IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.3015 of 2024

Reserved on: 30th April, 2024

Decided on: 8th May, 2024

Hoshyar Singh Chambyal and others …..**Petitioners**

Versus

Hon'ble Speaker, H.P. Legislative Assembly
and others .....**Respondents**

Coram

The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting? Yes.

For the Petitioners: Mr. Maninder Singh, Senior Advocate (through Video Conferencing) with Mr. Anshul Bansal, Mr. Ajay Vaidya and Mr. Shriyek Sharda, Advocates.

For the Respondents: Mr. Kapil Sibal (through Video Conferencing) and Mr. K.S. Banyal, Senior Advocates with Mr. Rohit Sharma, Mr. Uday Banyal, Mr. Nizam Pasha, Ms. Aprajita Jamwal, Mr. Nikhil Purohit and Mr. Jatin Lalwani, Advocates, for respondents No.1 and 3.

Notice not issued to respondent No.2.

Mr. Ankush Dass Sood, Senior Advocate with Mr. Arjun Lall, Advocate, for respondent No.4.

Whether reporters of print and electronic media may be allowed to see the order? Yes

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Ms. Shagun Sharma and Mr. Arun Kaushal, Advocates, for the intervener.

Per Jyotsna Rewal Dua, Judge

I have had the privilege of going through the well written judgment authored by Hon'ble the Chief Justice. However, having some difference of opinion, I have separately penned down my judgment in the case.

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The case:-

Petitioners are Independent Members of the Legislative Assembly of the State of Himachal Pradesh. Their simple projected case is that 'voluntary' and 'genuine' resignations were tendered by them by hand on 22.03.2024 to the Speaker of the House. This was followed by written reminders requesting the Speaker to accept the same. The resignations so tendered were in conformity with the provisions of the Constitution of India and Rules of Procedure & Conduct of Business of the Legislative Assembly. The resignations are liable to be accepted, however, the Speaker in an illegal, unconstitutional and malafide manner, has refrained from taking decision on the resignations. Instead of accepting petitioners' resignations, the Speaker has issued them show cause notice purportedly to ascertain voluntariness and genuineness of the resignations. Petitioners in their written responses to the show cause notice and also during interactions with the Speaker (recorded in the ongoing inquiry), have reiterated that their resignations were genuine and submitted voluntarily, however, the inquiry that is otherwise unnecessary and unwarranted in the given facts, is being conducted and dragged on. This action has caused prejudice to the constitutional rights of the petitioners, hence, the writ petition.

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Respondent No.1-the Speaker of the State Legislative Assembly, who is also impleaded by name as respondent No.2, besides questioning maintainability of the writ petition against him at a pre-decisional stage, has defended its action of not taking the decision so far primarily on the grounds that:-

(a). Constitution of India provides for accepting resignation only if the same was genuinely and voluntarily tendered and these two facets are to be ascertained in an inquiry to be conducted by him. The inquiry is in progress and decision can be taken only on its completion.

(b). The Constitution of India does not set out any time limit for taking decision on resignations.

2. There is **no dispute** amongst the parties to the **following facts:-**

2(i). The three petitioners contested the elections to the Himachal Pradesh Legislative Assembly as 'Independent' candidates in the year 2022. They were declared elected in the results announced on 08.12.2022. Petitioners No.1 to 3 were elected from Constituencies of Dehra (10), Nalagarh (51) and Hamirpur (38), respectively, in the Legislative Assembly having total strength of 68 seats.

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2(ii). On 22.03.2024, petitioners submitted their separate resignation letters (Annexure P-1 Colly.) to respondent No.1-the Speaker of the Legislative Assembly. The handwritten note on the top left hand column of the resignation letters suggests the tendering of the same 'by hand'. Bottom note on the same side contains endorsement of receipt by respondent No.3-the Secretary of the Legislative Assembly. The contents of all the resignation letters are *"I hereby tender my resignation of my seat in the House with effect from 22.03.2024"*.

Another admitted fact about tendering of resignation letters is that on 22.03.2024 itself, the petitioners had gone to the residence of respondent No.1 and handed him over their resignations at around 3:30 pm. These facts also find mention in the show cause notice (Annexure P-6 Colly.) issued to the petitioners on 27.03.2024 by respondent No.1. A photograph has also been placed on record (page 59 of the paper book), admittedly showing all three petitioners standing with respondents No.1/2 on 22.03.2024, statedly tendering their resignations.

2(iii). Apparently, no action on the resignation letters was initiated by respondent No.1. Petitioners No.1 and 2 sent written reminders to respondent No.1 on 26.03.2024, requesting immediate

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acceptance of their resignations w.e.f. 22.03.2024. The contents of the letters were:-

> *"I independent MLA K.L. Thakur have already tendered my resignation in person to your good self from HP Vidhan Sabha on dated 22/03/2024.*
>
> *It was stated by me to your good self whiling tendering my resignation in person that the resignation are tendered voluntarily and as per constitutional mandate and Rules as applicable in this regard and requested to accept the same immediately.*
>
> *Sir till date as per my information the resignation has not been accepted. I again humbly request your good self to kindly accept my resignation immediately."*

Another reminder was sent by the petitioners to respondent No.1 on 27.03.2024 for accepting their resignations. These documents are part of Annexure P-2 (Colly.).

2(iv). Besides requesting respondent No.1, petitioners also wrote to His Excellency, the Governor of Himachal Pradesh, complaining about the inaction of respondent No.1 on their resignation letters. Gist of the communication addressed by petitioner No.2 on 26.03.2024 and by petitioners No.1 to 3 on 27.03.2024 (part of Annexure P-3 (Colly.) to the Hon'ble Governor was that 'They have voluntarily tendered resignations from Legislative Assembly on 22.03.2024; While submitting resignations, constitutional mandate and applicable rules were followed; It was mandatory for the Speaker to accept the

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resignations once the same were tendered voluntarily; Respondent No.1 has not accepted resignations till date; The conduct of the Speaker shows that delay is being caused arbitrarily, unreasonably and with a biased attitude; Such conduct of respondent No.1 was undemocratic & unfair; and The Speaker was acting at the behest of the State Government.'

The request was made to direct the Speaker to work in accordance with the Constitution of India, Rules of Business of the House & morality and to accept petitioners' resignations immediately.

2(v). His Excellency, the Governor of Himachal Pradesh through a communication dated 26.03.2024, inviting attention of the Speaker to Article 190(3)(b) of the Constitution of India and Rule 287 of the Rules of Procedure & Conduct of Business in the House, requested him to take an early decision in the matter.

2(vi). On 27.03.2024, respondent No.1 issued a show cause notice to the petitioners to the following effect:-

(a). Informing them that on 23.03.2024, a representation was received by him from some Members of Legislative Assembly (MLAs/Ministers) belonging to Indian National Congress (INC) about the conduct of the petitioners since

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February, 2024 and claiming that their resignations were not voluntary & genuine;

(b). Directing them to appear in person before him on 10.04.2024 for an inquiry on the subject matter to be conducted by him in accordance with Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules of Procedure and Conduct of Business of the Legislative Assembly;

(c). Written response, if any, could be submitted prior to the date fixed.

