IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

WPA(P) 213 of 2021

Pronounced on: 28.09.2021

Ambika Roy

...Petitioner

-Vs-

The Hon'ble Speaker, West Bengal Legislative Assembly and Ors.

...Respondents

Present:-

Mr. C.S. Vaidyanathan,
Senior Advocate (Through VC)
Mr. Billwadal Bhattacharyya,
Mr. Kabir Shankar Bose,
Mr. Amit Mishra,
Mr. Sarthak Raizada,
Mr. Akshay Nagranjan, Advocate (Through VC)
Ms. Kanika Singhal,
Mr. Nitish Raj,
Mr. Thajaswani C.B.,
Mr. Rishav Thakur,
Mr. Anish Mukar Mukherjee and
Mr. Saket Sharma, Advocates (Present in Court)

...for the petitioner

Mr. Anindya Kumar Mitra, Senior Advocate (Through VC)
Mr. Arif Ali,
Mr. Prabhat. Srivastava and
Mr. Sayantak Das, Advocates (Present in Court)

...for the Respondent No.2

Mr. Kishore Datta, learned Advocate General
[On 08.09.2021& 13.09.2021]

Mr. T.M. Sidiqui and
Mr. Debashish Ghosh, Advocates (Through VC)

...for respondent Nos. 1 & 3

Coram: THE HON'BLE JUSTICE RAJESH BINDAL,
CHIEF JUSTICE (ACTING)
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

ORDER

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DUTY OF THE COURT

1. The duty of a Judge has been well-defined in Smriti Chandrika in the following terms:

यथा शल्यं मिषक् कायादुद्धरेद् यंत्रयुक्तितः ।
प्राड्विवाकस्तथा शल्यमुद्धरेदु व्यवहारतः ॥

> As an experienced surgeon extracts a dart from the body of a person by means of surgical instruments, even so the Chief Justice must extract the dart of inequity from a law suit."
>
> (Narada vide Smriti Chandrika P. 30).
>
> Asahaya explains this provision thus:
>
> "As a skilful surgeon, conversant with the art of extracting a dart, takes it out by the application of surgical instruments and other manifold artful practices, even though it may be difficult to get at, it being invisible, even so a judge shall extract the dart of inequity which has entered a law suit, by employing the artful expedients of judicial investigation.
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> [Narada Smriti SBE Series P. 39 footnote].
>
> (Source: A compilation by Justice Dr. M. Rama Jois published by Department of Post Graduate Studies and Research in Law, Gulbarga University at the time of introduction of new LLM Course in Bharateeya Nyaya Darshan and Raja Dharma).

2. In **State of Rajasthan v. Union of India, (1977) 3 SCC 592**, Hon'ble the Supreme Court opined that merely because a question has a political complication, it is no ground for the Court to shirk from performing its duty under the Constitution. So long as a question arises whether an authority under the Constitution has acted within limits of its power or exceeded it, can certainly be decided by the Court. It would be its constitutional obligation to do so. Relevant Para 149 thereof is extracted below:

> "**149.** ...It will, therefore, be seen that merely because a question has a political colour, the Court cannot fold its hands in despair and declare "Judicial hands off". So long as a question arises whether an authority under the

Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. It is necessary to assert in the clearest terms, particularly in the context of recent history, that the Constitution is supreme lex, the paramount law of the land, and there is no department or branch of Government above or beyond it. Every organ of Government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one howsoever highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the Constitution. This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law. To quote the words of Mr Justice Brennan in Baker v. Carr. "Deciding whether a matter has in any measure been committed by the Constitution to another branch of Government or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation and is a responsibility of this Court as ultimate interpreter of the Constitution". Where there is manifestly unauthorised exercise of power under the Constitution, it is the duty of the Court to intervene. Let it not be forgotten, that to this Court as much as to other branches of Government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that reach the Court. "Tact and

> wise restraint ought to temper any power but courage and the acceptance of responsibility have their place too." The Court cannot and should not shirk this responsibility, because it has sworn the oath of allegiance to the Constitution and is also accountable to the people of this Country. There are indeed numerous decisions of this Court where constitutional issues have been adjudicated upon though enmeshed in questions of religious tenets, social practices, economic doctrines or educational policies. The Court has in these cases adjudicated not upon the social, religious, economic or other issues, but solely on the constitutional questions brought before it and in doing so, the Court has not been deterred by the fact that these constitutional questions may have such other overtones or facets. We cannot, therefore, decline to examine whether there is any constitutional violation involved in the President doing that he threatens to do, merely on the facile ground that the question is political in tone, colour or complexion."
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> *(emphasis supplied)*

3. It is the duty of the Court to protect the Constitution and its values and the principles of democracy, which has been held to be a basic structure of the Constitution. It is in discharge of this duty that this Court has been called upon to decide the issues raised in the present petition.

4. The petitioner who is a sitting member of the State Legislative Assembly and also advocate by profession has filed the present petition praying for issuance of a writ of quo-warranto challenging nomination of respondent No.2 as the Chairman of the Committee on Public Accounts. Further prayer has been made for quashing of order dated June 24, 2021 passed by the respondent No.3 vide which the objection petition filed by the petitioner to the

returning officer regarding acceptance of nomination form of respondent No.2 was rejected. Further prayer has been made for a direction to the respondent No.1 to appoint/ nominate member of the opposition party as Chairman of the Committee on Public Accounts.

ARGUMENTS ON BEHALF OF THE PETITIONER

5. Mr. C.S. Vaidyanathan, learned Senior Counsel appearing for the petitioner submitted that the respondent No.2 was elected as a member of the State Legislative Assembly on a BJP ticket. The result of the Assembly Election was declared on May 02, 2021. On June 11, 2021 the respondent No.2 defected from Bharatiya Janata Party (for short, 'BJP') to All India Trinamool Congress (for short, 'AITC'). It is so pleaded in para 8 of the petition and the same has not been specifically denied by respondent No.2 though he has personal knowledge of this fact. Even denial of respondent Nos. 1 and 3 to the pleadings of the petitioner is general in nature and evasive. On June 17, 2021 a petition was filed by Suvendu Adhikari seeking disqualification of respondent No.2 from the Assembly. On June 24, 2021, twenty MLAs including the respondent No.2 were elected as members of Committee on Public Accounts. On July 09, 2021 the Speaker nominated the respondent No.2 as the Chairman of the Public Accounts Committee treating him to be MLA belonging to BJP though he had already defected to AITC. It was against the convention admitted by the Speaker himself in the order passed by him.

6. Mr. Vaidyanathan, learned Senior Counsel further referred to the declaration made by the Speaker vide which he nominated respondent No.2 as the Chairman of the Committee on Public Accounts. It is clearly mentioned therein that in the West Bengal

Legislative Assembly there is a healthy and rich tradition, and convention being followed for the last 54 years or so, to appoint a member of the opposition as the Chairman of the Committee on Public Accounts. As in the present Committee on Public Accounts, 7 out of 20 members belong to BJP i.e. the opposition, the respondent No.2, taking him to be a member belonging to the BJP, was nominated as the Chairman thereof. This clearly established the fact that the Speaker had acted on the fact that respondent No.2 belonged to BJP and keeping in view the healthy tradition he was nominated as the Chairman. As the respondent No.2 had defected to AITC, the order of nomination of respondent No.2 as the Chairman of the Committee deserves to be set aside only on that ground. None of the allegations made in the petition have been denied specifically by any of the respondents.

7. Referring to the judgment of Hon'ble the Supreme Court in **Mohinder Singh Gill v. Chief Election Commissioner, New Delhi And Others**, **(1978) 1 SCC 405** it was submitted that any order passed by an authority can be justified only on the ground mentioned therein and the reasons cannot be supplemented by way of an affidavit. Hence, no affidavit filed by either of the respondents can be relied upon to justify the order, which states differently than what is contained in the order vide which respondent No.2 has been nominated as the Chairman of the Committee on Public Accounts. Admission made by the Speaker at the time of nomination of respondent No.2 as the Chairman of the Committee on Public Accounts clearly shows that it is an established constitutional convention which can be enforced as a binding precedent. In fact as is

admitted by the Speaker himself the convention was set keeping in view the healthy traditions. The Speaker himself said in the order that he is bound by the long convention and in fact it is good for the healthy democracy as the Committee on Public Accounts verifies the accounting. In support of his arguments reliance was placed upon judgments of Hon'ble the Supreme Court in **Supreme Court Advocates-on-Record Association And Others v. Union of India, (1993) 4 SCC 441**; **Supreme Court Advocates-on-Record Association And Another v. Union of India, (2016) 5 SCC 1**.

8. In support of the argument that the respondents having failed to specifically denying the allegation regarding the respondent No.2 being not the MLA belonging to BJP, the same should be deemed to be admitted and adverse inference be drawn against the respondents, reliance was placed upon **Badat and Co. Bombay v. East India Trading Co., AIR 1964 SC 538; Naseem Bano v. State of U.P., 1993 Supplement (4) SCC 46**.

9. Mr. Vaidyanathan, learned Senior Counsel further submitted that the Committee on Public Accounts is constituted for one year and the idea of the respondents is to let the present petition become infructuous. Firstly, the Speaker is not deciding the petition pending before him alleging defection of respondent No.2 from BJP to AITC, which in terms of judgment of Hon'ble the Supreme Court in **Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly and Others, (2020) SCC OnLine SC 55** is to be decided within a reasonable period which has been held to be maximum three months. Reliance was also placed upon judgment of Hon'ble the Supreme Court in **Rajendra Singh Rana v. Swami**

Prasad Maurya, (2007) 4 SCC 270. It cannot be denied that it is a matter of public importance. Once the allegations are specific against the respondents, the onus shifts on them to prove otherwise. A public interest litigation in such matter is maintainable specially in the form of quo-warranto. Reliance was placed upon **B.R. Kapur v. State of T.N., (2001) 7 SCC 231**, **Central Electricity Supply Utility of Odisha v. Dhobei Sahoo, (2014) 1 SCC 161**.

