '*aghadi*" or "front". It was further concluded that original political party or '*aghadi*" in Section 5 of the Act of 1986, would mean the party at the National level and not

the "Municipal Party". The nature of controversy before the Full Bench, the questions framed in that context and the manner in which the questions were answered, show that the deeming fiction contemplated under Section 5(2) of the Act of 1986, *pari materia* with paragraph 4(2) of the Tenth Schedule to the Constitution, did not come up for consideration before the Full Bench in order to consider and answer the specific questions that were referred to the Full Bench.

63. It was in the process of discussing the provisions of the Act of 1986, which have been enacted on the basis of the Tenth Schedule to the Constitution, that the Full Bench did make observations with regard to Section 5 of the Act of 1986, particularly in paragraph 36. But, the question is whether such observations made by the Full Bench of this Court in the aforesaid judgment can be said to be the *ratio decidendi* of the said judgment or merely passing observations or *obiter dicta*. Only those findings of the Full Bench germane to the specific questions referred for consideration in the said case would be the *ratio decidendi* and hence binding precedent on this Court. We are of the opinion that a bare perusal of the above-quoted questions referred to the Full Bench and the answers given thereto in paragraph 75 of the said Judgment, quoted above, would show that the passing observations made in some portions of the said judgment, including paragraph 36 thereof, do not constitute the *ratio decidendi* of the said Judgment of the Full Bench.

64. In this context, the learned Counsel appearing for the Respondents are justified in relying upon Full Bench Judgment of this Court in the case of ***Emkay Exports, Mumbai & anr. vs.***

Madhusudan Shrikrishna[18]**.** In this Full Bench Judgment, this Court has referred to well established principles recognised by the Supreme Court in various judgments, concerning the concept of the *ratio decidendi* in the backdrop of the law of precedent. In the said Judgment, it has been held as follows:

> *"7. The concept of precedent has attained important role in administration of justice in the modern times. The case before the Court should be decided in accordance with law and the doctrines. The mind of the Court should be clearly reflecting on the material in issue with regard to the facts of the case. The reason and spirit of case make law and not the letter of a particular precedent. Halsburys The Laws of England, explained the word ratio decidendi as It may be laid down as a general rule that part alone of a decision by a Court of Law is binding upon Courts of co-ordinate jurisdiction and inferior Courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined. This underlying principle which forms the only authoritative element of a precedent is often termed the ratio decidendi. It is by the choice of material facts that the Court create law. The law so created would be a good*

18 (2008) 4 Mah LJ 843(FB)

precedent for similar subsequent cases unless it falls within the exceptions hereinafter indicated.

8. The doctrine of precedent relates to following of previous decisions within its limitations. It introduces the concept of finality and adherence to the previous decisions and while attaining it, it creates consistency in application of law. The later judgment should be similar to the earlier judgment, which on material facts are the same. Finding ratio decidendi is not a mechanical process but an art which one gradually acquires through practice. What is really involved in finding the ratio decidendi of a case is the process of abstraction. Ratio decidendi is a term used in contrast to obiter dictum which is not necessarily binding in law. According to Sir John Salmond, a precedent is a judicial decision, which contains in itself a principle. The only principle which forms its authoritative element is often termed the ratio decidendi. The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of law as regards the world at large. According to Austin, the general reasons or principles of judicial decision abstracted from peculiarities of the case are commonly styled by writers on jurisprudence as ratio decidendi.

...

...

13. In order to apply a judgment as a precedent, the relevant laws and earlier judgments should be brought to the notice of the Court and they should be correctly applied. Mere observations in a previous judgment may not be binding on a subsequent Bench if they are not truly applicable to the facts and controversies in a subsequent case as per settled principle of ratio decidendi. The rule of precedent, thus, places an obligation upon the Bench considering such judgments that the Court should discuss the facts and the law of both the cases and then come to a conclusion whether the principle enunciated in the previous judgment is actually applicable on facts and law to the subsequent case. This principle would equally apply when the Courts have to consider which of the two views expressed by earlier equi or other Benches is applicable to the subsequent case. The rule of precedent is not without exceptions. It has its own limitations. Besides that, the law changes with the changed circumstances and even good law may be rendered ineffective or unconstitutional because of passage of time, as reflected in the principle "cessante ratione cessat ipsa lex...."