The complaint/representation that was the basis for issuing the show cause notice was also enclosed with it. The show cause notice dated 27.03.2024 and the complaint dated 23.03.2024 are part of Annexure P-6 (Colly.). The complaint signed by 7 MLAs/Ministers belonging to INC, inter-alia, states that:-

'Petitioners had extended their unconditional support to INC Government, but had been allured by the Bharatiya Janata Party (BJP) by illegal means using threat, force, coercion for voting against the INC's official nominee for Rajya Sabha Election. Their illegal defection from INC was discernible from the facts that:-

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> 'On 27.02.2024, they were kept in BJP Office at Chakkar; Thereafter, they were taken to Chaura Maidan, then to Kandaghat, brought to Legislative Assembly in the afternoon and in the evening taken to Panchkula; On 28.02.2024, they were taken from Panchkula to Mohali and by a Chartered Flight brought to State Legislative Assembly in the afternoon and flown back to Panchkula by a Chartered Flight; From 28.02.2024 to 08.03.2024, petitioners were kept at Hotel Lalit at Mohali, at Devprayag in Tihri Garhwal from 08.03.2024 to 12.03.2024 and at Gurgaon from 12.03.2024; They were brought to H.P. State Legislative Assembly on 22.03.2024 under threat, duress, coercion, force and undue influence to submit their respective resignations, which can be visualised as they were brought by the Leader of Opposition and other MLAs belonging to BJP by a Chartered Flight; They submitted their resignations in presence of Leader of Opposition and other MLAs belonging to BJP.'

According to the complainants, the petitioners were under constant threat to their life and liberty; were not being allowed to leave Gurgaon, where they were kept; they were not being permitted to return and were forced to tender resignations;

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such resignations were in violation of Rule 287 of the Rules of Procedure and Conduct of Business in Himachal Pradesh State Legislative Assembly. In view of these allegations, request was made to conduct a detailed inquiry as envisaged under proviso to Article 190(3)(b) of the Constitution of India and Rule 287 of the Rules of Procedure and Conduct of Business in the Legislative Assembly.

2(vii). At this stage, the petitioners invoked Article 226 of the Constitution of India and instituted this writ petition on 08.04.2024 with following substantive prayers:-

> "*(i) issue an appropriate writ, order or direction to the Respondent No.1/Respondent No.2 to forthwith accept the resignation of the Petitioners dated 22.03.2024 w.e.f. 22.03.2024 and issue appropriate communication to that effect forthwith; and*
>
> *(ii) Issue an appropriate writ, order or direction quashing the Show Cause Notice dated 27.03.2024 and all consequent proceedings arising out of it; and*
>
> *(iii) Consequently issue an appropriate writ, order or direction to the Respondent No.4 to notify the three vacancies in the Assembly Constituencies.*"

An application, being CMP No.5639 of 2024, for intervention has been moved in the writ petition by one of the signatories of the complaint presented by some members of Legislative Assembly belonging to INC to the Speaker. The present lis is completely between the petitioners and the respondents. His

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intervention is not necessary and is irrelevant. The applicant has no right of hearing in the writ petition. The application is, therefore, dismissed.

3. Legal Provisions:-

Submissions on law and facts by both sides in this case hinge around the provisions made in the Constitution of India and also in the Rules of Procedure & Conduct of Business framed by the State Legislative Assembly about tendering of resignation by the Member of Legislative Assembly and its acceptance/rejection (decision thereupon) by the Speaker. Therefore, it would be appropriate to first refer to the legal provisions involved.

Both sides have pleaded and relied upon Article 190(3)(b) of the Constitution of India and Rule 287 of the Rules of Procedure and Conduct of Business in Himachal Pradesh Legislative Assembly (in short 'Rules of Procedure and Business') in support of their respective contentions. The show cause notice issued to the petitioners on 27.03.2024 also refers to these very provisions. According to the petitioners, their resignations were in accordance with these provisions and therefore, respondent No.1 was bound to accept the same, whereas, according to respondent No.1, in view of the complaints received by it from the MLAs/Ministers of INC, he was conducting an inquiry to ascertain

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whether the resignations were genuine & voluntary and whether they were required to be accepted or rejected.

3(i). Article 190(3) of the Constitution of India provides the mechanism enabling a legislator to resign from the State Legislative Assembly as under:-

> *"190(3) If a member of a House of the legislature of a State-*
>
> (a) *becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 191; or*
>
> (b) *resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be,*
>
> *his seat shall thereupon become vacant:*
>
> *Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation."*

Clause 3(b) and the proviso thereto of Article 190 were incorporated by 33rd amendment of the Constitution w.e.f. 19.05.1974. A Member of the State Legislative Assembly can resign from his seat by writing under his hand addressed to the Speaker. His seat becomes vacant by acceptance of such resignation by the Speaker. The Speaker shall not accept the resignation if from the information received or otherwise and after making such inquiry as he thinks proper, he is satisfied that the resignation was not voluntary or genuine.

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3(ii). Rules of Procedure and Conduct of Business in Himachal Pradesh Legislative Assembly have been framed in exercise of power under Article 208 of the Constitution. Rule 287 thereof provides for 'resignation of seats in the House' and reads as under:-

> *"287. Resignation of seats in House.- (1) A member who desires to resign his seat in the House shall intimate in writing or online under his hand addressed to the Speaker his intention to resign his seat in the House, in the following form and* ***shall not give any reason for his resignation****:-*
>
> *To*
>
> *The Speaker,*
> *Himachal Pradesh Legislative Assembly,*
> *Shimla-4.*
>
> *Sir,*
>
> *I hereby tender my resignation of my seat in the House with effect from…………*
>
> *Yours faithfully,*
> *Member of the House:*
>
> *Place………*
> *Date………*
>
> *Provided that where any member gives any reason or introduces any extraneous matter the Speaker may, in his discretion, omit such words, phrases or matter and the same shall not be read out in the House.*
>
> ***(2) If a member hands-over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, the Speaker may accept the resignation immediately.***
>
> ***(3) If the Speaker receives the letter of resignation either by post or through someone else, the Speaker may make such enquiry as he thinks fit to satisfy himself that the resignation is voluntary and genuine. If, the Speaker, after making a summary enquiry either himself or through the agency of Legislative Assembly Secretariat or through such***

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other agency, as he may deem fit, is satisfied that the resignation is not voluntary and genuine, he shall not accept the resignation.

(4) A member may withdraw his letter of resignation at any time before it is accepted by the Speaker.

(5) The Speaker shall, as soon as may be, after he has accepted the resignation of a member, inform the House that the member has resigned his seat in the House and he has accepted the resignation.

Explanation:- When the House is not in session, the Speaker shall inform the House immediately after the House reassembles.

(6) The Secretary shall, as soon as may be, after the Speaker has accepted the resignation of a member, cause the information to be published in writing or online in the Bulletin Part-II and the Gazette and forward a copy of the notification in writing or online to the Election Commission of India for taking steps to fill the vacancy thus caused:

Provided that where the resignation is to take effect from a future date, the information shall be published in the Bulletin Part-II and the Gazette not earlier than the date from which it is to take effect."

Rule 287 enables a Member of the Legislative Assembly to:-

(a). Intimate in writing or online under his hand to the Speaker his intention to resign his seat in the House in the prescribed format, which is "*I hereby tender my resignation of my seat in the House with effect from………………….*".

(b). No reasons are to be given for the resignation. In case reasons are given or some extraneous matter is introduced in

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the resignation letter, the Speaker may in his discretion, omit such words from reading out in the House.

(c). If a member personally hands over resignation letter to the Speaker and informs that his resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, he may 'immediately' accept the resignation.

(d). If the Speaker receives the resignation letter either by post or through someone else or if he has information or knowledge that resignation is not voluntary and genuine, he may make such inquiry as he thinks fit to satisfy himself the genuineness and voluntary submission of resignation. A summary inquiry to ascertain this can be conducted by the Speaker either himself or through an agency of the Legislative Assembly Secretariat (LAS) or some other agency as deemed fit by him. On that basis, if he is satisfied that resignation is not voluntary and genuine, the same shall not be accepted.

