

## Daily Order

Judge Name	Case No/Year	Date of Order	Daily Order
<b>CHIEF JUSTICE AND S VISHWAJITH SHETTY</b>	<b>WP 9474/2020</b>	<b>30/11/2020</b>	<p data-bbox="667 269 978 297"><b>W.P.No.9474/2020 C/w</b></p> <p data-bbox="667 354 1089 381"><b>W.P.Nos.9805/2020, 9950/2020</b></p> <p data-bbox="667 438 1079 466"><b>(through video conferencing)</b></p> <p data-bbox="667 605 1969 675"><b>1. The submissions of the learned counsel appearing for the parties have been heard on the prayer for grant of interim relief.</b></p> <p data-bbox="667 732 974 760"><b>FACTS OF THE CASE</b></p> <p data-bbox="667 899 1969 1138"><b>2. With a view to appreciate the submissions made across the Bar, it will be necessary to make a brief reference to the factual aspects. Firstly, we are referring to the facts of the case in Writ Petition No.9474 of 2020. We may note here that by a separate order passed today, we have permitted the petitioner to delete the second respondent. The issue concerns the fifth, sixth and seventh respondents in this petition. The said respondents are Shri R.Shankar, Shri A.H.Vishwanath and Shri N.Nagaraj.</b></p> <p data-bbox="667 1278 1969 1516"><b>3. It is pointed out that the said three respondents were elected in the general elections as the Members of Karnataka Legislative Assembly on 15th May 2018. The said three respondents along with the others were disqualified as per the orders of the Hon'ble Speaker of the Karnataka Legislative Assembly passed in exercise of the powers under paragraph 2 of the tenth schedule of the Constitution of India (for short 'the Constitution'). The orders of disqualification were passed against them as well as some other members</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p>which were subjected to a challenge by the said three respondents as well as others by writ filing petitions before the Apex Court by invoking Article 32 of the Constitution. We must note here that the Hon'ble Speaker while passing the separate orders of disqualification held that the resignations submitted by the Members against whom disqualification was alleged were not voluntary or genuine. The Hon'ble Speaker purported to disqualify the concerned Members till the end of term of the 15th Legislative Assembly of the State of Karnataka. The Apex Court disposed of the petitions by the judgment and order dated 13th November 2019 in the case of <b>SHRIMANTH BALASAHEB PATIL vs. HON'BLE SPEAKER, KARNATAKA LEGISLATIVE ASSEMBLY AND OTHERS</b> . The orders passed by the Hon'ble Speaker were upheld insofar as the disqualification is concerned. However, that part of the order passed by the Hon'ble Speaker detailing the duration of disqualification was set aside by the Apex Court.</p> <p>4. After the disqualification, bye-elections to the vacant Legislative Assembly seats were held. It is pointed out in the petition that Shri R.Shankar did not contest the bye-elections. Shri A.H.Vishwanath contested the election of the Assembly and was defeated. It is pointed out that even Shri N.Nagaraj contested the election of the Assembly and was defeated.</p> <p>5. Subsequently, Shri R.Shankar and Shri N.Nagaraj were elected as the Members of Legislative Council by the Members of Legislative Assembly. As far as Shri A.H.Vishwanath is concerned, as pointed out in the petition, in exercise of the powers under sub-clause (e) of clause (3) of Article 171 of the Constitution, the Hon'ble Governor of Karnataka nominated him as a Member of the Karnataka Legislative Council by the order dated 22nd July 2020. Other four persons were also nominated as the Members of Legislative Council under the same order of the Hon'ble Governor.</p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p data-bbox="667 201 1978 607"><b>6. The prayer in Writ Petition No.9474 of 2020 as originally filed was for issuing a writ in the nature of mandamus, commanding the deleted second respondent (the Hon'ble Governor of Karnataka) from administrating the oath of affirmation to the said three respondents as Ministers. The second prayer is for a declaration that the said three respondents are disqualified for holding the office of the Ministers. There was an interim prayer made in the writ petition restraining the first to fourth respondents from precipitating the matter further and restraining them either from accommodating or from administering the oath of affirmation to the said three respondents as the Hon'ble Ministers. As a consequence of deletion of the second respondent, consequential amendments were permitted by replacing the prayer clause (b).