ARGUMENTS ON BEHALF OF THE RESPONDENT NOS. 1 & 3

10. Mr. Kishore Datta, learned Advocate General, appearing for respondent Nos. 1 and 3 submitted that though the petitioner has tried to use the word constitutional convention in his arguments but the same is not borne out even from the order passed by the Speaker nominating respondent No.2 as the Chairman of the Committee on Public Accounts. He merely used the term 'convention'. The same cannot be taken to be constitutional convention. As the names of the Chairman of various committees including the Committee on Public Accounts were declared by the Speaker on the floor of the House during the proceedings of the Assembly, the bar under Article 212 of the Constitution of India applies for any interference by the Court. As the petitioner is an interested party to the litigation, a petition filed in public interest will not be maintainable. At the most he can bring motion in the Assembly.

11. As far as the Committee on Public Accounts is concerned, the members thereof are elected whereas Chairman is nominated by the Speaker. Article 208 of the Constitution of India enables the Speaker to frame Rules for conduct of business. These are the rules of procedure to be followed in an Assembly. Rule 301 provides for the

functions of the Committee on Public Accounts whereas Rule 302 provides for its constitution. Rule 255 provides that the Chairman of the Committee shall be appointed by the Speaker from amongst the members of the Committee. He further submitted though Rule 302 provides that the members of the Committee shall be elected from amongst its members according to the principle of proportional representation. However, in the case in hand there were only 20 nominations filed, hence, all were declared elected. The question of proportional representation did not arise. The term 'Member' has been defined in the Rule. The process of election as the members of the Committee is to be followed in case there are more than 20 nominations filed, whereas the Chairman is to be nominated by the Speaker.

12. Article 212 of the Constitution of India bars scrutiny by the Court of any proceedings on the floor of the House. At the most the petitioner alleges irregularities in the procedure. The issue cannot be raised in court. The Speaker is an officer heading the State Assembly. Article 178 of the Constitution of India provides for that. In support of the argument reliance was placed upon **Nabam Rebia & Bamang Felix v. Dy. Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1; State of Kerala v. K. Ajith and Others, (2021) SCC OnLine SC 510.** As to what is meant by proceedings on the floor of the House in terms of Article 212 of the Constitution of India reference was made to commentary in **May's Parliamentary Practice, 24th Edition**, judgment of Orissa High Court in **Godavaris Misra v. Nandakisore Das, AIR 1953 Orissa 111** was also referred to. The format of the nomination paper as member of the Committee

on Public Accounts was referred to show that it does not provide for any column for the candidate to mention the name of the party to which he belongs to. In fact it is not mandatory. The members can be belonging to only one party. At times during previous period there had been practice of having Chairman of the Committee on Public Accounts who were belonging to the opposition party but that cannot be termed as a constitutional convention. He could not deny the fact recorded in the order passed by the Speaker that the respondent No.2 was nominated as the Chairman of the Committee on Public Accounts being MLA belonging to BJP. As far as his disqualification is concerned on account of his alleged defection to AITC, the petition is still pending consideration before the Speaker.

13. It was further alleged that in the case in hand the petitioner had filed objections to the nomination of respondent No.2 for being elected as member of the Committee on Public Accounts, which were rejected. He being interested party cannot file a petition in public interest. Again while referring to the commentary from **May's Parliamentary Practice**, he submitted that whatever action the Speaker takes the same can be challenged only by way of substantive motion in the Assembly. **Kaul – Practice & Procedure in Parliament, 6th Edition** was also referred to. 'Motion' has been well explained in the Rules of Business to mean the proposal by a member for consideration of the assembly relating to any matter which may be discussed there.

14. The judgment in **Mohinder Singh Gill's** case (supra) as cited by Mr. Vaidyanathan, learned Senior Counsel appearing for the petitioner was distinguished stating that the case in hand is not a

service matter. It was the prerogative of the Speaker to have nominated any of the member of the Committee as the Chairman, thereof. No reasons were required to be given in support. It is not a case of constitutional convention as is sought to be pleaded by the petitioner. While referring to judgment of Hon'ble the Supreme Court in **Supreme Court Advocates-on-Record Association's (1993)** case (supra) he submitted that there is no doubt that the constitutional convention can be enforced but the case in hand does not fall in that category. It is merely a case of rules of procedure and conduct of business in the assembly. Even Parliamentary practice was not held to be Constitutional Convention by the Supreme Court in **Consumer Education & Research Society v. Union of India, (2009) 9 SCC 648**.

15. A writ of quo-warranto can be issued only where a person is found to be usurping a public office, which is created either by the Constitution or by the Statutory rules. All offices cannot be said to be public office. In the case in hand the only eligibility required to be a member or chairman of the Committee on Public Accounts is that the person concerned has to be member of the Legislative Assembly. The rules of business do not provide that a member of the opposition party has to be Committee's chairman. In support of the argument that a writ of quo-warranto can be issued only where the person is found to be usurping the office in violation of any statutory rules, reliance was placed upon **Bharati Reddy v. State of Karnataka, (2018) 6 SCC 162**. Public office is as created under any statutory rules or the Constitution and not merely by Rules of Business.

16. Reliance was also placed upon **P.S. Venkataswamy Setty (Dr.) v. University of Mysore, AIR 1964 Mys 159; Sashi Bhusan Roy v. Pramathanath Banerjee, 72 CWN 50**. The aforesaid judgments have been referred to by Hon'ble the Supreme Court in **Ram Singh Saini v. H.N. Bhargava, (1975) 4 SCC 676**. Judgments cited by the petitioner in **B.R. Kapur's** and **Central Electricity Supply Utility of Odisha's** cases (supra) are distinguishable for the reason that in the aforesaid judgments the persons involved were holding either statutory or constitutional positions. Judgment of Hon'ble the Supreme Court in **State of Punjab v. Satya Pal Dang and Ors., AIR 1969 SC 903** was referred to submit that the rules of procedure cannot be read as Clauses in the Constitution. These are not mandatory and are merely directory in terms of judgment of the Patna High Court in **Karpoori Thakur and Another v. Abdul Ghafoor and Others, AIR 1975 PATNA 1**.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 2

17. Mr. Anindya Kumar Mitra, learned Senior Advocate appearing for respondent No.2 submitted that it is misconceived to argue that any practice for a short duration can be treated as a constitutional convention. Even an admission made by a Speaker on that account cannot be considered to be a constitutional convention. It cannot be created by one person in the state. Even if seen from the pleadings of the petitioner, intermittently there had been Chairman of the Committee on Public Accounts belonging to the opposition party however, it was not a regular practice. Constitutional convention cannot be limited to a state. In any case any admission made by the Speaker will not be binding on the respondent No.2. Even in the

objections filed by the petitioner to the nomination of respondent No.2 as member of the Committee on Public Accounts no such plea was raised. Constitution of Committee is for a period of one year. It is not provided in the Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly (for short, 'the Rules of Business') that nomination has to be proposed and seconded by the member of same party. Some credence has to be given to the Rules of Business framed in exercise of powers conferred under Article 208 of the Constitution of India. It is not provided in the Rules of Business that the Chairman of the Committee on Public Accounts has to be of any opposition party. It is easy to plead but difficult to prove a constitutional convention. How the same is to be established has been well laid down in judgment of Hon'ble the Supreme Court in **Supreme Court Advocates-on-Record Association's (1993)** case (supra) and **K. Lakshminarayanan v. Union of India, (2020) 14 SCC 664**. Any convention in a state cannot be termed as constitutional convention.

18. Even if some practice is established by the petitioner, the same cannot be taken to be a constitutional convention. Even if it is so, a writ petition filed to challenge the proceedings in a State Assembly, is barred in terms of Article 212 of the Constitution of India as the declaration of the Chairman of the Committee was made at the floor of the House. It shall be treated as proceedings in the legislature. In support of the arguments reliance was placed upon **Godavaris Misra v. Nandakisore Das's** case (supra); **A.M. Paulraj v. The Speaker, Tamil Nadu Legislative Assembly & The Secretary, Tamil Nadu Legislative Assembly, AIR 1986 Madras**

248 and **Pandit M.S.M. Sharma v. Dr. Krishna Sinha, AIR 1960 SC 1186**.

19. It was further argued by Mr. Mitra, learned Senior Counsel that a prayer for issuance of writ of quo-warranto is not maintainable for the reason that it is not a public post. Such a prayer is available only if there are certain eligibility conditions laid down in the Rules and the person has been appointed in violation thereof. There are no such pleadings available. In fact, the present litigation is not a public interest litigation rather a private interest litigation as the petitioner himself had filed objections to challenge nomination of respondent No.2 as the member of the Committee on Public Accounts and the same was rejected. Hence, he is an interested party. As to what can be termed to be a litigation filed in public interest, reliance was placed upon judgment of Hon'ble the Supreme Court in **S.P. Anand v. H.D. Deve Gowda, (1996) 6 SCC 734**.

REPLY TO THE ARGUMENTS OF THE RESPONDENTS BY THE PETITIONER

20. In response, Mr. Vaidyanathan, learned Senior Counsel appearing for the petitioners submitted that there is no response by either of the respondents that the respondent No.2 had left BJP party and joined AITC. That is the basic fact on which all other issues regarding convention are dependent. It is the fact admitted by the speaker himself in the order. Hence, no explanation given by either of the parties can be accepted. Further relying upon a judgment of Hon'ble the Supreme Court in **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Others, (2007) 3 SCC 184** he submitted that there is distinction between procedural and substantial irregularities. In case of

substantive irregularities the Court can always interfere. The parameters of judicial review in the Parliament/ Assembly proceedings have been well laid down. Even the proceedings in the House can also be examined. Reliance was placed upon judgment of Hon'ble the Supreme Court in **Amarinder Singh v. Special Committee, Punjab Vidhan Sabha, (2010) 6 SCC 113**.