4. Gist of Factual Submissions:-

4(i). Gist of **factual submissions of the petitioners** is that:-

4(i)(a). Resignations were submitted by the petitioners by hand not only to respondent No.3-the Secretary of Legislative Assembly on 22.03.2024, but to respondent No.1 as well, the same day. The

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resignation letters did not contain any reason for resigning as it was not required in law. Petitioners had expressly informed the Speaker that their resignations were genuine and voluntary. They had again requested the Speaker in writing on 26/27.03.2024 to accept their resignations, reiterating that they were resigning out of their own free will and their resignations were genuinely submitted. The Speaker ought to have accepted their resignations 'immediately', but no action was taken by him till 27.03.2024.

4(i)(b). Instead of accepting petitioners' resignations, the Speaker issued a show cause notice to them on 27.03.2024 to attend a hearing on 10.04.2024 in an inquiry initiated by him. The petitioners submitted their responses to the show cause notice, reiterating voluntary and genuine submission of their resignations. The Speaker asked several questions from each of the petitioners in the inquiry proceedings conducted by him on 10.04.2024 including the reasons for tendering resignations, motive behind resigning from the House and about the media reports of petitioners having joined the BJP etc. The petitioners answered the questions and unequivocally & with clarity stated that their resignations were genuine & voluntary and requested for acceptance of the same. Despite this, the Speaker adjourned the hearing to 24.04.2024. The inquiry proceedings have been adjourned from time to time. The

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inquiry has not been concluded. No decision on resignations has been taken.

During hearing of this writ petition, we were informed that on 25.04.2024, the Speaker issued notice to the petitioners on a petition preferred by a Member of Legislative Assembly belonging to INC seeking disqualification of the petitioners under Rule 6 of the Members of Himachal Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1986.

4(i)(c). Learned Senior Counsel for the petitioners had been at pains to point out that the action of the Speaker in not taking any decision upon the resignations of the petitioners is illegal and unconstitutional. It has been contended that in the given facts, the Speaker was bound to accept the resignations. There was no other way out for him. By sitting over the resignations, by not taking any decision thereupon, by leisurely conducting and dragging the inquiry, the Speaker had violated and prejudiced petitioners' constitutional rights.

4(ii). **On facts, learned Senior Counsel for respondents No.1 and 3** submitted that the Speaker had received a complaint from some Members of the Legislative Assembly (MLAs/Ministers) belonging to INC on 23.03.2024 that the petitioners had been detained by the Members of BJP ever since

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February, 2024, hence, resignations submitted by them cannot be said to be voluntary. The resignations submitted by the petitioners, though are genuine having been signed by them, but there was a dispute about their being voluntary. The Speaker was obligated by law to hold an inquiry, which he was doing. There is no prescribed time limit to complete such inquiry.

5. Legal Submissions:-

5(i). For the petitioners, it has been contended that:-

5(i)(a). Having regard to the provisions of Article 190(3) of the Constitution read with Rule 287 of the Rules of Procedure and Conduct of Business in the Legislative Assembly and principle of law laid down by the Hon'ble Apex Court that if the resignation is voluntary and there is no doubt about its authenticity and is neither forged nor fabricated, the Speaker is obliged in law to accept the same immediately. The exercise to be undertaken by the Speaker has to be a bonafide exercise. It is not permissible for the Speaker either to delay the acceptance and/or hold it back when it is *ex-facie* clear that the resignation is voluntary, authentic and not forged & fabricated. There is no choice which has been extended to the Speaker in this behalf.

5(i)(b). The manner in which the matter is being processed by the Speaker that till the petitioners prove that their resignations

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were not involuntary, the same cannot be accepted, is in teeth of principles laid down by the Hon'ble Supreme Court. Petitioners do not have to prove the negative or else the provisions of Article 190(3)(b) as well as Rule 287 would be rendered otiose.

5(i)(c). In view of law settled by the Hon'ble Apex Court, there was no necessity of holding any inquiry to ascertain genuineness and voluntariness of the resignation letters. In the facts of the case, the resignation letters being genuine and voluntary, is apparent and established on record. The Speaker ought to have accepted the resignations immediately. It is the constitutional obligation of the Speaker under Article 190(3)(b) of the Constitution read with Rule 287(2) of the Rules of Procedure & Business framed under Article 208 of the Constitution that such resignation letters are to be accepted immediately.

5(i)(d). Failure of the Speaker in accepting petitioners' resignations, in the facts of the case, violates their indefeasible right to resign from the Legislative Assembly. The members of Legislative Assembly have an indefeasible right to resign. Any interference with such right of the members would be destructive of the principles of democracy. An elected member cannot be compelled to continue in his office if he chooses to resign.

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5(i)(e). While deciding a disqualification petition, the Speaker acts as a Tribunal, whereas, while deciding/considering a resignation letter under Article 190(3)(b) of the Constitution read with Rules 287 of the Rules of Procedure and Conduct of Business in the Legislative Assembly, the Speaker is only to carry out the limited inquiry as to whether the resignation is voluntary and genuine having regard to the principles laid down by the Hon'ble Apex Court. For exercise of such limited discretion, where there is continuing refusal on part of the Speaker in taking a decision, the Constitutional Court would be empowered as well as obliged to issue a writ to the Speaker to accept the resignations as the refusal of the Speaker to exercise the obligation to accept the resignations immediately constitutes a jurisdictional illegality requiring interference under Article 226 of the Constitution of India.

5(ii). **For respondents No.1 and 3**, it has been submitted that the writ petition is not maintainable and deserves to be dismissed for the following reasons:-

5(ii)(a). The Constitutional Courts while exercising their power of judicial review refrain from issuing directions as regards the manner of and timelines for performance of the role expressly assigned to the constitutional authorities under the Constitution. The Constitutional Courts refrain from taking upon themselves the

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constitutional burden of other authorities. The Constitutional Courts would be circumspect in issuing any directions that may have the effect of fettering the manner of and the timelines for performance of role expressly assigned to the Speaker under the Constitution. The decisions taken by the constitutional authorities such as the Speaker, are subject to judicial review, however, at a stage prior to the decision having been taken, the Courts should show restraint in exercising their power of judicial review, so as not to restrict or prevent constitutional authorities from performing their functions as they deem appropriate. Under the Tenth Schedule, the Speaker acts as a Tribunal tasked with the duty to adjudicate questions relating to disqualification of legislators. Being a Tribunal, his functioning is subject to supervision, albeit limited of the Constitutional Courts. As regards the power to decide on the acceptance or rejection of a letter of resignation submitted by a member of the House of the Legislature of a State, the said function has been conferred upon him in his capacity as an Officer of the State Legislature. In this capacity, the Speaker is co-equal to the Constitutional Courts as a constitutional authority. The Court, therefore, should refrain from issuing a mandamus to the constitutional authority on the question of acceptance of resignation in a particular manner or in a particular time-frame. The writ petition seeking a mandamus against the

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Speaker, a constitutional authority, to decide the question of acceptance of resignation in a particular manner, is liable to be rejected.

5(ii)(b). Article 190(3)(b) of the Constitution of India requires acceptance of the resignation tendered by a Member of the House of the Legislature of a State by the Speaker for it to take effect. The proviso inserted in Article 190(3)(b) by 33rd amendment of the Constitution, which came into effect from 19.05.1974, mandates the Speaker not to accept the resignation if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker is satisfied that such resignation is not voluntary or genuine. Merely addressing a resignation letter is not sufficient. The Speaker has to accept such resignation for the seat to become vacant. The constitutional requirement of acceptance inheres in it an element of discretion to be exercised by the Speaker. The acceptance or non-acceptance of the resignation of a member is based on a satisfaction to be arrived at by the Speaker, depending on whether or not the resignation is voluntary and genuine. Speaker is duty bound not to accept such resignation, if he is satisfied that the resignation is not voluntary or genuine. The satisfaction of the Speaker regarding the voluntariness and genuineness of the resignation is to be arrived after making such inquiry as he thinks

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fit. The Constitution has scribed a specific role to the Speaker when a member of the House of the Legislature of the State tenders his resignation in writing. The petitioners are attempting to subvert the constitutional scheme by requesting the Court to substitute its satisfaction regarding voluntariness and genuineness of their resignations with that of Speaker. This is impermissible in law.

