

2022 LiveLaw (SC) 697

IN THE SUPREME COURT OF INDIA

ORIGINAL CIVIL JURISDICTION

N.V. RAMANA; CJI., KRISHNA MURARI; J., HIMA KOHLI; J.

AUGUST 23, 2022

SUBHASH DESAI versus PRINCIPAL SECRETARY, GOVERNOR OF MAHARASHTRA & ORS.

Constitution of India - 10th Schedule - Anti-defection law - Supreme Court refers to Constitution Bench questions relating to Speaker's powers for disqualification proceedings- Questions referred in dispute between Uddhav Thackeray and Eknath Shinde over rift within Shiv Sena party - Prima facie doubts the law laid down in *Nabam Rebia & Bamang Felix versus Deputy Speaker, Arunachal Pradesh Legislative Assembly (2016) 8 SCC 1*.

WRIT PETITION (CIVIL) NO. 493/2022 with W.P.(C) No.469/2022 W.P.(C) No.468/2022 W.P.(C) No.470/2022 W.P.(C) No.479/2022 W.P.(C) No.538/2022

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ORDER

1. We have heard learned senior counsels appearing on both sides and perusing the material available on record.
2. This Court is of opinion that the present batch of petitions raise important constitutional questions relating to interpretation of Schedule X of the Constitution pertaining to disqualification, as well as the powers of the Speaker and the Governor and the power of judicial review thereof.
3. At the outset, it may be necessary to highlight one particular question raised in these batch of matters relating to the power of the Speaker/Deputy Speaker to initiate disqualification proceedings, when proceedings for removal from the said office has been initiated against them. In ***Nabam Rebia & Bamang Felix v. Deputy Speaker***,

Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1, a Constitution bench of this Court held as follows:

“193....We are, therefore, of the view that constitutional purpose and constitutional harmony would be maintained and preserved, if a Speaker refrains from adjudication of a petition for disqualification under the Tenth Schedule, whilst his own position, as the Speaker, is under challenge. This would also, allow the two provisions [Article 179(c) and the Tenth Schedule] to operate in their individual constitutional space, without encroaching on the other.”

4. We may *prima facie* observe that the proposition of law laid down by the Constitution bench in **Nebam Rebia** (*supra*), stands on contradictory reasoning, which requires gap filling to uphold the constitutional morality. As such, this question needs a reference to a Constitution bench for the requisite gap filling exercise to be conducted.

5. Further, these matters merit reference under Article 145(3) of the Constitution to a 5-Judge bench as they raise other substantial questions of law as to the interpretation of the Constitution, which are:

a. Whether notice for removal of a Speaker restricts him from continuing with disqualification proceedings under Tenth Schedule of the Constitution, as held by this Court in **Nebam Rebia** (*supra*)?

b. Whether a petition under Article 226 or Article 32 lies, inviting a decision on a disqualification petition by the High Courts or the Supreme Court, as the case may be?

c. Can a Court hold that a member is “deemed” to be disqualified, by virtue of his/her actions, absent a decision by the Speaker?

d. What is the status of proceedings in the House during the pendency of disqualification petitions against the members?

e. If the decision of a Speaker that a member has incurred disqualification under the Tenth Schedule relates back to the date of the action complained of, then what is the status of proceedings that took place during the pendency of a disqualification petition?

f. What is the impact of the removal of Paragraph 3 of the Tenth Schedule?

g. What is the scope of the power of the Speaker to determine the Whip and the leader of the house legislature party? What is the interplay of the same with respect to the provisions of the Tenth Schedule?

h. Are intra-party decisions amenable to judicial review? What is the scope of the same?

i. What is the extent of discretion and power of the Governor to invite a person to form the Government, and whether the same is amenable to judicial review?

j. What is the scope of the powers of the Election Commission of India with respect to determination of a split within a party?

6. The papers may be placed before the Hon’ble the Chief Justice for appropriate orders, immediately.