</b></p> <p data-bbox="667 740 1978 1024"><b>7. As far as Writ Petition No.9805 of 2020 is concerned, at the outset, we must note that on the basis of a memo filed by the learned counsel appearing for the petitioner, certain objectionable averments made in paragraph 2 have been permitted to be deleted. The first challenge in this writ petition is to Annexure-E by which, Shri R.Shankar and Shri N.Nagaraj were declared as the Members of Legislative Council of Karnataka. The second challenge in the petition is to the order of nomination of Shri A.H.Vishwanath as a Member of Legislative Council. The prayer for interim relief is for stay of both the aforesaid notifications.</b></p> <p data-bbox="667 1157 1978 1442"><b>8. As far as Writ Petition No.9950/2020 is concerned, the challenge is confined to Shri A.H.Vishwanath who is the third respondent in the said writ petition. The first prayer is of issue of a writ of quo warranto and for a declaration that the nomination of Shri A.H.Vishwanath as a Member of Legislative Council is unconstitutional. Consequently, a prayer is made for quashing his order of appointment. As far as the prayer for interim relief is concerned, a direction was sought to the office of the Hon'ble Governor of Karnataka to submit the entire file pertaining to nomination of Shri A.H.Vishwanath.</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p data-bbox="667 240 1201 267"><b>SUBMISSIONS OF THE PETITIONERS</b></p> <p data-bbox="667 407 1976 1523"><b>9. Shri Prashanth Bhushan, the learned counsel representing the petitioners in Writ Petition Nos.9474/2020 and 9805/2020 has firstly invited our attention to the judgment and order of the Apex Court dated 13th November 2019 in the case of SHRIMANTH BALASAHEB PATIL (supra) by which the order of disqualification of the aforesaid three respondents was affirmed. He invited our attention to clause (h) of paragraph 152 of the said decision which contains the conclusions drawn by the Apex Court. He submitted that while holding that the Hon'ble Speaker is not empowered to disqualify any member till the end of the term, the Apex Court specifically held that a member who is disqualified under the tenth schedule shall be subjected to sanctions provided under Articles 75(1B), 164 (1B) and 361B of the Constitution. He has invited our attention to Article 164 (1B) of the Constitution. As regards Shri A.H. Vishwanath, he urged that in any case, Shri A.H.Vishwanath is not declared elected to either Houses of Legislature as he is a nominated Member of the Legislative Council. Therefore, the disqualification imposed by clause (1B) of Article 164 of the Constitution will continue to operate till the expiry of his original term as a Member of the Legislative Assembly. He submitted that in fact, he contested the election of the Legislative Assembly and was defeated. He would, therefore, submit that Shri A.H.Vishwanath clearly attracts the disqualification for being appointed as a Minister of the State Government. As regards Shri R.Shankar and Shri N.Nagaraj, he submitted that purposive interpretation will have to be given to the provisions of clause (1B) of Article 164 and Article 361B. He submitted that the disqualification will cease to apply in case of the said two persons only if they get elected to the Karnataka Legislative Assembly. He submitted that if both the provisions are interpreted to mean that the disqualification will cease to apply when the disqualified members of the Legislative Assembly get elected as the Members of the Legislative Council, the very object of incorporating the two provisions will be defeated. He would, therefore, submit that if purposive interpretation is given to both the provisions, both of them will attract disqualification under clause (1B) of Article 164 as well as under Article 361B.</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p data-bbox="667 240 1978 354"><b>10. In WP.No.9950/2020, the learned counsel appearing for the petitioner invited our attention to clause (2) of Article 191 and urged that the nomination of Sri A.H.Vishwanath is itself null and void and therefore, his election is null and void.