5(ii)(c). The petitioners are seeking a declaration for acceptance of their resignations, thereby not letting the Speaker perform his constitutional role under Article 190(3)(b) of the Constitution. Hon'ble Supreme Court in ***Shrimanth Balasaheb Patil Versus Speaker, Karnataka Legislative Assembly***[1] has held that subjective satisfaction of the Speaker regarding voluntariness and genuineness of the resignation tendered by member of the House of the Legislature of a State is subject to judicial review. In the present case, the petitioners have approached the Court even before the Speaker could take a decision whether or not their resignations are liable to be accepted. The prayers made in the writ petition are in the teeth of a constitutional scheme. In the first prayer, the petitioners seek a direction to the Speaker to forthwith accept their resignation letters. Thus, the petitioners seek a direction that the Speaker must exercise his discretion under Article 190 of

[1] (2020) 2 SCC 595

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the Constitution in a particular manner, which is impermissible in law. The second prayer of the petitioners is that their resignations be accepted with effect from the date they were tendered. This is also contrary to the expressed mandate of Article 190(3)(b), which makes the resignation effective only upon its acceptance by the Speaker. Petitioners' third prayer for quashing the show cause notice dated 27.03.2024 and all consequential proceedings arising therefrom, is also contrary to the proviso to Article 190(3)(b), whereby the Speaker has been expressly permitted to conduct such inquiry as he thinks fit to determine the voluntariness and genuineness of the resignations.

The sum total of the submissions made by the respondents is that the petitioners are seeking to completely subvert the constitutional role assigned to the Speaker under Article 190(3)(b) of the Constitution of India and seek for this Court to takeover the Speaker's role under the Constitution, which is impermissible in law.

Learned counsel on both sides in support of their submissions have referred to several legal pronouncements. To avoid repetition, reference to the same has been made in succeeding paras.

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6. Consideration:-

6(i). Exercise of jurisdiction under Article 226 of the Constitution of India at a pre-decisional stage in a matter relating to decision upon resignation of Member of the Legislative Assembly-Maintainability of the writ petition.

6(i)(a). In ***Kihoto Hollohan v. Zachillhu***[2], Hon'ble Apex Court held that right to decide under the Tenth Schedule of the Constitution of India has been conferred on the Speaker of the Assembly. The conferment of such power was not anathema to the constitutional scheme. The Speaker decides the question of disqualification as a Tribunal. Limited protection given to the proceedings before the speaker in terms of para 6 of the Tenth Schedule to the Constitution, was also justified even though the said protection did not preclude a judicial review of the decision of the Speaker. But that judicial review was not a broad one in light of the finality attached to the decision of the Speaker under paragraph 6(1) of the Tenth Schedule. The judicial review was available on grounds like gross violation of natural justice, perversity, bias and such like defects. In the facts of that case, it was held that decision of the Speaker was not immune from challenge before the High Court under Articles 226 and 227 of the Constitution of India.

[2] 1992 Supp (2) SCC 651

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Three out of eight contentions formulated in this case were as under:-

"24(A) The Constitution (Fifty-second Amendment) Act, 1985, insofar as it seeks to introduce the Tenth Schedule is destructive of the basic structure of the Constitution as it is violative of the fundamental principles of Parliamentary democracy, a basic feature of the Indian constitutionalism and is destructive of the freedom of speech, right to dissent and freedom of conscience as the provisions of the Tenth Schedule seek to penalise and disqualify elected representatives for the exercise of these rights and freedoms which are essential to the sustenance of the system of Parliamentary democracy.

(E) That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts the immunity under Articles 122 and 212. The Speaker and the Chairman in relation to the exercise of the powers under the Tenth Schedule shall not be subjected to the jurisdiction of any Court.

The Tenth Schedule seeks to and does create a new and non-justiciable area of rights, obligations and remedies to be resolved in the exclusive manner envisaged by the Constitution and is not amenable to, but constitutionally immune from, curial adjudicative processes.

(F) That even if Paragraph 7 erecting a bar on the jurisdiction of Courts is held inoperative, the Courts' jurisdiction is, in any event, barred as Paragraph 6(1) which imparts a constitutional 'finality' to the decision of the Speaker or the Chairman, as the case may be, and that such concept of 'finality' bars examination of the matter by the Courts."

Contention (A) above was answered as under:-

"53. Accordingly we hold:

"That the Paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected Members of Parliament and the Legislatures of the

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States. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The Provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.

The contention that the provisions of the Tenth Schedule, even with the exclusion of Paragraph 7, violate the basic structure of the Constitution in they affect the democratic rights of elected Members and, therefore, of the principles of Parliamentary democracy is unsound and is rejected."

Following conclusion was drawn on contentions (E) and (F):-

"110. In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence.

111. In the result, we hold on contentions (E) and (F):

That the Tenth Schedule does not, in providing for an additional grant (sic ground) for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or chairman is a judicial power.

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That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh Case to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words 'be deemed to be proceedings in Parliament' or 'proceedings in the Legislature of a State' confines the scope of the fiction accordingly.

The Speaker/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairman. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence."

6(i)(b). In ***Rajendra Singh Rana and others Versus Swami Prasad Maurya and others***[3], one of the arguments raised was that

[3] (2007) 4 SCC 270

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qualified finality conferred by paragraph 6(1) of the Tenth Schedule of the constitution was not available to a decision of the speaker outside the Tenth Schedule. The contention raised was that the Speaker (in that case) was called upon to decide the question of disqualification and only to such decision, the qualified finality in terms of paragraph 6(1) got attached and not to a decision independently taken by him purporting to recognize a split. The Speaker had not decided the petition for disqualification filed against 13 MLAs, but had only proceeded to decide the application made by 37 members subsequently for recognizing them as a separate group. Such separate decision was not contemplated in a proceeding under the Tenth Schedule. Consequently, it was open to challenge before the High Court just like any other decision within the accepted parameters of Articles 226 and 227 of the Constitution of India.

Hon'ble Apex Court held that in context of introduction of Sub-Article (ii) of Articles 102 and 191 of the Constitution, a proceeding under the Tenth Schedule to the Constitution is the one to decide whether a Member has become disqualified to hold his position in the Parliament/Assembly on the ground of defection. The Tenth Schedule cannot be read or construed independent of Articles 102 & 191 of the Constitution

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and the object of those articles. Power to recognize a separate group in the Assembly may rest with the Speaker on the basis of Rules of Business of the House. But that is different from saying that the power is available to him under the Tenth Schedule to the Constitution independent of a claim being determined by him that a member had incurred disqualification by defection. To that extent, the decision of the Speaker in the case cannot be considered to be an order in terms of the Tenth Schedule to the Constitution. The speaker had failed to decide the question, he was called upon to decide, by postponing a decision thereon. The Court, therefore, found merit in the contention that the Speaker may not enjoy full immunity in terms of paragraph 6(1) of the Tenth Schedule of the Constitution and that even if it did, the power of judicial review recognized by the Court in *Kihoto Hollohan's*[2] case, would be sufficient to warrant interference with the order in question.