Applying the said principles to the observations made by the aforesaid Full Bench of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra) particularly paragraph 36 thereof, upon which the learned Counsel appearing for the Petitioners have placed much emphasis, we are of the opinion that the said observations do not constitute the *ratio decidendi* of the said Judgment, to be a binding precedent on this Court. This is particularly for the reason, as noted above, that the said observations are not germane to the specific questions referred to the Full Bench and the findings given thereon.

65. Therefore, it becomes clear that the said judgment of the Full Bench in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), does not lay down the ratio that there is necessarily a '*twin test*' for determining merger of the original political party with another political party and for such merger to take place, both conditions as contemplated under sub-paragraphs (1) and (2) of paragraph 4 of the Tenth Schedule, need to be satisfied.

66. The learned Senior Counsel appearing for the Respondent nos. 3, 8, 9 and 10 in Writ Petition No. 1228 of 2021, is also justified in contending that the aforesaid Full Bench Judgment of this Court has erred in relying upon the Judgment of the Supreme Court in the case of ***Mayavati vs. Markandeya Chand & Ors.*** (supra). In the first place, the said Judgment of the Supreme Court also concerned a case of alleged split in the political party relevant for the erstwhile paragraph 3 of the Tenth Schedule to the Constitution. Secondly, a perusal of the reported Judgment shows that there were two divergent opinions of two Hon'ble Judges in the

three Judge Bench of the Supreme Court, considering the case of ***Mayavati vs. Markandeya Chand & Ors.*** (supra). While opinion of one Hon'ble Judge, (*Thomas,J*) was that the appeal deserved to be allowed declaring twelve MLAs of the Uttar Pradesh Legislative Assembly as disqualified, the other Hon'ble Judge, (*Srinivasan,J*), completely disagreed and held that the appeal deserved to be dismissed. In this situation, the third Hon'ble Judge, (*The then Chief Justice of India, Justice M. M. Punchhi*), directed that the matter be referred to the Constitution Bench for decision. Thus, there are no conclusive findings in the said reported Judgment and the Full Bench has picked up the opinion of only one Hon'ble Judge, as if it was a binding precedent while reaching findings. This is another aspect, indicating that passing observations made by the aforesaid Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra) were not relevant for the specific questions referred to the Full Bench and hence not the *ratio decidendi*, which could be said to be binding on this Court.

67. It is at this stage, that question 5 framed above becomes relevant and it would be necessary to consider the same. According to the learned Counsel appearing for the Respondents, the recent Judgment of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra), impliedly overrules the aforesaid Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra). This is contested by the learned Counsel appearing for the Petitioners and, therefore, it becomes necessary to refer to the said recent Judgment of the Supreme Court in detail. Both parties agree that in this context, it would be

necessary to peruse paragraphs 26 to 28 and 183 to 189 of the said Judgment. The said portion of the Judgment concerns contentions raised by a sole elected member of a political party in the Karnataka Legislative Assembly.

68. The Speaker of the House in the said case proceeded on the basis that the aforesaid sole elected member of the political party had given a letter to the Speaker that he had agreed to merge his party with the INC. The Speaker proceeded on the basis of sub-paragraph (2) of paragraph 4 of the said Schedule and held that since the sole elected member of the said political party had communicated that he had agreed to merge his party with the INC and being the sole elected member, the requirement of two-thirds of members of the legislature party as per sub-paragraph (2) of paragraph 4 of the Schedule stood satisfied, the said sole elected member did not attract disqualification under the said Schedule of the Constitution. In fact, the said sole elected member was considered as a member of the INC Legislature Party on the basis of his letter to the Speaker about merger.