</b></p> <p data-bbox="667 492 1390 516"><b>THE SUBMISSIONS OF THE ADVOCATE GENERAL</b></p> <p data-bbox="667 659 1978 1019"><b>11. The learned Advocate General raised preliminary objections on the basis of Article 361 of the Constitution. He submitted that the Hon'ble Governor is not answerable to the Court when he exercises power under clause (3)(e) of Article 171 of nominating the Members of the Legislative Assembly. He invited our attention to the statement of objections filed on behalf of the State Government in WP.No.9805/2020. He also invited our attention to clause (3) of Article 163 by pointing out that the advice tendered by the Council of Ministers to the Hon'ble Governor shall not be inquired into by any Court. He, therefore, stated that the file of nomination of Shri A.H.Vishwanath and others which is produced on record does not contain a copy of advice tendered by the Council of Ministers to the Hon'ble Governor.</b></p> <p data-bbox="667 1157 1978 1312"><b>12. The learned Advocate General relied upon the decision of the Apex Court in the case of S.R.Bomma v. Union of India . He invited our attention to paragraphs-85 onwards of the said decision. He submitted that in view of clause (b) of Article 329 of the Constitution, the election of Shri R.Shankar and Shri N.Nagaraj cannot be questioned by filing a writ petition.</b></p> <p data-bbox="667 1450 1339 1474"><b>SUBMISSIONS OF THE OTHER RESPONDENTS</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p><b>13. The learned Senior Counsel Shri Ashok Haranahalli appearing for Shri R.Shankar and Shri N.Nagaraj, firstly relied upon a decision of the Apex Court in the case of B.R.Kapur v. State of T.N. . He invited our attention to what is held in paragraph-48 onwards of the said decision. He submitted that it is not for the Court at this stage to go into the question whether the said two respondents can be appointed as Hon'ble Ministers. He also invited our attention to a decision of the Apex Court in the case of Rameshwar Prasad (VI) v. Union of India . On the position of the Hon'ble Governor, he invited our attention to what is held by the Apex Court from paragraphs-270 to 273 of the said decision. He submitted that if the disqualified Members of the Legislative Assembly get elected to either Houses of the State Legislature, the disqualifications under clause (1B) of Article 164 and Article 361B cease to apply. He pointed out the phraseology used in both provisions. He submitted that in any event, the election of these two respondents cannot be questioned in writ jurisdiction in view of clause (b) of Article 329 and therefore, no case is made out by the petitioner for granting interim or final relief.</b></p> <p><b>14. The learned Senior Counsel representing</b></p> <p><b>Shri A.H.Vishwanath has taken us through the aforesaid judgment and order dated 13th November 2019 for inviting our attention to paragraph-91 onwards of the said decision. He pointed out that the Apex Court has made a distinction between clause (1) of Article 191 and clause (2) of Article 191. He submitted that the disqualification for being chosen as a member is provided in clause (1) of Article 191 which will not apply in case of Shri A.H.Vishwanath. He submitted that as he has become a Member of the Legislative Council, the disqualification is no more attracted.</b></p> <p><b>15. The learned counsel appearing for the petitioners reiterated the submissions made in support of the petitions.</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p data-bbox="667 363 1184 391"><b>CONSIDERATION OF SUBMISSIONS</b></p> <p data-bbox="667 448 1976 976"><b>16. We have considered the submissions. The said three respondents contested the general elections of the Karnataka Legislative Assembly held in the year 2018 for electing 15th Legislative Assembly. They were declared as elected. The results were declared on 15th May 2018. Against them and others, the orders of disqualification were passed in July, 2019 by the Hon'ble Speaker under paragraph 2 of the tenth schedule of the Constitution. The Hon'ble Speaker not only disqualified the said three respondents but disqualified them till the end of the term of 15th Legislative Assembly which will expire in May, 2023. The Apex Court by the aforesaid decision dated 13th November 2019 confirmed that part of the order of the Hon'ble Speaker by which it was held that the said three respondents will attract disqualification in view of paragraph 2 of the tenth schedule. However, the Apex Court held that the Hon'ble Speaker had no jurisdiction to disqualify the said three respondents till the end of the term of Legislative Assembly. In clause (h) of paragraph-152, the Apex Court held thus:</b></p> <p data-bbox="667 1032 1976 1308"><b>“h. In light of the existing Constitutional mandate, the Speaker is not empowered to disqualify any member till the end of the term. However, a member disqualified under the Tenth Schedule shall be subjected to sanctions provided under Articles 75(1B), 164(1B) and 361B of Constitution, which provides for a bar from being appointed as a Minister or from holding any remunerative political post from the date of disqualification till the date on which the term of his office would expire or if he is re-elected to the legislature, whichever is earlier.”