21. Responding to the argument raised by learned Advocate General he submitted that there is a difference between Clauses (1) and (2) of Article 212. As far as Clause (1) is concerned, he submitted that the power of judicial review is available. As far as Clause (2) is concerned, the officer who passed the order, may not be called in Court but his action can always be challenged. Article 361 of the Constitution of India gives protection to the President, Governor and the Raj Pramukh with reference to actions taken in their official capacity. However, even if they have the protection, their actions as such are not saved. The validity thereof can always be examined. Reliance was placed upon judgment of Hon'ble the Supreme Court in **B.R. Kapur's** case (supra). It was a case in which the action of the Governor in calling a candidate to be the Chief Minister was under challenge. In case the office occupied by the person concerned is of public nature, a writ of quo-warranto always lies. The principles applicable for judicial review of the action of the Speaker were subject matter of consideration before the Hon'ble the Supreme Court in **Rojer Mathew v. South Indian Bank Limited, (2020) 6 SCC 1**. In that decision of the Speaker of the Lok Sabha opining a bill to be a money bill which otherwise is treated as final, was considered by Hon'ble the Supreme Court. It is to keep the constitutional scheme in

order. Once the power of judicial review is available the bar under Article 212 is not possible.

22. With reference to the constitution of committees by the Assembly reference was made to Article 194 of the Constitution of India which talks about constitution of committees. Hence, to claim that it is something which is result of only the Rules of Business, is totally misconceived as it has origin from the Constitution itself. Judgment of Hon'ble the Supreme Court in **K. Lakshminarayanan's** case (supra) was relied upon to submit that the argument of constitutional conventions was even examined with reference to an Act of the Parliament. It was a case in which nomination to the Puducherry Assembly was in question with reference to an Act framed by the Parliament. The issue was related to only one State. In the case in hand the issue relates to exercise of discretion by the Speaker with reference to nomination of Chairman of the Committee on Public Accounts which is referable to Article 194 of the Constitution of India. Hence, any convention will be treated as a constitutional convention. Even if Rule 255 of the Rules of Business does not provide that a member of the opposition party will be the chairman of the Committee on Public Accounts but the convention guides the exercise of power by the Speaker. He also acted in the same manner, however, keeping his eyes shut, for the reasons best known to him, about the fact that the person being nominated as Chairman of the Committee on Public Accounts on that day had defected from BJP to AITC. His nomination as Chairman was made treating him as MLA belonging to BJP Party, which action on papers was in terms of the convention being followed. Any constitutional convention need not be

related to the entire country as it can be State specific as well. There are no pleadings in the objections filed by the respondents, otherwise there are similar conventions in the Parliament as well as the State Legislatures where certain committees are held by members of the parties in opposition. Referring to the judgment of Hon'ble the Supreme Court in **Supreme Court Advocates-on-Record Association's (1993)** case (supra) he submitted that even in the aforesaid case it was the statement made by the then Law Minister and the Home Minister on the floor of the House, which was considered as convention.

23. Regarding Chairman of the Committee on Public Accounts being a public office he submitted that though such an issue was not raised by the respondents in the objections filed but still the argument raised by them need to be answered. Article 194 of the Constitution of India provides for constitution of committees in the Assembly. Article 208 enables framing of Rules of Business. Rule 252-255 of the Rules of Business provide for constitution of committees. They are all termed as officers. The Chairman of the Committee on Public Accounts performs a very vital function. This is an office contemplated under the Constitution of India. As all details cannot be provided in the Constitution, the conventions started for maintaining healthy democracy. Any public office means a person manning the same discharges public functions. Powers vested with the Chairman of the Committee on Public Accounts are multifarious. He can even summon the officers and has to examine the budget and the accounts to be presented before the Assembly. Rule 301 of the Rules of Business clearly provides for the functions of Committee on Public

Accounts. Even Section 2(17)(g) of CPC also defines on as to who is a public officer. Even a member of Parliament was also held to be a public officer. Reliance was placed on the judgment of Hon'ble the Supreme Court in **P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626** for consideration of the issue. The duties attached to the office are to be considered. If the same are considered in the present case, there cannot be any other opinion except that the Chairman of the Committee on Public Accounts discharges public functions. Hence, for considering his eligibility to hold the post a writ of quo-warranto will be maintainable. It is a case in which the established admitted constitutional convention has been violated. The office is permanent, the persons may come and go. The office in question is a public office. In any case the members of the Legislative Assembly are public representatives elected to serve the public at large in the democratic set up.

24. Heard learned Counsel for the parties and perused the relevant referred record.

ANALYSIS

I - REGARDING DISQUALIFICATION PETITION

25. In Para 21 of **Keisham Meghachandra Singh's** case (supra) Hon'ble the Supreme Court observed that a member of the Assembly found to be disqualified, his continuance in the Assembly even for a day is illegal and unconstitutional and as a consequence his holding of office as minister would be illegal. It is the duty of the Court to protect the Constitution and its values and the principles of democracy, which is a basic feature of the Constitution.

26. In Para 29 of the aforesaid judgment Hon'ble the Supreme Court opined that the Speaker acting as a Tribunal under the Tenth Schedule of the Constitution of India is bound to decide disqualification petition within a reasonable period and the same was held to be three months, from the date on which the petition is filed. The period was fixed keeping in view the constitutional objectives of disqualifying persons who have failed to adhere to the provisions of Tenth Schedule. Relevant Paras 21 and 29 thereof are extracted below.

> **"21.** Finding that the life of the Assembly was about to end and that if the 13 members were found to be disqualified their continuance in the Assembly even for a day would be illegal and unconstitutional, and that their holding of office as Ministers would also be illegal, the Court stated that it was bound to protect the Constitution and its values, and the principles of democracy, which is a basic feature of the Constitution, and then went on to declare that the writ petition will stand allowed with a declaration that the 13 members who met the Governor on 27.08.2003 stand disqualified from the U.P Legislative Assembly w.e.f. 27.08.2003 on the ground contained in paragraph 2(1)(a) of the Tenth Schedule.
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> **29.** A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in paragraph 110 of Kihoto Hollohan (supra) are quia timet actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. Paragraphs 110 and 111 of Kihoto Hollohan (supra) do not, therefore, in any manner, interdict judicial review in aid of the Speaker arriving at a prompt decision as to

> disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a Tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period. What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided if the constitutional objective of disqualifying persons who have infracted the Tenth Schedule is to be adhered to. This period has been fixed keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is 5 years and the fact that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for a single day, as found in Rajendra Singh Rana (supra), if they have infracted the provisions of the Tenth Schedule."
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> *(emphasis supplied)*

27. In **Rajendra Singh Rana's** case (supra) as well the issue was regarding pendency of the proceedings for disqualification of certain MLAs before the Speaker of the Assembly. The matter was kept pending for years together. Instead of remanding the matter back to the Speaker as their term was going to expire very soon, Hon'ble the Supreme Court had taken up the task of deciding on the question of their disqualification. It was observed that the Court is bound to protect the Constitution, its values and the democratic principles, which is the basic feature of the Constitution. Para 44 thereof is extracted below.

> "**44.** Normally, this Court might not proceed to take a decision for the first time when the authority concerned has not taken a decision in the eye of the law and

> this Court would normally remit the matter to the authority for taking a proper decision in accordance with law and the decision this Court itself takes on the relevant aspects. What is urged on behalf of the Bahujan Samaj Party is that these 37 MLAs except a few have all been made Ministers and if they are guilty of defection with reference to the date of defection, they have been holding office without authority, in defiance of democratic principles and in such a situation, this Court must take a decision on the question of disqualification immediately. It is also submitted that the term of the Assembly is coming to an end and an expeditious decision by this Court is warranted for protection of the constitutional scheme and constitutional values. We find considerable force in this submission."

28. The issues raised in the present petition could very well be sorted out in case the Speaker had decided the petition pending before him for disqualification of respondent No.2 from the Assembly, expeditiously. On account of his being member of BJP in the Legislative Assembly that he has been appointed as Chairman of the Committee on Public Accounts. Maximum three months period has been prescribed by Hon'ble the Supreme Court for decision of any such petition, which has already expired. The objective and purpose of Tenth Schedule is to curb the evil of political defections motivated by lure of office, which endangers the foundation of our democracy. The disqualification takes places from the date when the act of defection took place. The constitutional authorities who have been conferred with various powers are in fact coupled with duties and responsibilities to maintain the constitutional values. In case they fail to discharge their duties within time, it will endanger the democratic set up. Even for decision of the petitions filed for disqualification of a

member by the Speaker, the Courts have to intervene and specify the timeline. A Speaker in discharge of his constitutional duties is expected to be neutral. The power of the Speaker to adjudicate upon an application filed for disqualification of a member of Assembly has been held to be quasi-judicial in nature, which is subject to judicial review by the Courts. It is because of inaction of the Speaker that this Court has been approached in this avoidable litigation. In the case in hand, petition filed for disqualification of the respondent No.2 with allegations of his defection from BJP to AITC is pending before the Speaker since June 17, 2021. Three months period expired on September 16, 2021.

II - RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN THE WEST BENGAL LEGISLATIVE ASSEMBLY, CONSTITUTION OF COMMITTEES AND IMPORTANCE THEREOF

29. The relevant provisions of the Constitution of India are extracted below:

> "**CONSTITUTION OF INDIA**
>
> **208. Rules of procedure**.—(1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.
>
> (2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

30. The relevant provisions of the Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly are extracted below:

"**Definition**

"Assembly" means the West Bengal Legislative Assembly;

"Assembly Committee" means a committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker, and the Secretariat for which is provided by the Assembly Secretariat;

"**Member**" means a member of the West Bengal Legislative Assembly;

"**Member in charge of the Bill**" means the member who has introduced the Bill and any Minister in the case of a Government Bill;

"**Motion**" means a proposal made by a member for the consideration of the Assembly relating to any matter which may be discussed by the Assembly, and includes an amendment;

x x x x

Chairman of Committee

255. (1) The Chairman of a Committee shall be appointed by the Speaker from amongst the members of the Committee:

Provided that if the Deputy Speaker is a member of the Committee, he shall be appointed Chairman of the Committee.

(2) If the Chairman is for any reason unable to act, the Speaker may appoint another Chairman in his place.

(3) If the Chairman is absent from any sitting the Committee shall choose another member to act as Chairman for that sitting.

x x x x

Power to take evidence or call for documents

266. (1) A witness may be summoned by a order signed by the Principal Secretary and shall produce such documents as are required for the use of a Committee.