69. Thereafter, the said member became a Minister but later resigned and withdrew support from the Government, having voted against the whip of the INC in the House. The said member claimed that he could not be hauled up for disqualification because merger in the first place had not taken place in the absence of a formal order of merger. According to him, he was free to disobey the whip issued by the INC because there was no formal order of merger and that he could not be disqualified under the Tenth Schedule to the Constitution. The aforesaid contention of the sole

elected member was rejected by the Supreme Court and the Order passed by the Speaker disqualifying the said member was upheld.

70. The learned Counsel appearing for the Petitioners placed reliance on paragraph 27 of the said Judgment to claim that in the said case, there was a merger of the original political party and, therefore, the facts were distinct from the present cases where there was no merger of the political parties. As opposed to this, the Respondents contended that there was no necessity of merger of the original political party in view of the deeming fiction operating under sub-paragraph (2) of paragraph 4 of the said Schedule. We are unable to accept the said contentions raised on behalf of the Petitioners, because a proper appreciation of Paras 183 to 189 of the said Judgment of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra), particularly paragraph 186 thereof, would show that the operation of the deeming fiction under sub-paragraph (2) of paragraph 4 recognised by the Speaker was clearly upheld by the Supreme Court. Thus, we find substance in the contention raised on behalf of the Respondents that the passing observations made in the Full Bench judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), pertaining to Section 5(2) of the Act of 1986, *pari materia* with sub-paragraph (2) of paragraph 4 of the Tenth Schedule of the Constitution, are contrary to the position of law recognised by the Supreme Court.

71. Therefore, even if the observations of the Full Bench of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), heavily relied upon by the Petitioners

are to be taken into consideration, the same stand impliedly overruled by the observations of the Supreme Court in the said Judgment in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra).

72. Consequently, question 4 is answered by holding that the Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), is not a binding precedent on this Court for interpretation of sub-paragraph (2) of paragraph 4 of the Tenth Schedule to the Constitution. We also find that even otherwise the passing observations made by the Full Bench of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), are contrary to the law recognised by the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra). It is also found that the aforesaid Judgment of the Supreme Court effectively supports the case of the Respondents herein and, accordingly, question 5 stands answered.

73. In Re: Question 6:

The learned Counsel appearing for the rival parties have also made elaborate submissions on the Full Bench Judgment of the Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.*** (supra). While the learned Counsel for the Petitioners have submitted that the said Judgments are based on an erroneous interpretation of paragraph 4 of the Tenth Schedule to the

Constitution, the learned counsel appearing for the Respondents have placed much reliance on the said Judgments.

74. In the Full Bench Judgment of the Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra), the distinction between the split of a political party under the erstwhile paragraph 3 and merger under paragraph 4 of the Tenth Schedule to the Constitution has been taken into consideration. It has been observed as follows:

> *"13. Thus sub-paragraph 2 creates a fiction in law that though there is no merger as such in the original political party either at the national level or at the State level such a merger is deemed to have taken place if two-thirds members of the Legislature party of that political party agree that there is a merger. Thus under sub-paragraph 2 of paragraph 4 it is for the members of the Legislature party to decide whether there should be or should not be a merger of their political party with another political party.*
>
> *14. ...*
>
> *15. Thus a split referred to in the above paragraph relates to a split in the original party. What happens in the Legislature party is only an outcome of the split outside the Legislature, but such a split will be recognised by the Speaker if such groups splitting away from the original party*

consist of not less than one-third members of the Legislature party. Thus for the purpose of paragraph 3, two things are required, one is split in the political party and one-third members of the Legislature party consist of the group splitting the original political party. There is no provision like sub-paragraph (2) of paragraph 4 incorporated in paragraph 3 of the 10th Schedule. As per paragraph 4(1) if there is a merger of the original political party with the other political party, then it can be taken as merger, but for the purpose of recognising that merger by the Speaker, such measure is dependent on any action by the members of the Legislature party of that political party concerned while in the case of split, developments take place entirely outside the House. It is pertinent to note that paragraph 4(2) reads that the merger of the original political party of a member of a House shall 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. The words used therein are not that "no merger" of a political party with any other party can be deemed to have taken place unless at least two-third members of the Legislature party concerned if agreed or ratified such a merger taken outside the House. It does not contemplate any merger outside the House. The deeming provision as