</b></p> <p data-bbox="667 1365 953 1393"><b>(underline supplied)</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p>17. The said three respondents were the petitioners before the Apex Court and therefore, they are bound by the judgment and order dated 13th November 2019. The Apex Court specifically held that the said three respondents will be subjected to sanctions provided under Articles 75(1B), 164(1B) and 361B. As far as Article 75(1B) is concerned, it will not apply to the Members of the State Legislature. Therefore, we are concerned with Articles 164(1B) and 361B. Before, we go to these provisions, we must make a note that the order of the disqualification against the said three respondents is under paragraph 2 of the tenth schedule. As held by the Apex Court, in view of the language used by clauses (1) and (2) of Article 191, a person who is disqualified under the tenth schedule is not prevented from contesting the election of both the Houses of the Legislature.</p> <p>18. The sanctions under Articles 164(1B) and 361B operate in different fields.</p> <p>Clause (1B) of Article 164 reads thus:</p> <p>“(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.”</p> <p>(underline added)</p>



Judge Name	Case No/Year	Date of Order	Daily Order
			<p><b>Article 361B reads thus:</b></p> <p><b>“361B.Disqualification for appointment on remunerative political post</b></p> <p><b>A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.”</b></p> <p><b>(underline added)</b></p> <p><b>19. Under clause (4) of Article 164, a person who is not a member of Legislature of a State can be appointed as a Hon’ble Minister. But he automatically vacates his office as the Hon’ble Minister at expiration of a period of six consecutive months provided he does not become a Member of one of the two Houses of the Legislature within the said period of six months. Therefore, in the absence of clause (1B) of Article 164, a member who stands disqualified under paragraph 2 of the tenth schedule could have been appointed as a Hon’ble Minister during the operation of disqualification. This would have defeated the very object of providing for disqualification. But, clause (1B) of Article 164 takes care of such a situation. It provides that a Member of a House of Legislature of a State having Legislative Council, who is disqualified under paragraph 2 of the tenth schedule shall also be disqualified to be appointed as a Hon’ble Minister under clause (1) of Article 164. The said disqualification commences from the date of his disqualification under paragraph 2 of the tenth schedule and ends on the date on which the term of his office as such a member would expire. In case, a Member who is disqualified under paragraph 2 of the tenth</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p><b>schedule, contests election of either Houses of Legislature of a State, the disqualification under clause 1B of Article 164 will come to an end on the day he gets elected.</b></p> <p><b>20. Article 361B provides for a similar disqualification which ensures that a person who is disqualified under paragraph 2 of the tenth schedule does not secure appointment to a remunerative political post. Even this disqualification from holding a remunerative political post starts from the date of disqualification till the date on which the term of his office as such a member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.</b></p> <p><b>21. As regards the election of Shri R.Shankar and Shri N.Nagaraj as members of the Legislative Council, prima facie the bar under clause (b) of Article 329 will be attracted which lays down that no election to either House of Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by the Legislature.