(2) It shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential.

(3) No document submitted to the Committee shall be withdrawn or altered without the knowledge and approval of the Committee.

x x x x

Committee on Public Accounts

Functions

301. (1) There shall be a Committee on Public Accounts for the examination of accounts showing the appropriation of sums granted by the House for the expenditure of the State Government, the Annual Finance Accounts of the State Government and such other accounts laid before the House as the Committee may think fit.

(2) In scrutinising the Appropriation Accounts of the State Government and the report of the Comptroller and Auditor-General thereon, it shall be the duty of the Committee to satisfy itself-

(a) that the moneys shown in the accounts as having been disbursed were legally available for, and applicable to, the service or purpose to which they have been applied or charged;

(b) that the expenditure conforms to the authority which governs it; and

(c) that every re-appropriation has been made in accordance with such rules as may be prescribed by the Governor or by the Finance Minister, as the case may be.

(3) It shall also be the duty of the Committee-

(a) to examine the statement of accounts showing the income and expenditure of State corporations, trading and manufacturing schemes, concerns and projects together with the balance sheets and statements of profit and loss accounts which the Governor may have required to be prepared or are prepared under the provisions of the statutory rules regulating the financing of a particular corporation, trading or manufacturing scheme or concern or project and the report of the Comptroller and Auditor-General thereon;

(b) to examine the statement of accounts showing the income and expenditure of autonomous and semi-autonomous bodies, the audit of which may be conducted by the Comptroller and Auditor-General of India either under the directions of the Governor or under an Act of Parliament or of the State Legislature or under any law in force under Article 372 of the Constitution; and

(c) to consider the report of the Comptroller and Auditor-General in cases where the Governor may have required him to conduct an audit of any receipts or to examine the accounts of stores and stocks.

(4) If any money has been spent on any service during a financial year in excess of the amount granted by

the House for that purpose, the Committee shall examine with reference to the facts of each case the circumstances leading to such an excess and make such recommendation as it may deem fit.

Constitution -

302. The Committee shall consist of twenty members. They shall be elected by the House from among its members according to the principle of proportional representation by means of the single transferable vote in accordance with the directions framed in this behalf by the Speaker. The term of office of members of the Committee shall be one year, but any member shall be eligible for re-election:

Provided that a Minister shall not be elected a member of the Committee, and that if a member, after his election to the Committee, is appointed a Minister he shall cease to be a member of the Committee from the date of such appointment."

31. Article 208 of the Constitution of India enables the House of Legislature of a State to make Rules for regulating its procedure and conduct of business. As is evident from the Rules of Business, Chapter XXV thereof provides for Assembly Committees. Rule 252 provides that the members of the Committees shall be either appointed or elected or nominated by the Speaker. Rule 255 provides that the Chairman of a Committee shall be appointed by the Speaker from amongst the members of the committee. The sittings are to be held within the precincts of the House. Any change in place has to be with the approval of the Speaker. In terms of Rule 266 the Committee may summon any witness to produce any documents required for its use by the Committee. Any evidence submitted or produced before the

Committee can be kept secret or confidential at the discretion of the Committee. It can also administer oath of affirmation to the witness being examined by it. Any business pending before a Committee shall not lapse by reason only of prorogation of the House.

32. Rules 284 – 290 of the Rules of Business provide for constitution of Business Advisory Committee. Rules 291 – 298 provide for constitution of Select Committee on bills. Rules 298A – 300 provide for Committee on Papers laid on the table of the House.

33. Rules 301 – 303 of the Rules of Business provide for constitution of Committee on Public Accounts, the one with which we are concerned in the present case. The Committee on Public Accounts is constituted for examination of accounts showing the appropriation of sums granted by the House for the expenditure of the State Government, annual finance accounts of the State Government and such other accounts laid before the House, as the Committee may think fit. While scrutinizing appropriation accounts of the State Government and the report of the Comptroller and Auditor General (for short, 'CAG') thereon, it shall be the duty of the Committee to satisfy itself.

(i) that the money shown in the accounts as have been disbursed, were legally available for the purpose to which they have been applied or charged.

(ii) the expenditure conforms to the authority which governs it.

(iii) reappropriation has been made in accordance with such rules as may be prescribed.

34. The Committee is also duty bound to examine statement of accounts showing income and expenditure of the State

Corporations together with the profit and loss accounts and the Balance Sheets. It also has the power to examine statement of accounts showing income and expenditure of autonomous and semi-autonomous bodies, which may be audited by the CAG and to consider the report of the CAG.

35. As per Rule 302 of the Rules of Business the Committee is to consist of 20 members, to be elected from amongst the members according to principle of proportional representation. The term of the Committee has been specified as one year. Rule 303 of the Rules of Business provide for the timeline for submission of reports to the House.

36. Rules 303A to 310ZI of the Rules of Business further provide for constitution of various other Committees.

37. In terms of Rule 255 of the Rules of Business, the Chairman of the Committee is to be appointed by the Speaker from amongst the members of the Committee. As per Rule 302 the Committee on Public Accounts is consisting of 20 members. It may be out of place if not mentioned here that at the time of hearing it was submitted by learned Counsel for the respondents that there being only 20 nominations filed for being members of the Committee on Public Accounts, no election was held. The Speaker being the authority in terms of Rule 255 of the Rules of Business appointed the Chairman thereof. It was so done on July 09, 2021. While noticing certain facts regarding constitution of Committees and its Chairmen, the Speaker declared that he has been given the power to appoint Chairman/Chairperson from amongst the members elected to different Committees. In the case of the Committee on Public Accounts, the

Speaker mentioned that a very healthy and rich tradition, and convention have grown for the last 54 years or so to appoint a member of the Opposition as the Chairman of the Committee. 7 out of 20 members of the Committee on Public Accounts belong to BJP, the party in opposition. Following the convention as established, he as the Speaker, is to appoint a person from amongst the said seven members as the Chairman of the Committee on Public Accounts. As the appointment has to be of a member holding outstanding experience in legislative and parliamentary affairs and the Committee on Public Accounts enjoys a place of pride in the Committee system, taking all factors into account, the respondent No.2 having vast experience in parliamentary affairs and belonging to the legislative party in opposition, was nominated as the Chairman to head that Committee. In addition, the Chairpersons of other Committees were also nominated.

38. Importance of role of committees constituted in the Parliament and the State Assembly has been considered by Hon'ble the Supreme Court in **Ajit Mohan and Others v. Legislative Assembly National Capital Territory of Delhi and Others, 2021 SCC OnLine SC 456**. Relevant paras thereof are extracted below:

> "**175.** The committees constituted by legislative bodies like the Assemblies for the States and Parliament for the Union, perform a key role in the functioning and the working of the Houses. In fact, it is often said that the real work is done in these committees - away from the din of the Parliament. These committees witness more vociferous reflection of the divergent view, slightly away from public gaze. It is said that there is a more reasonable and applied discussion in these committees. This is an

aspect recognized all over the world qua the functioning of such committees. These committees are bodies which have the capability to undertake wide-scale consultative processes, engage in dialogue, and build consensus through intelligent deliberations. In fact, such an exercise is intrinsic to the legislative process where public policies would require detailed studies and concentration. These committees undertake deliberations and provide recommendations as precursors to legislative activities, and the effective working of committees is a prelude to the core working of the Assemblies.

176. The committees are an extension of the legislature itself and do informed work. Their significance has been exhaustively dealt with in Kalpana Mehta which we have extracted hereinabove. US Representative James Shannon's words were noted with approval in the judgment, recognising that "around the world there is a trend to move toward reliance on committees to conduct the work of parliament, and the greatest reason for this trend is a concern for efficiency." It is not possible for us to accept the contention of the petitioners to create an artificial division between Assembly's core/essential and non-essential functions, with any restrictive clauses being placed on the deliberations of the committees. Such water-tight compartmentalisation is not advisable. Unless the committee embarks on a course completely devoid of its functional mandate specified by the Assembly, or the Assembly itself lacks jurisdiction to deal with the subject matter, we are of the view that the widest amplitude must be given to the functioning of these committees. It is the parliamentary committee system that has been recognised as a creative way of parliaments to perform their basic functions. The same principle would apply, even if it is to some extent beyond their legislative domain. This is because they will not be able to make any valid

> legislative recommendations in the absence of competence over the subject matter. However, they may debate aspects which may be a reflection of their sense and consequently the sense of the House, if so adopted by the House."
>
> *(emphasis supplied)*

39. A perusal of the various Rules of Business with reference to the working of the Committees and the work to be discharged by them and the powers conferred on them clearly establish the importance thereof. Hon'ble the Supreme Court has opined that the Committees constituted by the legislative bodies perform a key role in the functioning and working of the Houses as there is more reasonable and applied discussion in these Committees. Effective working of the Committees is a prelude to the core working of the Assemblies. The Committees are in fact an extension of legislature itself and do informed work. These Committees are consisted of Members of the Assembly having affiliation to different parties. It is a participative process in the democratic set up. The importance of the Committee on Public Accounts is evident from the fact that Rule 302 of the Rules of Business provides for proportional representation. The Chairperson has to be appointed by the Speaker. It is not the power to be exercised by the Assembly. The Assembly proceedings are in the term of some formal action or decision taken by the House in its collective capacity. Debate is an intrinsic part of that process. Even if in the present case the declaration of the names of the Members of the Chairpersons of the Committees was made in the Assembly, this cannot be termed to be proceedings in the Assembly as it was merely a declaration made by the Speaker in the presence of all the Members. It was not subject

matter of discussion amongst the Members in the Assembly. There may be some Committees constituted by the State Assemblies or the Parliament but the case in hand is different.

III - CONSTITUTIONAL CONVENTION

40. Long arguments and counter-arguments were raised on the issue as to whether there is a constitutional convention, which has been violated. It is the case of both the parties that the constitutional conventions are enforceable in Court. As to what is a constitutional convention and how it can be established is no more *res integra*.