discussed above and contained in subparagraph (2) of paragraph 4 clearly is indicative of the fact that the merger contemplated in paragraph 4 is a merger of the political party consisting of the members of the Legislative with another political party. If by majority of two-third members of that Legislative members belonging to that particular political party agree, then it shall be taken that political party has merged with another political party. Such a situation is also recognised by the apex Court in Kihota Hollohon v. Achihu, 1992 Supp (2) SCC 651 : AIR 1993 SC 413 wherein it has been observed by the Supreme Court as follows:

> *"The underlying premise in declaring an individual act of defection as forbidden is that lure of office or money could be presumed to have prevailed. Legislature has made this presumption on its own perception and assessment of the extant standards of political properties and morality. At the same time legislature envisaged the need to provide for such "floor-crossing" on course of conduct commended itself to a member of elected representatives might, in itself, lend credence and reassurance to a presumption of bona fides. The presumptive impropriety of motives progressively weakens according as the members sharing the action and there is nothing capricious and arbitrary in this legislative perception of the distinction between defection and split."*

75. In the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.***(supra), the Division Bench of the Gauhati High Court, while considering paragraph 4 of the Tenth Schedule to the Constitution, has held as follows :

> *"33. The distinction between paragraph 1 and 2 lies in the fact that in paragraph 1, there should be a valid merger according to the party constitution and elected members of the House endorsing that merger even they are less than 2/3rd and join other political party, they would be saved from disqualification and those who do not agree to the merger would be treated as a separate group. It is only in the case of valid merger, the legislators endorsing merger are less than 2/3rd joining the other party, when the Speaker will have the jurisdiction to make an enquiry regarding valid merger. But when 2/3rd members of the House endorse the merger and join other political party, it would be inscrutable for the Speaker to make an enquiry since the deeming provisions in paragraph 4(2) declares and makes it conclusive proof of fact of merger of original political party.*
>
> *34. The argument that the last words 'such merger' in paragraph 4(2) should be relatable to valid merger according to the party constitution is untenable. Such merger should be understood in*

the context of the provisions of paragraph 2 only. If the argument of the counsel for the respondent Nos. 1 and 4 is accepted, the very purpose of the deeming provisions of paragraph 4(2) would be rendered redundant. The argument that such a view would amount to re-inventing the ghost of extinct paragraph 3 in paragraph 4(2) is an incorrect view. On the other hand, the plain language of the deeming provision of paragraph 4(2) supports the view taken by us and it only amounts to discovering the correct meaning and effect of the deeming provision. Therefore, we are of the opinion that by virtue of the deeming provisions in paragraph (2), 2/3rd elected members of the House have endorsed the merger and joined BJP. The claim of merger set up by them is inscrutable on the part of the Speaker. The deeming provisions will come into effect and such merger claimed by them is a valid merger within the meaning of paragraph 4(2). Consequently, they do not suffer disqualification under paragraph 4-2(1).”

76. We are in agreement with the aforesaid findings rendered by the Full Bench Judgment of the Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.***(supra), because they are based on an

interpretation of paragraph 4 of the Tenth Schedule to the Constitution, which ensures that sub-paragraph (2) of paragraph 4 is not rendered otiose and the deeming fiction incorporated in the same operates in its full force as intended by the Parliament in its own wisdom. Reading a '*twin test*' in paragraph 4 of the said Schedule as canvassed by the Petitioners, would be incongruous and it would militate against the plain meaning of the words in sub-paragraphs (1) and (2) of paragraph 4 of the said Schedule.