</b></p> <p><b>22. The question is whether the said three respondents have incurred disqualification under Articles 164(1B) and 361B. Firstly, we turn to the case of Shri A.H.Vishwanath. As per Annexure-C to WP.No.9474/2020, he has been nominated as a Member of the Karnataka Legislative Assembly by the Hon'ble Governor in exercise of powers vested in him under sub-clause (e) of clause (3) of Article 171 of the Constitution. Article 171 deals with composition of the Legislative Councils. Clause (3) thereof provides that Members of the Legislative Council shall be elected as provided in sub-clauses (a) to (d) thereof and nominated as provided in sub-clause (e) thereof. Therefore, the mode of appointment of Members of the Legislative Council is by election and also by nomination. Clause (5) of Article 171 provides that the Members to be nominated by the Hon'ble Governor under sub-</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p>clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters namely, literature, science, art, co-operative movement and social service. Shri A.H.Vishwanath (as could be seen from the file tendered by the learned Advocate General) was nominated on the ground that he has a special knowledge of literature. The documents in the file refer to books written by him. At this stage, when we are dealing with the prayer for interim relief, we cannot make any adjudication on the question whether Shri A.H.Vishwanath will fall in the category of persons having a special knowledge or practical experience in literature. His appointment as a nominated Member can be always subjected to a judicial scrutiny, but at this stage, no adjudication can be made on the question whether he could have been nominated.</p> <p>23. In fact, at this stage, the only issue which we have been called upon to decide is whether Shri A.H.Vishwanath attracts disqualification under Articles 164(1B) and 361B of the Constitution. We have already referred to clause (1B) of Article 164 which lays down that a Member of either House of the Legislature, who is disqualified under paragraph 2 of the tenth schedule incurs disqualification for being appointed as a Minister till the end of the term of his office from which he is disqualified. But the disqualification for being appointed as a Minister will come to an end earlier provided the disqualified Member is declared elected in the election to the Legislative Assembly or Legislative Council, as the case may be. Similar is the provision of disqualification under Article 361B from holding remunerative political post. As could be seen from the order of the Hon'ble Governor dated 22nd July 2020, Shri A.H.Vishwanath is a nominated Member and even according to his case, he has not been elected to any of the two Houses of the State Legislature. He could have escaped from the disqualification under clause (1B) of Article 164 provided he could have got himself elected to either Houses of Legislature before the expiry of the term of his post from which he has been disqualified.</p> <p>24. Admittedly, Shri A.H.Vishwanath has not been elected as a Member of any of the Houses</p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p>of Legislature. Nomination cannot be termed as an election. Clause (3) of Article 171 of the Constitution makes a clear distinction between an election and a nomination. Wherever the framers of the Constitution intended, it is specifically provided that the posts shall be filled in by an election from a particular electoral college. Sub-clauses (a) to (c) of clause (3) of Article 171 provide for such election. Admittedly, the term of the post as a Member of the Legislative Assembly from which he is disqualified has not expired and it will expire in May 2023. Therefore, as provided in clause (1B) of Article 164, Shri A.H.Vishwanath has ex-facie incurred a disqualification for being appointed as a Hon'ble Minister as he has failed to get elected to either Houses of the State Legislature. Even the disqualification under Article 361B will apply in his case for the same reason.</p> <p>25. In view of this clear finding, the question is whether an injunction as prayed can be granted. Under clause (1) of Article 164, it is provided that the Hon'ble Ministers other than Hon'ble the Chief Minister shall be appointed by the Hon'ble Governor on the advice of Hon'ble the Chief Minister. Under clause (3) of Article 164, before Hon'ble Minister enters upon his office, the Hon'ble Governor is required to administer to him the oath of office and of secrecy.