41. The question as to whether an established constitutional convention can be read in Articles 124(2) and 217(1) of the Constitution in the matter of appointment of Judges of the Supreme Court and High Courts was considered by Hon'ble the Supreme Court in **Supreme Court Advocates-on-Record Association's (1993)** case (supra). For that purpose test for existence of a convention laid down by Sir Ivor Jennings was based on three questions, namely, (i) what are the precedents? (ii) did the actors in the precedents believe that they were bound by a rule? And (iii) is there a reason for the rule? Finding that the tests as laid down by Sir Ivor Jennings were fully satisfied in the aforesaid, Hon'ble the Supreme Court opined that the convention is established to the effect that opinion and recommendation of the Chief Justice of India in the matter of appointment of Judges is binding on the executive. It was found that there were precedents for the period from 1950-1959 and from 1983-1993, when almost all appointments were made with the concurrence of the Chief Justice of India. Hence, there were precedents. As regards the second test, it was noticed that even on the floor of the House of

the Rajya Sabha it was stated by the then Home Minister and the then Law Minister that executive was bound by the recommendations made by the judiciary. As far as the third test is concerned, it was found that the Chief Justice of a High Court and Chief Justice of India are well equipped to express their views and tender advice on the suitability of the person. The independence of judiciary is paramount and the same can be maintained if the executive does not have final word on the appointments.

42. The issue regarding constitutional convention was also considered by Hon'ble the Supreme Court in **K. Lakshminarayanan's** case (supra). One of the questions framed therein was as to whether there was a constitutional convention to consult the government of Puducherry before making nomination by the Central Government, on the strength that on earlier occasions the nominations were made by the Central Government in consultation with the government of Puducherry. It was opined therein, that the constitutional conventions are born and recognized in working of the Constitution. These always aim to achieve higher values and objectives enshrined in the Constitution. The conventions are not static but can change with the change in constitutional values and interpretations. The conventions cannot run contrary to express provisions of the Constitution or underline constitutional objectives. Para 70 thereof is extracted below:

> "**70.** The constitutional conventions are born and recognised in working of the Constitution. The purpose and object of constitutional convention is to ensure that the legal framework of the Constitution is operated in accordance with constitutional values and constitutional morality. The

> constitutional conventions always aims to achieve higher values and objectives enshrined in the Constitution. The conventions are not static but can change with the change in constitutional values and constitutional interpretations. No constitutional convention can be recognised or implemented which runs contrary to the expressed constitutional provisions or contrary to the underlined constitutional objectives and aims which the Constitution sought to achieve."

43. In **Consumer Education & Research Society's** case (supra) Hon'ble the Supreme Court observed that the recommendation of Bhargava Committee in November 1955 was merely a parliamentary procedure and not a constitutional convention. It was a case where power of Parliament to frame law was pitched against the procedure. It was held that Parliament's power to frame law is supreme and it cannot be held to be unconstitutional merely because some procedure, which may have been followed earlier, was not followed this time. The case in hand is not pertaining to enactment or amendment of any law, hence, distinguishable.

44. To appreciate the issue it would be relevant to extract contents of declaration made by the Speaker with reference with constitution of various committees and the Chairmen thereof. The same is extracted below:

> "**CONSITUTION OF ASSEMBLY COMMITEES**
>
> Mr. Speaker : Now, announcement relating to Assembly Committees. Hon'ble Members, election to the four Financial Committees for the year 2021-2022 of this Assembly have been completed and the Members have been declared elected to those Committees. The names of the elected Members have already been displayed at the Notice Board.

I have also nominated the Members of other traditional Assembly Committees and 26 departmentally related Standing Committees for the year 2021-2022. The composition of those Committees will be intimated to the Members by the Assembly Secretariat in due course.

Before announcing the names of Chairmen/Chairpersons of different Committees of West Bengal Legislative Assembly including four financial Committees, I would like to share with the House some relevant facts. A letter dated 14.6.2021 from the Hon'ble Chief Opposition Whip has been received by me intimating therein the consent of the Leader of the Opposition to nominate a particular member as Chairmen of Public Accounts Committee of West Bengal Legislative Assembly. The letter had been addressed at a time when election process for election to the four financial Committees including the Public Accounts Committee had not been started and the media was informed of the contents of the matter. Thereafter, there has been much speculation in the media on the matter.

Hon'ble Members, Sub-rule(1) of Rule 255 of the Rules of Procedure and Conduct of Business in the West Bengal Legislative Assembly empowers the Speaker to appoint the Chairman/Chairperson of a Committee including the financial Committee(s). In the case of other Committees of the House excluding the financial Committees, the Speaker nominates the different Members of the Committee and appoints the Chairmen/Chairpersons of the Committees from amongst the Members so nominated. But in the case of four financial Committees, the sphere of work of the Chair on this particular issue becomes restricted to a great extent – the Chair has to make the appointment of Chairman/Chairperson from amongst the Members elected by the House to that particular Committee. In the case of Committee on Public Accounts in West Bengal Legislative Assembly, a very

healthy and rich tradition and convention have grown for the last 54 years or so, to appoint a Member of the Opposition as the Chairman of the Committee. In the present Committee on Public Accounts, out of 20 Members, 7 Members belonging to Legislature Party of Bharatiya Janata Party in Opposition, have been elected to the Committee. Following the convention so established, the Chair has to appoint a person from amongst the said 7 Members, as the Chairman of the present Committee on Public Accounts.

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Mr. Speaker:- (Contg.).. The appointment of Chairman/Chairperson of a Committee is made amongst the Members holding outstanding experience in Legislative and Parliamentary Affairs. For this purpose, the Chair has to apply his mind and make a judicious decision.

Hon'ble Members, as you know, the Committee on Public Accounts enjoys a place of pride in our Committee system and this year is the centenary year of its inception.; taking all these into account, I think that Shri Mukul Roy, Hon'ble Member, having vast experience in parliamentary affairs belonging to the Legislatures Party of Bharatiya Janata Party in opposition, is the competent person to head the present Committee on Public Accounts of this House.

(--At this stage Hon'ble Members of the Bharatiya Janata Party walked out from the House)

Now, I declare the name of the Chairman/Chairperson of all the Committees for the year 2021-2022.

Sl No.	Name of the Committees	Name of the Chairman/Chairperson
1	Committee on Public Accounts	Shri Mukul Roy
2-13	***	***

(emphasis supplied)"

45. A perusal of the contents of the aforesaid declaration made by the Speaker shows that he specifically stated that certain members to the Financial Committee have been elected whereas certain Members of the traditional Assembly Committees have been nominated by him. He further referred to the fact that Rule 255(1) of the Rules of Business empowers the Speaker to appoint Chairman/Chairperson of a Committee including the Financial Committee(s). He further specifically noted that in case of Committee on Public Accounts in the West Bengal Legislative Assembly, a very healthy and rich tradition, and convention have grown in the last 54 years or so, to appoint a Member of the Opposition as the Chairman of the Committee. 7 out of 20 Members of the aforesaid Committee belong to BJP, the party in opposition. Following the established convention, the Speaker had to appoint a person from amongst the 7 Members as the Chairman of the Committee on Public Accounts. He further mentioned that Committee on Public Accounts enjoys a special status in the committee system. Taking into account his experience in parliamentary affairs, the respondent No. 2 being Members of the Assembly belonging to BJP was found to be the most

competent person to head that Committee. Hence, he was appointed as such.

46. If the tests laid by Sir Ivor Jennings are applied in the case in hand, *firstly* there are precedents available in the form of admission of the Speaker himself in the declaration made by him at the time of appointment of Chairman of the Committee on Public Accounts that a very healthy and rich tradition, and convention have grown for the last 54 years or so, to appoint a Member of the Opposition as the Chairman of the Committee. Even the *second* test is also passed if the declaration of the Speaker is read where he clearly mentions that he followed the convention so established to appoint a person from amongst the Members of the Opposition party as the Chairman of the Committee on Public Accounts. The *third* test laid down is also satisfied. In the case in hand we need not travel beyond the declaration of the Speaker to find an answer to that. He mentions that the appointment of the Chairperson of a Committee has to be of a Member holding outstanding experience in legislative and parliamentary affairs. This Committee enjoys a place of pride in the Committee system. No such statement was made by the Speaker with reference to any other Committee though Chairperson of 13 Committees were declared on that day. This has to be read coupled with the important functions which the Committee has to discharge. These have been held to be extension of the legislature itself to do informed work. They perform key role in the functioning and working of the House.

47. The specific facts recorded by the Speaker in his statement, which was read out for information of all the Members of the

Assembly were sought to be disputed by respondent No. 3 claiming to be authorized to file affidavit even on his behalf. The contents of an order or any document cannot be permitted to be explained by way of an affidavit or denied outrightly [Reference can be made to **Mohinder Singh Gill's** case (supra)].

48. Though no issue was joined by the parties on the enforceability of the constitutional conventions but still we find it appropriate to refer to the judgment of Hon'ble the Supreme Court in **Supreme Court Advocates-on-Record Association's (1993)** case (supra). In the aforesaid judgment Hon'ble the Supreme Court opined that there is distinction between the 'constitutional law' and an 'established constitutional convention'. Both are binding in the field of their operation. Once it is found that a particular convention exists, it becomes part of the constitutional law. Para 353 thereof is extracted below:

> "**353.** We are of the view that there is no distinction between the "constitutional law" and an established "constitutional convention" and both are binding in the field of their operation. Once it is established to the satisfaction of the Court that a particular convention exists and is operating then the convention becomes a part of the "constitutional law" of the land and can be enforced in the like manner."

49. As in the case in hand all the three ingredients, which are required to accept the convention as noticed by the Speaker in the declaration made by him as a constitutional convention, are available the same can very well be treated as constitutional convention. This is in additional to the fact that the same is the admitted case of the Speaker himself in the declaration made. He cannot come out of the

admission made by him. The same is also keeping in view the healthy democratic set up and maintaining the constitutional values. It is only after the action was challenged in Court that the respondents have come up with different pleas to come out of the declaration made by the Speaker at the time of nomination of the Chairman of the Committee. The fact remains that the Chairman was declared keeping in view the convention and noticing all the facts. Nothing was pointed out at the time of hearing that the constitutional convention as was admitted in the declaration and as could be seen to be passing the three-question test applied in the case of **Supreme Court Advocates-on-Record Association And Others's (1993)** (supra) is in contravention to any of the provisions of Constitution of India. Rather it is in aid thereof to maintain the constitutional values and healthy democracy. There was no dispute raised by either of the parties on the principle of law that the constitutional convention are binding and enforceable.