In the facts of that case, the Apex Court held that: The Speaker had totally misdirected himself in answering the claims of 37 MLAs that there had been a split in the party and in not deciding the question of disqualification raised before him in the application already pending with him; This failure on part of Speaker to decide the application seeking disqualification was not merely in the realms of procedure. It was against the constitutional scheme of

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adjudication contemplated by the Tenth Schedule and the Rules of Business of the House. The failure to exercise jurisdiction was held to be jurisdictional illegality not covered by shield of paragraph 6 of the Tenth Schedule. A contention was raised that it was for the Speaker to take a decision in the first instance and Court should not substitute its decision for that of the Speaker. Hon'ble Supreme Court observed that normally the Court might not proceed to take a decision for the first time, when the authority concerned has not taken a decision in the eyes of law and the Court would normally remit the matter to the authority for taking a proper decision in accordance with law. The Court, however, took cognizance of the facts of the case including impending end of the term of the Assembly and found merit in the submission that expeditious decision by the Court was warranted and proceeded to decide the same. Some relevant observations from the judgment are as under:-

> *"25. …………… The Speaker has failed to decide the question, he was called upon to decide, by postponing a decision thereon. There is therefore some merit in the contention of the learned counsel for BSP that the order of the Speaker may not enjoy the full immunity in terms of para 6(1) of the Tenth Schedule to the Constitution and that even if it did, the power of judicial review recognised by the Court in Kihoto Hollohan is sufficient to warrant interference with the order in question."*
>
> *29. …………….. This failure on the part of the Speaker to decide the application seeking a disqualification cannot be said to be merely in the realm of procedure. It goes*

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against the very constitutional scheme of adjudication contemplated by the Tenth Schedule read in the context of Articles 102 and 191 of the Constitution. It also goes against the rules framed in that behalf and the procedure that he was expected to follow. It is therefore not possible to accept the argument on behalf of the 37 MLAs that the failure of the Speaker to decide the petition for disqualification at least simultaneously with the petition for recognition of a split filed by them, is a mere procedural irregularity. We have no hesitation in finding that the same is a jurisdictional illegality, an illegality that goes to the root of the so called decision by the Speaker on the question of split put forward before him. Even within the parameters of judicial review laid down in Kihoto Hollohan and in Jagjit Singh v. State of Haryana it has to be found that the decision of the Speaker impugned is liable to be set aside in exercise of the power of judicial review.

40. Coming to the case on hand, it is clear that the Speaker, in the original order, left the question of disqualification undecided. Thereby he has failed to exercise the jurisdiction conferred on him by paragraph 6 of the Tenth Schedule. Such a failure to exercise jurisdiction cannot be held to be covered by the shield of paragraph 6 of the Schedule. He has also proceeded to accept the case of a split based merely on a claim in that behalf. He has entered no finding whether a split in the original political party was prima facie proved or not. This action of his, is apparently based on his understanding of the ratio of the decision in Ravi S. Naik case. He has misunderstood the ratio therein. Now that we have approved the reasoning and the approach in Jagjit Singh case and the ratio therein is clear, it has to be held that the Speaker has committed an error that goes to the root of the matter or an error that is so fundamental, that even under a limited judicial review the order of the Speaker has to be interfered with. We have, therefore, no hesitation in agreeing with the majority of the High Court in quashing the decisions of the Speaker.

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41. ……………….. It is undisputable that in the order that was originally subjected to challenge in the Writ Petition, the Speaker specifically refrained from deciding the petition seeking disqualification of the 13 MLAs. On our reasoning as above, clearly, there was an error which attracted the jurisdiction of the High Court in exercise of its power of judicial review.

45. ………………. we think that as a Court bound to protect the Constitution and its values and the principles of democracy which is a basic feature of the Constitution, this Court has to take a decision one way or the other on the question of disqualification of the 13 MLAs based on their action on 27-8-2003 and on the materials available.

53. ……………….. The 13 MLAs, therefore, stand disqualified with effect from 27-8-2003…………………."

6(i)(c). In ***Speaker, Haryana Vidhan Sabha Versus Kuldeep Bishnoi and others***[4], some of the questions considered by the Hon'ble Apex Court were:-

"Whether even in exercise of its powers of judicial review, the High Court as a constitutional authority, can issue mandatory directions to the Speaker of a State Assembly, who is himself a constitutional authority, to dispose of a disqualification petition within a specified time?" and

"Whether the High Court in exercise of its powers under Articles 226 and 227 of the Constitution, has jurisdiction to issue directions of an interim nature to a Member of the House while a disqualification petition of such member is pending before the Speaker of a State Legislative

[4] (2015) 12 SCC 381

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Assembly under Article 191 read with the Tenth Schedule to the Constitution of India?"

The contention of the learned Solicitor General of India was that in *Kihoto Hollohan's*[2] case, it was stated that in view of limited scope of judicial review that is available on account of finality clause in paragraph 6 of the Tenth Schedule and also having regard to the constitutional intendment and status of repository of the adjudicating power, i.e. the Speaker, judicial review cannot be available at a stage prior to the making of the decision by the Speaker and *quia timet* action would not be permissible. Nor would interference be permissible at an interlocutory stage of proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence. It was then contended that the case in hand did not involve any disqualification or suspension of a Member of the House by the Speaker during pendency of the proceedings, but related to disqualification proceedings pending before him, which were not being disposed of for one reason or the other. The fact that the Speaker had not finalized the disqualification petitions for almost a period of two years could not and did not vest the High

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Court with power to usurp the jurisdiction of the Speaker and to pass interim orders effectively disqualifying the MLAs in question from functioning effectively as Members of the House.

Hon'ble Apex Court took cognizance of the fact that the appeals were being decided in the background of complaint made to the effect that the interim orders had been passed by the High Court in purported exercise of its powers of judicial review under Articles 226 and 227 of the Constitution, when the disqualification proceedings were pending before the Speaker. Hon'ble Apex Court held that since the decision of the Speaker on a petition under paragraph 4 of the Tenth Schedule concerns only a question of merger on which the Speaker was not entitled to adjudicate, the High Court could not have assumed jurisdiction under its powers of review before a decision was taken by the Speaker under para 6 of the Tenth Schedule. It is in fact in a proceeding under para 6 that the Speaker assumes jurisdiction to pass a quasi-judicial order that is amenable to the writ jurisdiction of the High Court. It is in such proceedings that the question relating to the disqualification is to be considered and decided. Accordingly, restraining the Speaker from taking any decision under paragraph 6 of the Tenth Schedule, is beyond the jurisdiction of High Court, since the Constitution has itself vested the Speaker

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with power to take decision under paragraph 6 and care has also been taken to indicate that such decision of the Speaker would be final. It is only thereafter that the High Court assumes jurisdiction to examine the Speaker's order. The High Court has no jurisdiction to pass an order that was in the domain of the Speaker.

The Apex Court affirmed the direction given by the learned Single Judge to the Speaker, as endorsed by the Division Bench, to the extent it directed the Speaker to decide the petitions for disqualification of the MLAs in question within a period of four months, as under:-

> *"47. In our view, the High Court had no jurisdiction to pass such an order, which was in the domain of the Speaker. The High Court assumed the jurisdiction which it never had in making the interim order which had the effect of preventing the five MLAs in question from effectively functioning as Members of the Haryana Vidhan Sabha. The direction given by the learned Single Judge to the Speaker, as endorsed by the Division Bench, is, therefore, upheld to the extent that it directs the Speaker to decide the petitions for disqualification of the five MLAs within a period of four months. The said direction shall, therefore, be given effect to by the Speaker. The remaining portion of the order disqualifying the five MLAs from effectively functioning as Members of the Haryana Vidhan Sabha is set aside. The said five MLAs would, therefore, be entitled to fully function as Members of the Haryana Vidhan Sabha without any restrictions, subject to the final decision that may be rendered by the Speaker in the disqualification petitions filed under Para 6 of Schedule X to the Constitution."*

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6(i)(d). In ***SLP(C) No.33677 of 2015 (S.A. Sampath Kumar Versus Kale Yadaiah and others)***, a reference order was made by a Division Bench of Hon'ble Apex Court on 08.11.2016 for decision by a Larger Bench as to 'whether the High Court exercising power under Article 226 of the Constitution can direct a Speaker of the Legislative Assembly acting in quasi-judicial capacity under the Tenth Schedule to decide a disqualification petition within a certain time and whether such a direction would not fall foul of *quia timet* action doctrine mentioned in para 110 of *Kihoto Hollohan's*[2] case. Just as the decision of a Speaker can be corrected by judicial review by the High Court exercising jurisdiction under Article 226, so, *prima facie*, should indecision by a Speaker be correctable by a judicial review, so as not to frustrate the laudable object and purpose of the Tenth Schedule, which has been referred to in both the majority and minority judgments in *Kihoto Hollohan's*[1] case'.