77. Much was said by the learned Counsel appearing on behalf of the Petitioner in Writ Petition No. 1228 of 2021, that the Full Bench of the Punjab and Haryana High Court, on the very same day, gave two contradictory Judgments i.e. the above mentioned Judgment in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Judgment in the case of ***Ram Bilas Sharma vs. The Speaker, Haryana Vidhan Sabha*** (supra). But, a perusal of the two Judgments shows that while the Judgment in the case of ***Ram Bilas Sharma vs. The Speaker, Haryana Vidhan Sabha*** (supra), pertained to a question of split in a political party, the Judgment in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) pertained to merger. We are of the opinion that what applies to split in a political party as per erstwhile paragraph 3 of the said Schedule, now deleted, does not apply to merger as contemplated in paragraph 4 of the said Schedule, for the purpose of facilitating protection of a member from disqualification under the said Schedule. Once this distinction is understood, it becomes clear that the aforesaid contention raised on behalf of the Petitioners is misplaced and cannot be accepted. Thus, we answer the aforesaid question 6 by holding that the position of law enunciated in the Full Bench Judgment of the Punjab and Haryana

High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.***(supra), lay down the correct position of law, as regards the interpretation of paragraph 4 of the Tenth Schedule to the Constitution and that we agree with the same.

78. As noted above, the said position now stands confirmed by the observations of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra).

79. In Re: Question 7 :

There were elaborate submissions made on behalf of the Petitioners that if the contentions raised on behalf of the Respondents on interpretation of paragraph 4 of the Tenth Schedule to the Constitution were to be accepted, it would militate against the object with which the Tenth Schedule was introduced in the Constitution, that it would encourage defections and that it was against political and Constitutional morality. Emphasis was placed on observations made by the Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra).

80. At this juncture, it would be appropriate to refer to the Judgment of the Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra), because it concerned challenge to the very amendment i.e. the Fifty Second Amendment of the Constitution made in the year 1985, whereby Tenth Schedule to the Constitution was introduced. The Supreme Court took into consideration rival

contentions pertaining to the Constitutional validity of the Tenth Schedule. In this context, there was a discussion on the aspect of unprincipled defections by elected members due to the lure of political office and other extraneous considerations, which had become a political and social evil. In the context of morality and the purpose for which the Tenth Schedule was introduced, the Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra), held as follows:

> *"49. Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct — whose awkward erosion and grotesque manifestations have been the bane of the times — above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should, we think, defer to this legislative wisdom and perception. The choices in constitutional adjudications quite*

clearly indicate the need for such deference. "Let the end be legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are adopted to that end ...." are constitutional.

50. It was then urged by Shri Jethmalani that the distinction between the conception of "defection" and "split" in the Tenth Schedule is so thin and artificial that the differences on which the distinction rests are indeed an outrageous defiance of logic. Shri Jethmalani urged that if floor-crossing by one Member is an evil, then a collective perpetration of it by one-third of the elected Members of a party is no better and should be regarded as an aggravated evil both logically and from the part of its aggravated consequences. But the Tenth Schedule, says Shri Jethmalani, employs its own inverse ratiocination and perverse logic to declare that where such evil is perpetrated collectively by an artificially classified group of not less than one-third Members of that political party that would not be a "defection" but a permissible "split" or "merger".

51. This exercise to so hold up the provision as such crass imperfection is performed by Shri Jethmalani with his wonted forensic skill. But we are afraid what was so attractively articulated, on

closer examination, is, perhaps, more attractive than sound. The underlying premise in declaring an individual act of defection as forbidden is that lure of office or money could be presumed to have prevailed. Legislature has made this presumption on its own perception and assessment of the extant standards of political proprieties and morality. At the same time legislature envisaged the need to provide for such "floor-crossing" on the basis of honest dissent. That a particular course of conduct commended itself to a number of elected representatives might, in itself, lend credence and reassurance to a presumption of bona fides. The presumptive impropriety of motives progressively weakens according as the numbers sharing the action and there is nothing capricious and arbitrary in this legislative perception of the distinction between 'defection' and 'split'.

52. Where is the line to be drawn? What number can be said to generate a presumption of bona fides? Here again the courts have nothing else to go by except the legislative wisdom and, again, as Justice Holmes said, the court has no practical criterion to go by except "what the crowd wanted". We find no substance in the attack on the statutory distinction between "defection" and "split"."