IV - JUDICIAL REVIEW

50. Arguments sought to be raised by the respondents is that in view of Article 212 of the Constitution the proceedings in the Assembly cannot be called in question in Court. The issue is no more *res integra*. The interpretation of Article 212 has been subject matter of consideration before Hon'ble the Supreme Court on number of occasions. Article 212 of the Constitution of India is reproduced hereunder:

> "**212. Courts not to inquire into proceedings of the Legislature**.–(1) The validity of any proceedings

> in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.
>
> (2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

51. Article 212(1) of the Constitution of India provides that validity of any proceeding in a legislature of a state shall not be called in question on the ground of any alleged "irregularity of proceeding". The aforesaid Article was subject matter of consideration before Hon'ble the Supreme Court wherein it was opined that there is a difference between the term 'irregularity' and 'illegality'. In case illegality is alleged the Court can always examine. The same will not be protected from judicial scrutiny.

52. In **Raja Ram Pal's** case (supra) a Constitution Bench of Hon'ble the Supreme Court opined that there is a distinction between 'procedural irregularity' and 'substantive illegality'. The proceedings which may be tainted on account of substantive illegality or unconstitutionality as opposed to those merely irregularity cannot be held to be protected from judicial scrutiny. Principles relating to parameter of judicial review have been summed up in Para 431 thereof. Relevant Paras 360, 366 and 431 are extracted below.

> "**360.** The question of extent of judicial review of parliamentary matters has to be resolved with reference to the provision contained in Article 122(1) that corresponds to Article 212 referred to in Pandit Sharma (II). On a plain reading, Article 122(1) prohibits "the

validity of any proceedings in Parliament" from being "called in question" in a court merely on the ground of "irregularity of procedure". In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, "procedural irregularity" stands in stark contrast to "substantive illegality' which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ vis-à-vis proceedings in Parliament uses language which is neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an answer elsewhere or invocation of principles of harmonious construction.

x x x x

366. The touchstone upon which parliamentary actions within the four walls of the legislature were examined was both the constitutional as well as substantive law. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny by Article 122(1) inasmuch as the broad principle laid down in Bradlaugh acknowledging exclusive cognizance of the legislature in England has no application to the system of governance provided by our Constitution wherein no organ is sovereign and each organ is amenable to constitutional checks and controls, in which scheme of things, this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution.

x x x x

431. We may summarise the principles that can be culled out from the above discussion. They are:

(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

(b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;

(c) The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;

(d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an

ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;

(i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;

(j) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;

(l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212;

(m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

(p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

(r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of

jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

53. Para 54 of the judgment in **Amarinder Singh's** case (supra) can also be referred to where even the proceedings in the House were also examined by the Supreme Court, once found to be tainted on account of substantive or gross illegality or unconstitutionality. The same is extracted below.

> "**54.** Hence, we are empowered to scrutinise the exercise of legislative privileges which admittedly include the power of a legislative chamber to punish for contempt of itself. Articles 122(1) and 212(1) make it amply clear that courts cannot inquire into matters related to irregularities in observance of procedures before the legislature. However, we can examine whether proceedings conducted under Article 105(3) or 194(3) are "tainted on account of substantive or gross illegality or unconstitutionality". The facts before us do not merely touch on a procedural irregularity. The appellant has contended that the Punjab Vidhan Sabha has committed a substantive jurisdictional error by exercising powers under Article 194(3) to inquire into the appellant's actions which were taken in his executive capacity. As explained earlier, the relevant fact here is not only that the allegations of wrongdoing pertain to an executive act, but the fact that there is no conceivable obstruction caused to the conduct of routine legislative business."

54. To similar extent is the judgment of Supreme Court in **Kalpana Mehta and Others v. Union of India and Others, (2018) 7 SCC 1**. Para 121 thereof is extracted below.

> "**121.** The aforesaid summarisation succinctly deals with the judicial review in the sense that the constitutional courts are not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens; that there is no absolute immunity to the parliamentary proceeding under Article 105(3) of the Constitution; that the enforcement of privilege by the legislature can result in judicial scrutiny though subject to the restrictions contained in other constitutional provisions such as Articles 122 and 212; that Article 122(1) and Article 212(1) prohibit the validity of any proceedings in the legislature from being called in question in a court merely on the ground of irregularity of procedure, and the proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny."

55. In **Rojer Mathew's** case (supra), Hon'ble the Supreme Court examined the validity of decision of the Speaker treating a Bill to be a Money Bill, the opinion of the Speaker on which was final in terms of Article 110(3) of the Constitution of India. Relevant paras 273, 274, 275, 282, 289, 291, 292 are extracted below.

> "**273.** Article 122(1) provides immunity to proceedings before Parliament being called into question on the ground of "any alleged irregularities of procedure". In several decisions of this Court which construed the provisions of Article 122 and the corresponding provisions contained in Article 212 for the State Legislatures, a distinction has been drawn between an irregularity of procedure and an illegality. Immunity from judicial review attaches to the former but not to the latter. This distinction found expression in a seven-Judge Bench decision of this Court in Special Reference No. 1

of 1964 (Special Reference). This Court held : (AIR p. 768, para 62)

> "62. … Article 212(2) confers immunity on the officers and members of the legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the Legislative Chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular."
>
> *(emphasis supplied)*

This formulation was applied in the context of Article 122 by the Constitution Bench in Ramdas Athawale (5) v. Union of India (Ramdas Athawale) : (SCC pp. 13-14, para 36)

> "36. This Court under Article 143, Constitution of India, In re (Special Reference No. 1 of 1964) (also known as Keshav Singh case) while construing Article 212(1) observed that it may be possible for a citizen to call in question in the appropriate court of law, the validity of any proceedings inside the legislature if his case is that the said proceedings suffer not from mere irregularity

> of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. The same principle would equally be applicable in the matter of interpretation of Article 122 of the Constitution."

274. A subsequent Constitution Bench decision in Raja Ram Pal v. Lok Sabha emphasised the distinction between a procedural irregularity and an illegality : (SCC pp. 359 & 362, paras 386 & 398)

> "386. … Any attempt to read a limitation into Article 122 so as to restrict the court's jurisdiction to examination of Parliament's procedure in case of unconstitutionality, as opposed to illegality would amount to doing violence to the constitutional text. Applying the principle of expressio unius est exclusio alterius (whatever has not been included has by implication been excluded), it is plain and clear that prohibition against examination on the touchstone of "irregularity of procedure" does not make taboo judicial review on findings of illegality or unconstitutionality.
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> ***
>
> 398. … the court will decline to interfere if the grievance brought before it is restricted to allegations of "irregularity of procedure". But in case gross illegality or violation of constitutional provisions is shown, the judicial review will not be inhibited in any manner by Article 122, or for that matter by Article 105."
>
> *(emphasis supplied)*

275. The fundamental constitutional basis for the distinction between an irregularity of procedure and an illegality is that unlike in the United Kingdom where parliamentary sovereignty governs, India is governed by constitutional supremacy. The legislative, executive and judicial wings function under the mandate of a written Constitution. The ambit of their powers is defined by the Constitution. The Constitution structures the powers of Parliament and the State Legislatures. Their authority is plenary within the field reserved to them. Judicial review is part of the basic structure of the Constitution. Any exclusion of judicial review has to be understood in the context in which it has been mandated under a specific provision of the Constitution. Hence, the provisions contained in Article 122 which protect an alleged irregularity of procedure in the proceedings in Parliament being questioned cannot extend to a substantive illegality or a violation of a constitutional mandate.

x x x x

282. Mohd. Saeed Siddiqui proceeds on an incorrect construction of the decision in Mangalore Beedi and on an erroneous understanding of Article 255. The decision in M.S.M. Sharma v. Krishna Sinha which was adverted to in Mohd. Saeed Siddiqui was discussed in the Special Reference to hold that the validity of the proceedings in a legislative chamber can be questioned on the ground of illegality. The decisions in the Special Reference, Ramdas Athawale (5) and Raja Ram Pal clearly hold that the validity of the proceedings before Parliament or a State Legislature can be subject to judicial review on the ground of an illegality (as distinguished from an irregularity of procedure) or a constitutional violation. Hence, the decisions in Mohd. Saeed Siddiqui and Yogendra Kumar on the above aspect do not lay down the correct position in law and are overruled.

x x x x

289. The judgment of D.Y. Chandrachud, J. in K.S. Puttaswamy specifically holds that the decision of the Speaker to certify a Bill as a Money Bill is not immune from judicial review. After tracing the constitutional history of Article 110 including the provisions of the Parliament Act, 1911 in Britain and Section 37 of the Government of India Act, 1935, the judgment places reliance on the construction placed on the provisions of Article 122 and the corresponding provision in Article 212 in (i) Special Reference; (ii) Ramdas Athawale (5); and (iii) Raja Ram Pal. In coming to the conclusion that the decision of the Speaker is amenable to judicial review if it suffers from illegality or from a violation of constitutional provisions, the decisions in Mohd. Saeed Siddiqui and Yogendra Kumar were disapproved. Distinguishing the principle of parliamentary sovereignty in the UK from the position of constitutional supremacy in India, the decision observes : (Puttaswamy case, SCC pp. 725-26, para 1067)