6(i)(e). ***Keisham Meghachandra Singh Versus The Hon'ble Speaker Manipur Legislative Assembly and others***[5] was a case where no action was being taken by the Speaker on the applications filed for disqualification of an MLA. The petitioner prayed that the High Court direct the Speaker to decide the disqualification petition within a reasonable time. The High Court, *inter alia*, framed the

[5] 2020 (2) Scale 329

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question as to 'Whether in the facts and circumstances of the case, the Speaker can be said to have failed to discharge its duties enjoined in the Tenth Schedule to the Constitution of India to decide the petitions'. The Speaker took a preliminary objection that judicial review was shut out in such cases.

The High Court held that the Speaker is a quasi judicial authority, who is required to take a decision within a reasonable time. Remedy provided in Tenth Schedule is, in essence, an alternative remedy to be exhausted before approaching the High Court and this being the case, if such alternative remedy is found to be ineffective due to deliberate inaction or indecision on part of the Speaker, the Court cannot be denied jurisdiction to issue an appropriate writ to the Speaker. Consequently, the preliminary objection was dismissed and the Court went on to hear the writ petition on merits. Several judgments were cited, but the High Court ultimately came to the finding that since the very issue was pending before a Constitution Bench of the Supreme Court in *S.A. Sampath Kumar's* case, hence, it would not be appropriate for the High Court to pass any order for the time being, which would include orders relating to inaction or indecision on the part of the Speaker as well as issuing of a writ of quo-warranto. The petitioner then approached the Hon'ble Apex Court.

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Hon'ble Apex Court expressed the view that the issue referred to Larger Bench in *S.A. Sampath Kumar* had already been answered by a 5 Judge Bench in *Rajendra Singh Rana's*[3] case. After noticing several precedents in the timeline, the Apex Court concluded that in *Rajendra Singh Rana's*[3] case, it had been stated that failure to exercise jurisdiction vested in a Speaker cannot be covered by the shield contained in paragraph 6 of the Tenth Schedule and that when a Speaker refrains from deciding a petition within a reasonable time, there was clearly an error, which attracted jurisdiction of the High Court in exercise of the power of judicial review. *Kihoto Hollohan's*[2] decision does not interdict judicial review in aid of Speaker arriving at prompt decision as to disqualification under the Tenth Schedule. Relevant paragraphs of the judgment read as under:-

> "22. *It is clear from a reading of the judgment in Rajendra Singh Rana (supra) and, in particular, the underlined portions of paragraphs 40 and 41 that the very question referred by the Two Judge Bench in S.A. Sampath Kumar (supra) has clearly been answered stating that a failure to exercise jurisdiction vested in a Speaker cannot be covered by the shield contained in paragraph 6 of the Tenth Schedule, and that when a Speaker refrains from deciding a petition within a reasonable time, there was clearly an error which attracted jurisdiction of the High Court in exercise of the power of judicial review.*
>
> 23. *Indeed, the same result would ensue on a proper reading of Kihoto Hollohan (supra). Paragraphs 110 and 111 of*

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the said judgment when read together would make it clear that what the finality clause in paragraph 6 of the Tenth Schedule protects is the exclusive jurisdiction that vests in the Speaker to decide disqualification petitions so that nothing should come in the way of deciding such petitions. The exception that is made is also of importance in that interlocutory interference with decisions of the Speaker can only be qua interlocutory disqualifications or suspensions, which may have grave, immediate, and irreversible repercussions. Indeed, the Court made it clear that judicial review is not available at a stage prior to the making of a decision by the Speaker either by a way of quia timet action or by other interlocutory orders.

28. 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

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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.

29. In the years that have followed the enactment of the Tenth Schedule in 1985, this Court's experience of decisions made by Speakers generally leads us to believe that the fears of the minority judgment in Kihoto Hollohan (supra) have actually come home to roost. Verma, J. had held :

"181. The Speaker being an authority within the House and his tenure being dependent on the will of the majority therein, likelihood of suspicion of bias could not be ruled out. The question as to disqualification of a Member has adjudicatory disposition and, therefore, requires the decision to be rendered in consonance with the scheme for adjudication of disputes. Rule of law has in it firmly entrenched, natural justice, of which, rule against bias is a necessary concomitant; and basic postulates of rule against bias are: nemo judex in causa sua — 'A Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased'; and 'it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.' This appears to be the underlying principle adopted by the framers of the Constitution in not designating the Speaker as the authority to decide election disputes and questions as to disqualification of members under Articles 103, 192 and 329 and opting for an independent authority outside the House. The framers of the Constitution had in this manner kept the office of the Speaker away from this controversy. There is nothing unusual in this scheme if we bear in mind that the final authority for removal of a Judge of the Supreme Court and High Court is outside the judiciary in the Parliament under Article 124(4). On the same

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principle the authority to decide the question of disqualification of a Member of Legislature is outside the House as envisaged by Articles 103 and 192.

182. In the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such dispute with no provision for any appeal or revision against the Speaker's decision to any independent outside authority. This departure in the Tenth Schedule is a reverse trend and violates a basic feature of the Constitution since the Speaker cannot be treated as an authority contemplated for being entrusted with this function by the basic postulates of the Constitution, notwithstanding the great dignity attaching to that office with the attribute of impartiality."

30. *It is time that Parliament have a rethink on whether disqualification petitions ought to be entrusted to a Speaker as a quasi-judicial authority when such Speaker continues to belong to a particular political party either de jure or de facto. Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as arbiter of disputes concerning disqualification which arise under the Tenth Schedule with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other outside independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the provisions contained in the Tenth Schedule, which are so vital in the proper functioning of our democracy.*

31. *It is not possible to accede to Shri Sibal's submission that this Court issue a writ of quo warranto quashing the appointment of the Respondent No.3 as a minister of a cabinet led by a BJP government. Mrs. Madhavi Divan is right in stating that a disqualification under the Tenth Schedule from being an MLA and consequently minister must first be decided by the exclusive authority in this*

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behalf, namely, the Speaker of the Manipur Legislative Assembly. It is also not possible to accede to the argument of Shri Sibal that the disqualification petition be decided by this Court in these appeals given the inaction of the Speaker. It cannot be said that the facts in the present case are similar to the facts in Rajinder Singh Rana (supra). In the present case, the life of the legislative assembly comes to an end only in March, 2022 unlike in Rajinder Singh Rana (supra) where, but for this Court deciding the disqualification petition in effect, no relief could have been given to the petitioner in that case as the life of the legislative assembly was about to come to an end. The only relief that can be given in these appeals is that the Speaker of the Manipur Legislative Assembly be directed to decide the disqualification petitions pending before him within a period of four weeks from the date on which this judgment is intimated to him. In case no decision is forthcoming even after a period of four weeks, it will be open to any party to the proceedings to apply to this Court for further directions/reliefs in the matter."