81. The above quoted portion shows that the Supreme Court held that it was for the legislature to lay down the threshold of political morality while introducing the Tenth Schedule for addressing the evil of unprincipled defections by elected members of political parties. It was held that the Courts would have nothing else to go by, except the legislative wisdom in this arena. The perception of the legislature regarding political proprieties and moral standards was recognised by the Supreme Court, while emphasising that there was a need to provide for "floor-crossing" on the basis of honest dissent.

82. As per the law laid down by the Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra), it is for the Parliament to lay down such standards of morality, including the threshold of numbers that would determine as to whether a merger and consequent giving up of membership of a political party by an elected member would not result in disqualification from membership of the House. Parliament in its own wisdom has incorporated a deeming fiction under sub-paragraph (2) of paragraph 4 of the Tenth Schedule to the Constitution, which protects a member of a House from being disqualified from membership provided at least two-thirds members of the legislature party agree to merge with another political party. As long as Parliament in its wisdom has determined the threshold of morality of at least two-thirds members of the legislature party agreeing for merger, the Courts have nothing else to go by, except the legislative wisdom of the Parliament to determine such a threshold of political morality in that context. In fact, as long as the specific condition of not less than two-thirds members of the legislature party agreeing to merge is satisfied, as per the wisdom of the Parliament, it is

politically and Constitutionally moral to protect the member of the House from disqualification under sub-paragraph (2) of paragraph 4 of the Tenth Schedule to the Constitution.

83. Much has been said about the interpretation canvassed on behalf of the Respondents being antithetical of the very object of introduction of the Tenth Schedule to the Constitution, but we are of the opinion that the object of introduction of the Tenth Schedule to the Constitution is not only to prevent unprincipled defections, but to lay down the minimum standards of political and Constitutional morality in the backdrop of merger of political parties and to lay down conditions in which a member would either attract disqualification under paragraph 2 of the said Schedule or such member would stand protected from disqualification under paragraph 4 of the said Schedule. It is significant that sub-paragraph (1) of paragraph 2 of the said Schedule opens with the words "*Subject to the provisions of paragraph 4",* thereby showing that Parliament in its wisdom while seeking to achieve the object of introduction of Tenth Schedule to the Constitution, carved out exception to the disqualification of a member under paragraph 2, by providing that if under sub-paragraph (2) of paragraph 4, there was a deemed merger, the member would be protected from disqualification. The contentions raised on behalf of the Petitioners could be accepted if paragraph 4 consisted only of sub-paragraph (1) and sub-paragraph (2) did not exist at all. But, so long as sub-paragraph (2) of paragraph 4 of the said Schedule exists, it has to be given its logical effect and the same cannot be ignored.

84. In view of the above, the aforesaid question is answered by holding that Parliament in its wisdom has incorporated sub-

paragraph (2) of paragraph 4 of the said Schedule, which cannot be held to be militating against the object of introduction of the Tenth Schedule and it cannot be said that the same would encourage defections. The presumption of *bona fide* as per legislative wisdom, referred to in the above-quoted paragraphs of the Judgment of the Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra), cannot be ignored.

85. In Re : Question 8 :

In the backdrop of the above discussion, we are of the opinion that the Respondent no.1-Speaker passed the impugned Orders based on interpretation of sub-paragraph (2) of paragraph 4 of the said Schedule, which is in tune with the language of the said provision. The Speaker proceeded on the basis that, so long as there was no dispute that in both these cases two-thirds members of the legislature parties of the INC and the MGP had placed material on record that they had agreed for merger of their original political party with the BJP, the deeming fiction came into operation, resulting in protection of Respondent nos. 2 to 11 in Writ Petition No. 1228 of 2021 and Respondent nos. 2 and 3 in Writ Petition No. 1530 of 2021, from disqualification. Once this position on the basis of interpretation of paragraph 4 is accepted, no error can be attributed to the final decisions/orders rendered by the Speaker in these two cases.