</p> <p>26. We are dealing with the issue of appointment as Hon'ble Ministers by a highest Constitutional functionary in the State namely, the Hon'ble Governor. As far as the powers of Hon'ble Governor are concerned, the law is laid down by the Apex Court in the case of B.R.Kapur (supra). An argument was canvassed before the Apex Court that in view of the provisions of Article 164, the Hon'ble Governor was obliged to appoint a nominee of the Hon'ble Chief Minister as a Minister regardless of whether or not the person nominated was qualified to be a Member of the Legislature under the Constitution. Paragraphs-50 and 51 of the decision are material, which read thus:</p> <p>“50. To accept learned counsel's submission is to invite disaster. As an example, the</p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p>majority party in the Legislature could recommend the appointment of a citizen of a foreign country, who would not be a member of Legislature and who would not be qualified to be a member thereof under Article 173, as Chief Minister under Article 164(1) read with (4) to the Governor; and the Governor would be obliged to comply; the Legislature would be unable to pass a no-confidence motion against the foreigner Chief Minister because the majority party would oppose it; and the foreigner Chief Minister would be ensconced in office until the next election. Such a dangerous – such an absurd interpretation of Article 164 has to be rejected out of hand. The Constitution prevails over the will of the people as expressed through the majority party. The will of the people as expressed through the majority party prevails only if it is in accord with the Constitution. The Governor is a functionary under the Constitution and is sworn to “preserve, protect and defend the Constitution and the law” (Article 159). The Governor cannot, in the exercise of his discretion or otherwise, do anything that is contrary to the Constitution and the laws. It is another thing that by reason of the protection the Governor enjoys under Article 361, the exercise of the Governor’s discretion cannot be questioned. We are in no doubt at all that if the Governor is asked by the majority party in the Legislature to appoint as a Chief Minister a person who is not qualified to be a member of the Legislature or who is disqualified to be such, the Governor must, having due regard to the Constitution and the laws, to which he is subject, decline, and the exercise of discretion by him in this regard cannot be called in question.</p> <p>51. If perchance, for whatever reason, the Governor does appoint as Chief Minister a person who is not qualified to be a member of the Legislature or who is disqualified to be such, the appointment is contrary to the provisions of Article 164 of the Constitution, as we have interpreted it, and the authority of the appointee to hold the appointment can be challenged in quo warranto proceedings. That the Governor has made the appointment does not give the appointee any higher right to hold the appointment. If the appointment is contrary to constitutional provisions it will be struck down. The submission to the contrary – unsupported by any authority —must be rejected.”</p> <p>(underline supplied)</p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p>27. Hence, if the Hon'ble Governor receives an advice from Hon'ble the Chief Minister to appoint a person as a Minister who has incurred disqualification under clause (1B) of Article 164, the Hon'ble Governor having due regard to the Constitution is empowered to decline to administer oath of office to the person recommended by Hon'ble the Chief Minister.</p> <p>28. The Hon'ble Governor is the appointing Authority to appoint the Hon'ble Ministers. He exercises the said power on the basis of the advice of Hon'ble the Chief Minister. As observed in paragraph-50 of the decision in the case of B.R.Kapur (supra), if the Hon'ble Governor finds that notwithstanding the recommendation made by Hon'ble the Chief Minister, the person who is recommended has incurred a disqualification under clause (1B) of Article 164, he is bound to exercise his discretion by declining to administer oath of office having due regard to the provisions of the Constitution. Hence, even after holding that Shri A.H.Vishwanath has incurred disqualification under clause (1B) of Article 164 and Article 361B, we are not granting specific injunction as prayed for. The reason is that the Hon'ble Governor who is the appointing Authority to the post of Hon'ble Ministers is bound to take into consideration the disqualification incurred by</p> <p>Shri A.H.Vishwanath under clause (1B) of Article 164 if he receives an advice to appoint him as Hon'ble Minister. When the legal position is so clear, it will not be appropriate to grant injunction against the constitutional functionary like the Hon'ble Governor. Even Hon'ble the Chief Minister holds office under the Constitution and before recommending him for the post of Hon'ble Minister, he will have to consider the aspect of disqualification under clause (1B) of Article 164.