The Speaker, Manipur Legislative Assembly was directed to decide the disqualification petitions pending before him within a period of four weeks. No decision was taken by the Speaker even during the time further extended by the Hon'ble Apex Court, hence, vide order dated 30.03.2020, passed in exercise of powers under Article 142 of the Constitution of India, respondent No.3 was restrained from entering the Legislative Assembly till further orders.

6(i)(f). In ***Shrimanth Balasaheb Patil's***[1] case, the contention that the Court cannot go into the acceptance/rejection of the

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resignation, which is based upon the subjective satisfaction of the Speaker, hence, immune from judicial review, was rejected. It was held that determination of whether the resignations were voluntary and genuine, cannot be based on the *ipse dixit* of the Speaker. Instead, it has to be based upon the satisfaction. Even though the satisfaction is subjective, it has to be based on objective material showing that resignation is not voluntary or genuine. When a member tenders his resignation in writing, the Speaker must immediately conduct an inquiry to ascertain if the member intends to relinquish his membership. The inquiry must be in accordance with the provisions of the Constitution and the applicable rules of the House. The satisfaction of the Speaker is subject to judicial review. Paragraph 73 of the judgment, being relevant, is extracted hereinafter:-

> *"73. We are unable to agree with this contention. It is true that 33rd Constitutional Amendment changed the constitutional position by conferring discretion on the Speaker to reject the resignation. However, such discretion is not unqualified, as the resignation can only be rejected if the Speaker is "satisfied that such resignation is not voluntary or genuine". Determination of whether the resignations were "voluntary" or "genuine" cannot be based on the ipse dixit of the Speaker, instead it has to be based on his "satisfaction". Even though the satisfaction is subjective, it has to be based on objective material showing that resignation is not voluntary or genuine. When a Member tenders his resignation in writing, the Speaker must immediately*

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conduct an inquiry to ascertain if the Member intends to relinquish his membership. The inquiry must be in accordance with the provisions of the Constitution and the applicable rules of the House. This satisfaction of the Speaker is subject to judicial review."

6(i)(g). Analysis

When the Speaker takes the decision under the Tenth Schedule of the Constitution, he acts as a Tribunal-quasi judicial authority and in view of the law settled down by the Hon'ble Supreme Court, his decisions so taken are subject to qualified parameters of judicial review. Even at pre-decisional stage in such matters, judicial review in aid of Speaker to arrive at prompt decision has been recognized depending upon facts of the case. But in the instant case, the issue involved is alleged inaction of the Speaker in not taking decision on the resignations of the petitioners. According to the respondents, the Speaker while taking decision on the resignations tendered by the Member of the Legislative Assembly acts as a Constitutional Authority and not as a Tribunal or a Quasi-Judicial Authority; Interference by the Constitutional Court in exercise of jurisdiction under Article 226 of the Constitution of India at a pre-decisional stage where Speaker is acting purely as a Constitutional Authority, is impermissible in law.

The above is a strong argument, which has to be examined in the backdrop of law laid down by the Hon'ble Apex

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Court as discussed above alongwith the constitutional provisions and Rules of Procedure & Conduct of Business of the Legislative Assembly framed in exercise of power conferred by the Constitution. The other way of looking at the submission of the respondents is that even in the cases where decisions of Speaker armoured by the Tenth Schedule of the Constitution were impugned, the Hon'ble Apex Court has held that such decisions though final, are not conclusive and are subject to judicial review confined to jurisdictional infirmities, such as violation of constitutional guarantees and principles of natural justice, malafides and perversities etc. Even in petitions where allegations were of inaction or indecision by the Speaker in deciding the petitions under the Tenth Schedule or in other words, at pre-decisional stages, the Hon'ble Apex Court has held that in the given situation, the Constitutional Courts would have jurisdiction in the first instance to direct the Speaker to decide the petitions within a reasonable period that would depend upon facts of each case. That *Kihoto Hollohan's*[2] decision does not interdict judicial review in aid of Speaker arriving at prompt decision as to disqualification under the Tenth Schedule. It was fairly put forth for the respondents that a decision taken by the Speaker under Article 190(3)(b) of the Constitution read with Rule 287 of the Rules of Procedure and Conduct of Business of the

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Legislative Assembly will also be subject to well defined limited judicial review. This is so held in *Shrimanth Balasaheb Patil's*[1] case as well. The argument that the pre-decisional stages as well as decisions where the Speaker acts as a Tribunal under the Tenth Schedule to the Constitution (to which in terms of paras 6 & 7 of the Tenth Schedule, finality is attained), are though subject to judicial review on qualified judicial parameters, but the pre-decisional stage like the one involved in the present case, where the Speaker is to take decision on the resignations of the Members of Legislative Assembly would always be beyond the jurisdiction of the Constitutional Court even though the final decision on resignation would be subject to judicial review, to my mind cannot be accepted. It is also to be kept in mind that in terms of Article 190(3)(b) of the Constitution and Rule 287 of the Rules of Procedure and Conduct of Business in the House, the Speaker has to take a 'decision' on the resignation tendered by a Member of the Legislative Assembly. The 'decision' would be either to accept or reject the same. The 'decision' will be based upon his subjective satisfaction, which in turn, would be subject to judicial review as held in *Shrimanth Balasaheb Patil's*[1] case.

When a decision taken by the Speaker or his inaction in deciding (pre-decisional stage) involving the issues under the

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Tenth Schedule of the Constitution of India has been held subject to well defined judicial parameters; And when admittedly decision taken by the Speaker under Article 190(3)(b) of the Constitution of India read with Rule 287 of the Rules of Procedure and Business, would be subject to limited judicial review within the parameters as aforesaid; Then, certainly, in the given factual situation, the indecision/inaction of the Speaker in taking the decision and sitting over the resignations tendered by the Member of the Legislative Assembly would also be subject to limited judicial review on same parameters as laid down by the Hon'ble Apex Court in above precedents. More so, in the given facts of the case, where the petitioners are crying hoarse that:- They had themselves tendered their voluntary and genuine resignations fair and square to the Speaker, met & requested him to accept the same, repeated the request with reminders, but no action had been taken on the same by him, though Rule 287 required 'immediate' acceptance in view of the fact that the resignations were tendered by them by hand and their content & intent had been affirmed by them to the Speaker many times over; Instead of accepting the resignations, the Speaker issued them a show cause notice to participate in an inquiry to ascertain the voluntariness & genuineness of the resignations; The petitioners though responded to the show cause notice and affirmed

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their decisions to resign, but the inquiry is being dragged on putting negative burden of proof on the petitioners that their resignations were not involuntary.

The Speaker has a right to conduct the inquiry. It is his discretion to accept or reject the resignations, but the inquiry cannot be an overbroad inquiry. In a given case, the inquiry can be held, but only with a view to ascertain whether the resignations tendered by the Members of Legislative Assembly were voluntary and genuine. Nothing more than that. There cannot be any roving inquiry.

Being a Constitutional Authority does not mean that the said authority is beyond or above the Constitution. Duties of Constitutional Authority are more onerous. The Constitutional Authority has to act and conduct in accordance with the Constitution, for he has sworn an oath to bear true faith and allegiance to the Constitution of India. It is the Constitution which is supreme and not the Constitutional Authority. Continued state of indecision on petitioners' resignations, in the given facts, where petitioners complain of violation of their indefeasible rights, warrants exercise of limited jurisdiction under Article 226 of the Constitution of India. Not taking any decision for long may also amount to a decision. In the given facts and circumstances of the case, the writ petition is maintainable at pre-decisional stage.