86. As regards the contentions raised on behalf of the rival parties about attempt on the part of the Respondents to lead evidence to show merger of the original political party, opposition on the part of the Petitioners to permit such material being placed

on record and orders passed in such applications filed before the Speaker being made subject matter of Writ Petition before this Court, all pale into insignificance. This is for the reason that such material or proof was not necessary, so long as it was an admitted position that two-thirds members of the Legislature Party of the INC as well as the MGP had agreed for the merger and the deeming fiction in sub-paragraph (2) of paragraph 4 of the Tenth Schedule to the Constitution applied in full force. Hence, the aforesaid question is answered by holding that the impugned Orders do not deserve interference.

CONCLUSION :

87. In view of the above discussion pertaining to the questions that arose in these Petitions, it is concluded as follows:

(i) The Respondent no.1-Speaker in the present case was justified in holding that the Respondent nos. 2 to 11 in Writ Petition No. 1228 of 2021 and Respondent nos. 2 and 3 in Writ Petition No. 1530 of 2021, did not attract disqualification under the Tenth Schedule as the deeming fiction under sub-paragraph (2) of paragraph 4 of the said Schedule operated in their favour.

(ii) No case is made out by the Petitioners for interference in judicial review of the impugned Orders passed by the Respondent no.1-Speaker on the touchstone of the scope of judicial review recognised in the case of ***Kihoto Hollohan vs.***

Zachillhu (supra), limited to jurisdictional errors only i.e. infirmities based on violation of Constitutional mandate, malafides, non-compliance of Rules of natural justice and perversity. We conclude that none of the said jurisdictional errors could be demonstrated by the Petitioners in the facts of the present cases.

(iii) We agree with the position of law laid down in the Full Bench Judgment of the Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.***(supra), on the interpretation of paragraph 4 of the Tenth Schedule to the Constitution.

(iv) The recent Judgment of the Supreme Court in the case of ***Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly*** (supra), effectively lays down law in the context of sub-paragraph (2) of paragraph 4 of the Tenth Schedule to the Constitution, as recognised in the aforesaid Full Bench Judgment of the Punjab and Haryana High Court in the case of ***Baljit Singh Bhullar vs. Speaker, Punjab Vidhan Sabha*** (supra) and Division Bench Judgment of the Gauhati High Court in the case of ***Speaker***

Nagaland Legislative Assembly vs. Imtilemba Sangtam & Ors.(supra).

(v) The Full Bench Judgment of this Court in the case of ***Shah Faruq Shabir & Ors. vs. Govindrao Ramu Vasave & Ors.*** (supra), does not lay down the ratio as claimed by the Petitioners regarding '*twin test*' of merger of political parties under paragraph 4 of the Tenth Schedule to the Constitution, as the passing observations made therein were not germane to the specific questions referred to the said Full Bench and hence, it is not a binding precedent for the said aspect of the matter.

(vi) Admitted position on facts of the present cases indicates that the Respondent nos. 2 to 11 in Writ Petition No. 1228 of 2021 and Respondent nos. 2 and 3 in Writ Petition No. 1530 of 2021, satisfied the requirement of sub-paragraph (2) of paragraph 4 of the Tenth Schedule to the Constitution and hence, the deeming fiction operated, thereby protecting the said Respondents from disqualification under the Tenth Schedule to the Constitution.

(vii) The impugned Orders passed by the Respondent no.1-Speaker, rejecting the Disqualification Petitions cannot be said to be militating against the object of introduction of the

Tenth Schedule to the Constitution on the touchstone of political and Constitutional morality, in view of the specific observations regarding wisdom of the Legislature/Parliament made in the aforesaid Judgment of the Supreme Court in the case of ***Kihoto Hollohan vs. Zachillhu*** (supra).

(viii) Hence, we conclude that the Petitioners have not been able to make out a case for interference in the impugned Orders passed by the Respondent no.1-Speaker and we hold that the Disqualification Petitions filed by the Petitioners were correctly dismissed by the Respondent no.1-Speaker.

88. In view of the above, the Writ Petitions stand dismissed, with no order as to costs. Pending applications, if any, also stand disposed of.

R. N. LADDHA, J. **MANISH PITALE, J.**