> "1067. The purpose of judicial review is to ensure that constitutional principles prevail in interpretation and governance. Institutions created by the Constitution are subject to its norms. No constitutional institution wields absolute power. No immunity has been attached to the certificate of the Speaker of Lok Sabha from judicial review, for this reason. The Constitution-makers have envisaged a role for the judiciary as the expounder of the Constitution. The provisions relating to the judiciary, particularly those regarding the power of judicial review, were framed, as Granville Austin observed, with "idealism". Courts of the country are expected to function as guardians of the Constitution

and its values. Constitutional courts have been entrusted with the duty to scrutinise the exercise of power by public functionaries under the Constitution. No individual holding an institutional office created by the Constitution can act contrary to constitutional parameters. Judicial review protects the principles and the spirit of the Constitution. Judicial review is intended as a check against arbitrary conduct of individuals holding constitutional posts. It holds public functionaries accountable to constitutional duties. If our Constitution has to survive the vicissitudes of political aggrandisement and to face up to the prevailing cynicism about all constitutional institutions, notions of power and authority must give way to duties and compliance with the rule of law. Constitutional institutions cannot be seen as focal points for the accumulation of power and privilege. They are held in trust by all those who occupy them for the moment. The impermanence of power is a sombre reflection for those who occupy constitutional offices. The Constitution does not contemplate a debasement of the institutions which it creates. The office of the Speaker of the House of People, can be no exception. The decision of the Speaker of Lok Sabha in certifying a Bill as a Money Bill is liable to be tested upon the touchstone of its compliance with constitutional principles. Nor can such a decision of the Speaker take leave of constitutional morality."

x x x x

> **291.** From the above analysis, it is evident that the judgments of both D.Y. Chandrachud, J. and Ashok Bhushan, J. categorically held that the decision of the Speaker to certify a Bill as a Money Bill is not immune from judicial review. There is a clear distinction between an irregularity of procedure under Article 122(1) and a substantive illegality. The certificate of the Speaker under Article 110(3) is not conclusive insofar as judicial review is concerned. Judicial review can determine whether the conditions requisite for a Bill to be validly passed as a Money Bill were fulfilled. The point of difference between the majority (represented by the decisions of Sikri, J. and Ashok Bhushan, J.) and Chandrachud, J. was that on merits, the majority came to the conclusion that the Aadhaar Bill is a Money Bill within the meaning of Article 110(1) while the dissent held otherwise.
>
> **292.** On an overall reading of the judgment of Sikri, J. it is not possible to accede to the submission of the learned Attorney General that the issue of the reviewability of the certificate of the Speaker is left at large by the decision of the majority. In any event, in view of the issue having arisen in the present case, we have dealt with the aspect of judicial review independently of the decision in Puttaswamy."
>
> *(emphasis supplied)*

56. From the enunciation of law as referred to above it can be summed up that there is no absolute immunity granted to the action of the Speaker. Even the validity of the proceedings in the Parliament or the Assembly can also be gone into. The only prohibition is on the ground of 'irregularity of procedure' but if there is substantial illegality pointed out, the Courts can always interfere. It is to maintain the constitutional values. The role of Speaker is critical in maintaining the balance between the democratic values and the constitutional

considerations. Reference can be made to **Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly, (2020) 2 SCC 595**. Being a constitutional authority he is expected to discharge his duty above the party lines.

57. It has remained undisputed on record that respondent No.2 had contested the State Assembly Election on a BJP ticket. Following table will show certain other important dates:

Date	Events
May 02, 2021	The result of the Assembly Election was declared. The respondent No. 2 was elected as MLA on a BJP ticket.
June 11, 2021	The respondent No.2 defected from BJP to AITC.
June 17, 2021	A petition was filed by Suvendu Adhikari, another member of Legislative Assembly, for disqualification of respondent No.2. The petition is still pending with the Speaker.
June 24, 2021	20 MLAs including respondent No.2 were elected as members of the Committee on Public Accounts. 7 out of these are belonging to BJP, the main Opposition party.
July 09, 2021	The respondent and the Speaker nominated respondent No.2 as the Chairman of the Committee on Public Accounts treating him to be a member belonging to the legislative party of the BJP.

58. The declaration was made while noticing the fact that in the West Bengal Legislative Assembly there is a healthy and rich tradition to have a member of the Opposition as the Chairman of the Committee on Public Accounts. Keeping in view the important

function, the Committee discharges and also the transparency in the accounts.

59. Though at the time of hearing learned Counsel appearing for respondents sought to take a stand that there is no tradition as such in the West Bengal State Assembly to nominate a member of the legislative party in opposition as the Chairman of the Committee on Public Accounts. However, considering the categoric admission made by the Speaker in his announcement while appointing the Chairman of the Committee no such explanation can be accepted. Admissions made by the Speaker pass the tests laid down by Hon'ble the Supreme Court to hold any convention to be a constitutional convention. The fact in this case remains that the Speaker was well aware of all the traditions and the facts before him. Considering those and also noticing that respondent No.2 belong to BJP, the party in Opposition in the State Assembly, was appointed as the Chairman of the Committee. It is not denied that a petition filed for disqualification of respondent No.2 on account of his defection from BJP to AITC was pending, considering at that time for a period of about one month. As the tenure of the Committee is one year, the idea may be to maintain the traditions as well on papers and then have the member who had allegedly defected to the ruling party as the Chairman of the Committee on Public Accounts.

60. Once the respondents have been caught on a wrong foot, all types of explanations are coming forth to justify their illegal action, which is contrary to the stand available on record in the form of declaration. The fact remains that the nomination of respondent No.2 as the Chairman of the Committee on Public Accounts was made

keeping in view the rich tradition and convention being followed for the last 54 years or so. The same cannot be permitted to be justified now stating as there was no such convention. In fact it is not a case of mere irregularity in the procedure adopted, rather it is the illegality committed by the Speaker in nominating a person, who had in fact defected from BJP to AITC. In case the petition for his disqualification is allowed, he cannot even be a Member of the House, hence, not eligible to be a Member of the Committee, what to talk of its Chairman.

61. In the writ petition filed by the petitioner specific pleadings have been raised that the respondent No. 2 had contested and was elected as a Member of the Legislative Assembly on the BJP ticket. He defected to AITC and a petition for his disqualification was filed on June 17, 2021. The same is still pending. Though the aforesaid facts are in specific knowledge of the respondents but the same have not been specifically denied.

62. In the case in hand as is evident from the facts on record there is failure on the part of the Speaker to discharge his constitutional duty coupled with established admitted constitutional conventions. Apparently he has worked on dictates. Finally, he was caught in the web knitted by him. On one hand, he was fair enough to state in the declaration made by him that there is a rich and healthy tradition in the Assembly of having a Member of the opposition as the Chairman of the Public Accounts. The tradition was being followed for a period of 54 years or so. Keeping in view that tradition, the Speaker appointed a Member of the opposition party as the Chairman of the Committee on Public Accounts. However, now the aforesaid

declaration is sought to be explained that it is not necessary to have a Member of opposition party as the Chairman of the Committee on Public Accounts. In fact, he was not even required to be impleaded as respondent in the petition to answer the pleadings as the contents of the declaration made by him are sufficient. Any denial by the respondent No. 2 is meaningless.

63. The protection given in Article 212(2) is to the officer or the member of the legislature in discharge of his duties. Both the clauses of Article 212 operate in different fields. Clause (1) talks about challenge to the proceedings whereas Clause (2) grants protection to the officers. While challenging inaction of an authority, may be constitutional authority, he need not be impleaded as party to the proceedings however, still his action can be challenged. [Ref. **Rojer Mathew's** case (supra) and **Kumar Padma Prasad v. Union of India, (1992) 2 SCC 428**].

64. Another important fact to be noticed is that a person who has allegedly defected from BJP to AITC has been nominated as the Chairman of the Committee on Public Accounts treating him to be a Member of the opposition party. The petition for his disqualification was pending consideration before the Speaker, before he was nominated to act as Chairman. This cannot be termed to be mere irregularity. It is much more than that if seen coupled with the fact that despite judgments of Hon'ble the Supreme Court the Speaker is sitting tight on the matter on decision of disqualification of the respondent No. 2.

65. Efforts on the part of the respondent No.2 to delay the proceedings and the soft attitude of the Speaker thereon is evident

from the fact that even before this Court, adjournment was sought once by the learned Counsel appearing for the respondent No. 2 on the ground that they could not have conference with the respondent No. 2 before the arguments are addressed, after the pleadings were completed. It was on the ground that he was not keeping good health. The same was seriously opposed by the learned Counsel for the petitioner stating that a day before the respondent No. 2 had appeared on electronic media making certain statements. The fact was not disputed by the learned Counsel appearing for the respondent No. 2. All these factors erode the faith of the people in the constitutional system. In our Constitution no organ is sovereign as each organ is amenable to constitutional checks and controls. In the scheme of things the Courts are entrusted with the duty to be the watchdog and guarantor of the Constitution. It is in discharge of that duty that this Court has been called upon to examine the issue.

66. In view of the aforesaid factual matrix and the legal position as discussed above this Court is of the view that the action of the Speaker can be examined in its power of judicial review as the same does not fall merely in the ambit or “irregularity of the procedure” for which protection is available under Article 212(1) of the Constitution of India. The action of the Speaker is on wrong premise even as per the facts admitted by him in the declaration made at the time of appointment of the Chairman of the Public Accounts.

67. It is not a case of procedural irregularities, which could debar this Court from entertaining the petition in terms of Article 212(1) of the Constitution of India. It is a case of blatant illegality. Firstly, the Speaker was required to decide the petition filed before

him for disqualification of the respondent No. 2 having defected from BJP to AITC, as a result of which his membership to the Assembly itself was in doubt. In case the respondent No. 2 does not remain the Member of the Assembly, there was no question of he being even the Member of the Committee what to talk of its Chairman. Further, the established constitutional convention which even as per the declaration made by the Speaker at the time of appointment of the Chairman of the Committee was also violated. In fact, recently, Hon'ble the Supreme Court had to comment upon the conduct of the Speaker in many cases for the reason that they were not found to be discharging their duty independently, rising above the party lines. It was commented upon in **Shrimanth Balasaheb Patil's** case (supra) that there is a growing trend of the Speaker acting against the constitutional duty of being neutral. Horse trading and corrupt practices associated with defection and change of loyalty for lure of office, for wrong reasons have been opted.

V - QUO-WARRANTO

68. In **B.R. Kapur's** case (supra) Hon'ble the Supreme Court opined that if a Governor appoints a Chief Minister who is not qualified to be a member of legislature or is disqualified to be appointed as such, his appointment will be contrary to the provisions of Article 164 of the Constitution of India. The authority of the appointee to hold the appointment can be challenged by filing a writ of quo-warranto. Merely because the Governor has made the appointment, it does not give the appointee any right to hold the post if the appointment is contrary to Constitutional Conventions. It will be struck down.