</p> <p><b>Cases of Shri R. Shankar and Shri N. Nagaraj</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p><b>29. Now, coming to the other two respondents, the question before us is whether it can be said that their disqualification under clause (1B) of Article 164 and Article 361B has come to an end on the ground that they have been elected as the Members of the State Legislative Council. Neither the tenth schedule nor clause (2) of Article 191 provide any disqualification of a person who is disqualified as per paragraph 2 of the tenth schedule from being appointed as a Hon'ble Minister or from being appointed to hold a remunerative political post. The said disqualifications are found in clause (1B) of Article 164 and Article 361B. But for clause (1B) of Article 164, perhaps a Member who has been disqualified under paragraph 2 of the tenth schedule could have been considered for being appointed as the Hon'ble Minister in view of clause (3) of Article 164. Prima facie, we are of the view that the drastic provisions of disqualification under clause (1B) of Article 164 and Article 361B will have to be construed strictly. A purposive interpretation cannot be invoked while dealing with such a drastic provision which prevents a person from being appointed to the post of a Minister. In clause (1B) of Article 164, there is no indication that if a person who is a Member of the Legislative Assembly incurs a disqualification under the tenth schedule, to get away from disqualification, he must get elected only to the Legislative Assembly and not the Legislative Council. The use of the words either House of the Legislature of a State having Legislative Council prima facie makes it very clear that if a Member of the Legislative Assembly is disqualified under the tenth schedule and if he gets elected to the State Legislative Council, the disqualification under clause (1B) of Article 164 shall cease to apply. The same is the case with Article 361B. Though the phraseology used in clause (1B) of Article 164 and Article 361B is slightly different, once a Member of Legislative Assembly is disqualified under paragraph 2 of the tenth schedule gets elected as a Member of the Legislative Council, the disqualification under Article 361B will not operate.</b></p> <p><b>30. Thus, we summarise our prima facie conclusions as under:</b></p> <p><b>i. It is not even prima facie established that</b></p> <p><b>Shri R.Shankar and Shri N.Nagaraj have incurred disqualifications under clause (1B) of</b></p>

Judge Name	Case No/Year	Date of Order	Daily Order
			<p><b>Article 164 and Article 361B. Therefore, no interim order can be issued in relation to the said two Members;</b></p> <p><b>ii. We hold that Shri A.H.Vishwanath attracts disqualifications under clause (1B) of Article 164 and Article 361B of the Constitution;</b></p> <p><b>iii. Thus, ex facie, the disqualification of Shri A.H.Vishwanath under the said two provisions will continue till the expiry of term of the Karnataka Legislative Assembly. However, before expiry of the said term, if he gets elected (and not nominated) to either Houses of Legislature, the disqualification under both the aforesaid provisions may not apply. But as on today, as regards</b></p> <p><b>Shri A.H.Vishwanath, the disqualification under both the provisions continues to operate;</b></p> <p><b>iv. In view of clause (1B) of Article 164 and Article 361B, while making recommendation to the Hon'ble Governor for appointing Hon'ble Ministers, Hon'ble the Chief Minister will have to take into consideration the issue of disqualification incurred by Shri A.H.Vishwanath under the said provisions;</b></p> <p><b>v. Similarly, even if an advice is given by Hon'ble the Chief Minister for appointing Shri A.H.Vishwanath as a Minister, the Hon'ble Governor is bound to consider the aspect of disqualification incurred by Shri A.H.Vishwanath under clause (1B) of Article 164 and Article 361B;</b></p> <p><b>Accordingly, the prayer for interim relief in these three petitions stand disposed of;</b></p> <p><b>A copy of the file placed on record by the learned Advocate General which is in a sealed</b></p>



Judge Name	Case No/Year	Date of Order	Daily Order
			<b>cover will continue to remain in the safe custody of the Registrar (Judicial) till further orders are passed by this Court.</b>

[Close](#)[Print](#)