69. In the aforesaid judgment reference was made to an earlier judgment of Hon'ble the Supreme Court in **Kumar Padma Prasad's** case (supra), where appointment of one K.N. Srivastava who was appointed as a Judge of Gauhati High Court by a warrant of appointment signed by the President of India was set aside, finding him to be not qualified for appointment as a High Court Judge. It was opined that the issue could be examined in a quo-warranto proceedings. Paras 51 and 52 from the judgment in **B.R. Kapur's** case (supra) are extracted below:

> "**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.
>
> **52.** The judgment of this Court in Kumar Padma Prasad v. Union of India is a case in point. One K.N. Srivastava was appointed a Judge of the Gauhati High Court by a warrant of appointment signed by the President of India. Before the oath of office could be administered to him, quo warranto proceedings were taken against him in that High Court. An interim order was passed directing that the warrant of appointment should not be given effect to until further orders. A transfer petition was then filed in this Court and was allowed. <u>This Court, on examination of the record and the material that it allowed to be placed before it, held that Srivastava was not qualified to be appointed a</u>

> High Court Judge and his appointment was quashed. This case goes to show that even when the President, or the Governor, has appointed a person to a constitutional office, the qualification of that person to hold that office can be examined in quo warranto proceedings and the appointment can be quashed."
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> *(emphasis supplied)*

70. In his concurring judgment Brijesh Kumar, J. negated the argument that Article 361 of the Constitution shall come to the rescue of the party therein that the Governor is not answerable to any Court for performance of duties of his office as Governor. The Court opined that it was considering the prayer for issuance of writ of quo-warranto against respondent No.2 therein, who allegedly suffered from disqualification to hold the office of the Chief Minister of a State. A writ of quo-warranto lies against the person who according to the relator is not entitled to hold office of public nature and is only usurper of the office. If such a writ is filed the onus is on the person to show as to by what authority he is entitled to hold the office. It is not even necessary to implead the appointing authority as respondent in the proceedings. The Governor was not even required to answer the allegations against him. The protection available under Article 361 of the Constitution does not extend to the person who is the holder of an office, which under the law he is not entitled to hold. Any defence to say that the appointment has been made by a competent authority, who under the law is not answerable to any Court, is not available. Relevant paras thereof are extracted below.

> "**78.** Amongst other points, the learned counsel for the respondents submitted that the appointment of Respondent 2 as Chief Minister by the Governor, could not be

challenged, in view of the provisions under Article 361 of the Constitution, providing that the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office. It was also submitted that in appointing the Chief Minister, the Governor exercised her discretionary powers, therefore, her action is not justiciable. Yet another submission is that the Governor had only implemented the decision of the majority party, in appointing Respondent 2 as a Chief Minister i.e. she had only given effect to the will of the people.

79. Insofar as it relates to Article 361 of the Constitution, that the Governor shall not be answerable to any court for performance of duties of his office as Governor, it may, at the very outset, be indicated that we are considering the prayer for issue of the writ of quo warranto against Respondent 2, who according to the petitioner suffers from disqualification to hold the public office of the Chief Minister of a State. A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office. So as to have an idea about the nature of action in the proceedings for writ of quo warranto and its original form, as it used to be, it would be beneficial to quote from Words and Phrases, Permanent Edn., Vol. 35-A, p. 648. It reads as follows:

> "The original common law writ of quo warranto was a civil writ at the suit of the Crown, and not a criminal prosecution. It was in the nature of a writ of right by the King against one who usurped or

> claimed franchises or liabilities, to inquire by what right he claimed them. This writ, however, fell into disuse in England centuries ago, and its place was supplied by an information in the nature of a quo warranto, which in its origin was a criminal method of prosecution, as well as to punish the usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the Crown. Long before our revolution, however, it lost its character as a criminal proceeding in everything except form, and was applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor, the fine being nominal only; and such, without any special legislation to that effect, has always been its character in many of the States of the Union, and it is therefore a civil remedy only. Ames v. State of Kansas, People v. Dashaway Assn."

82. Besides the above, many High Courts as well as this Court have taken the view that a writ of quo warranto lies against a person, who is called upon to establish his legal entitlement to hold the office in question." In view of the legal position as indicated above it would not be necessary to implead the appointing authority as the respondent in the proceedings. In the case in hand, the Governor need not be made answerable to the court. Article 361 of the Constitution however does not extend any protection or immunity, vicariously, to the holder of an office, which under the law, he is not entitled to hold. On being called upon to establish valid authority to hold a public office, if the person fails to do so, a writ of quo warranto shall be directed against such person. It shall be no defence to say that the appointment was made by the competent authority, who under the law is not answerable to any court for anything done in performance of duties of his

> office. The question of fulfilling the legal requirements and qualifications necessary to hold a public office would be considered in the proceedings, independent of the fact as to who made the appointment and the manner in which the appointment was made. Therefore, Article 361 of the Constitution would be no impediment in examining the question of entitlement of a person, appointed by the Governor to hold a public office, who according to the petitioner/relator is usurper to the office."
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> *(emphasis supplied)*

71. In **Central Electricity Supply Utility of Odisha's** case (supra) it was observed that the basic purpose of writ of quo-warranto is to confer jurisdiction on the constitutional Courts to see that a public office is not held by an usurper without any legal authority. A Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds. Relevant paras 21 and 22 thereof are extracted below:

> "**21.** From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.
>
> **22.** While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a

> contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a relator to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds."

72. In **Bharati Reddy's** case (supra) Hon'ble the Supreme Court opined that the jurisdiction of the High Court to issue a writ of quo-warranto is limited when the appointment is found to be contrary to the statutory rules. Para 39 thereof is extracted below:

> "**39.** We have adverted to some of those decisions in the earlier part of this judgment. Suffice, it to observe that unless the Court is satisfied that the incumbent was not eligible at all as per the statutory provisions for being appointed or elected to the public office or that he/she has incurred disqualification to continue in the said office, which satisfaction should be founded on the indisputable facts, the High Court ought not to entertain the prayer for issuance of a writ of quo warranto."

73. Before a writ of quo-warranto can be issued the primary question is to be decided is whether the person concerned is a usurper of a Public Office. If the answer to the question that respondent No. 2 is holding a public office, this Court can examine the prayer for issuance of a writ of quo-warranto, otherwise not.

74. The word "Public Officer" has been defined in Code of Civil Procedure to include every officer in the service or pay of the Government or remunerated by the fee or commission for

performance of any duty. In the case in hand, it cannot be denied that the Members of the Legislative Assembly get their salaries from the public exchequer. That means from the public exchequer.

75. A 'Public Office' is the right, authority and duty created and conferred by law, by which an individual is vested with powers to exercise some government function for the benefit of the public. The determining factor, the test is whether the Office involves delegation of some of the solemn functions of government, either executive, legislative or judicial to be exercised by the holder for the public benefit.

76. The issue with reference to the term 'Public Servant' as contained in the Prevention of Corruption Act, 1988, was examined by Hon'ble the Supreme Court in **P.V. Narashima Rao's** case (supra). While interpreting Clause (viii) of Section 2 (c) of the aforesaid Act, it was opined that MPs and MLAs are included in the category of public servants, who hold office by virtue of which they are authorized or required to perform public duty.

77. Article 194(3) provides for powers, privileges, etc. of the House of Legislatures and of the Members of the Committees thereof. Rules of Business provide for constitution of various Committees. The Members and the Chairmen thereof are none else than the Members of the Legislative Assembly. The importance of the Legislative Committees has been discussed by Hon'ble the Supreme Court in **Ajit Mohan and Others's** case (supra). It cannot be disputed that the Members of the Committee discharge public functions. They are elected public representatives. Even as per the Rules of Business, various powers have been conferred on the Chairperson of the

Committee on Public Accounts where he can even summon any person and record evidence. Still further the Committee has to examine the accounts and the budget. This function cannot be treated less important as everything revolves around finances in a State. Hence, the argument raised by learned Counsel for the respondents that the office being held by respondent no. 2 is not a public office is totally misconceived and deserves to be rejected.

78. Once Office of Chairman of the Committee on Public Accounts is found to be a public office, a writ of quo-warranto will certainly be maintainable, in case he has found to be usurping the same. In the case in hand, there are two reasons on which this Court can exercise that power. Firstly is the constitutional convention, which stands established and further it is the admitted case of the respondents themselves that one of the eligibility conditions to be a Member or the Chairperson of the Committee, is to be a Member of the Legislative Assembly. In the case in hand, the allegation of the petitioner is that the respondent no. 2 had defected from BJP to AITC. A petition for disqualification was pending before the Speaker before even he was nominated as the Chairman of the Committee on Public Accounts. The disqualification is from the date when the act of defection took place. Failure on the part of the Speaker to adjudicate upon that petition despite the maximum period provided therefor having expired, is creating more trouble as a result of which the interference of this Court has been called for. In fact, the respondent No. 1 should have first decided the petition for disqualification of the respondent No. 2 and thereafter, considering his eligibility, should

have taken steps to appoint him as the Chairman of the Committee on Public Accounts.

VI - MAINTAINABILITY OF PIL

79. Maintainability of PIL in the present case will not be an issue as constitutional issues have been raised by the petitioner.

DIRECTIONS

80. From the facts which have come on record, we find that the issue pertaining to disqualification of the respondent No. 2 as Member of the Legislative Assembly is co-related with him being the Chairman of the Committee on Public Accounts. A petition filed for his disqualification is pending before the Speaker for the last more than three months, the maximum period fixed in **Keisham Meghachandra Singh's** case (supra) for decision thereof. Before we proceed further in the matter let the respondent No. 1 place before us the order passed in the petition filed for disqualification of respondent No. 2 as Member of the Legislative Assembly.

81. Adjourned to October 07, 2021. In case of failure this Court will decide further course of action to be taken in the matter.

(RAJESH BINDAL)
CHIEF JUSTICE (ACTING)

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
28.09.2021

PA(SG/RB/SS)