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6(ii). Next issue concerns the inquiry being conducted by the Speaker on petitioners' resignation:-

6(ii)(a). Reasons for resignation:-

Neither the Constitution of India nor the Rules of Procedure and Conduct of Business of the Himachal Pradesh Legislative Assembly mandate assigning reasons for tendering resignation. Rather, as per Rule 287 of the Rules of Procedure and Conduct of Business of State Legislative Assembly, reasons are not required to be assigned while tendering the resignations. The format of resignation given in Rule 287, as extracted earlier, is very simple. It does not entail giving reason for submitting the resignation. The resignation letters tendered by the petitioners did not contain any reasons. The resignation letters were procedurally in order. This is not disputed by the respondents.

6(ii)(b). The mechanism for acceptance of resignations:-

a. Article 190(3)(b) of the Constitution of India mandates that resignations in order to be accepted must be voluntary and genuine. If from information received or otherwise and after making such inquiry as he thinks fit, the Speaker is satisfied that such resignation was not voluntary or genuine, he shall not accept such resignation.

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b. Rule 287 of the Rules of Procedure and Conduct of Business of Legislative Assembly reiterates the above position. The rule also states that in case the resignation is submitted by hand and the MLA tendering it vouches that he has submitted it voluntarily and genuinely, the Speaker may 'immediately' accept it. However, in case it is not submitted by hand, but is submitted through a third person or by post etc., in that eventuality, the Speaker may conduct a summary inquiry as he deems fit either by himself or by some other agency to ascertain whether resignation was voluntary and genuine.

6(ii)(c). Genuineness of resignations:-

Shrimanth Balasaheb Patil's[1] case holds that the word 'genuine' has not been defined. It would simply mean a writing by which a member chooses to resign, is by the member himself and is not forged by any third party. The word 'genuine' only relates to the authenticity of the letter of resignation. Para 80 of the judgment reads as under:-

> *"80. Fourth, although the word "genuine" has not been defined, in this context, it would simply mean that a writing by which a Member chooses to resign is by the Member himself and is not forged by any third party. The word "genuine" only relates to the authenticity of the letter of resignation."*

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The above meaning of the term 'genuine' has been reiterated in ***Shivraj Singh Chouhan and others Versus Speaker Madhya Pradesh Legislative Assembly and others***[6] as under:-

> *"36.7. Though, the term "genuine" has not been defined, what is meant is the authenticity of the letter of resignation."*

In ***T. Thangzalam Haokip Versus Speaker, Manipur Legislative Assembly and Others***[7], the petitioners had admitted to writing and addressing their resignation letters to the Speaker that were submitted through a third party. The Hon'ble Court concluded that the resignations tendered were genuine. Para 33 of the judgment in this regard reads as under:-

> *"33. In the present cases, as the petitioners have admitted that they themselves wrote the resignation letter addressed to the Speaker and submitted the same through a third party, we can safely conclude that the resignation tendered by the petitioners are genuine and there is nothing available on record to cast a doubt as to the genuineness of the resignation letters submitted by the petitioners. That leave us with only the task of deciding whether the resignation tendered by the petitioners are voluntary or not."*

Special Leave Petition (C) No.11971/2021 preferred against the aforesaid judgment was dismissed by the Hon'ble Apex Court on 09.09.2021.

[6] (2020) 17 SCC 1
[7] 2021 SCC OnLine Mani 261

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In the instant case, there is no dispute that it was the petitioners, who had tendered the resignations; that they are the authors of the resignations; that their signatures are there on the resignation letters so tendered by them; that their resignation letters have not been forged by any third party. During the course of hearing of the case, it was conceded by the respondents that petitioners' resignations were genuine.

Though the show cause notice has been issued to the petitioners with respect to genuineness of their resignations as well, however, in the instant case, the respondents have admitted that: resignations were tendered by the petitioners; the resignation letters were not fake or forged and; they were genuine.

6(ii)(d). Voluntariness of the resignations:-

Shrimanth Balasaheb Patil's[1] case explains that the word 'voluntary' has not been defined. It would mean that the resignation should not be based on threat, force or coercion. Hon'ble Apex Court rejected the contention that a Speaker as a part of his inquiry, can go into the motive of the member behind his resignation and reject the same if it was done under political pressure. Hon'ble Court held that Article 190(3)(b) of the Constitution of India does not permit the Speaker to inquire into the motive of the resignation. When a member is resigning on political

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pressure, he is still voluntarily doing so. Once the member tenders his resignation, it would be voluntary and if writing can be attributed to him, it would be genuine. The observations relevant to the context are as under:-

> *"81. Similarly, the word "voluntary" has not been defined. In this context, it would mean the resignation should not be based on threat, force or coercion. This is evident from the Statement of Objects and Reasons of the 33rd Constitutional Amendment Act……….*
>
> *82. The learned Senior Counsel, Mr. Kapil Sibal, has contended that a Speaker, as a part of his inquiry, can also go into the motive of the Member and reject his resignation if it was done under political pressure. We are unable to accept this contention. The language of Article 190(3)(b) of the Constitution does not permit the Speaker to inquire into the motive of the resignation. When a Member is resigning on political pressure, he is still voluntarily doing so. Once the Member tenders his resignation it would be "voluntary" and if the writing can be attributed to him, it would be genuine". Our view is also supported by the debates on the 33rd Constitutional Amendment……….*
>
> *In this regard, there is no doubt that the petitioners have categorically stated and have reaffirmed before the Speaker and this Court, in unequivocal terms, that they have voluntarily and genuinely resigned their membership of the House. This Court, in the earlier writ petition, being Writ Petition (C) No.872 of 2019, had also directed [Pratap Gouda Patil v. State of Karnataka, 2019 SCC OnLine SC 1108] the Speaker to look into the resignation of the members, but the same was kept pending."*

The above was reiterated in ***Shivraj Singh Chouhan's***[6] case as under:-

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"36.8. Though, the expression "voluntary" has not been defined, it would mean that a resignation should not be a result of threat of force or coercion."

In ***T. Thangzalam Haokip***[7], it was the case of the petitioners that without holding any inquiry as contemplated under the Rules of Procedure and Conduct of Business in Manipur Legislative Assembly, the Speaker had promptly accepted the resignations. It was contended for the petitioners that acceptance of the resignations tendered by them without holding any inquiry as contemplated under the Procedure and Conduct Rules read with Article 190(3)(b) of the Constitution was illegal and unsustainable; The petitioners did not voluntarily submit their resignation letters, but had been compelled to do so due to the pressure exerted by their workers and supporters;. That they were sidelined by the Government; There was discontentment amongst the party members in the State; Due to the political pressure exerted by their own party workers, they had resigned.

The Court took note of the factual position that the petitioners therein had admitted that they themselves wrote the resignation letters addressed to the Speaker, submitted the same through a third party. It was held that this fact leads to the conclusion that the resignations tendered by the petitioners were genuine. Even though the petitioners had alleged tendering their

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resignations due to pressure exerted by their political workers and supporters, the Court held that their resignations were voluntary. The motive behind tendering of resignations cannot be inquired into. Paras 36, 38 and 39 of the judgment, being relevant, are extracted hereinafter:-

> *"36. Since the petitioners have tendered their resignation due to the pressure exerted by their political workers and supporters, we have no hesitation to hold that the resignation tendered by the petitioners are voluntary and we cannot also enquired into the motive of the petitioners for tendering their resignation. Our conclusion is supported by the findings made by the Hon'ble Apex Court in the case of "Shrimanth Balasaheb Patil" (supra), wherein the Hon'ble Apex Court at Para 82 held that the language of Article 190(3)(b) of the Constitution does not permit the Speaker to enquire into the motive of the resignation and that when a member tendered resignation on political pressure, he is still voluntarily doing so and that once the member tenders his resignation it would be voluntary and if the writing can be attributed to him it would be genuine.*
>
> *38. It is an admitted and undisputed fact that on 17.06.2020, all the 3 (three) writ petitioners resign from the primary membership of the BJP and joint the Indian National Congress. Thereafter on the same day, all the 3 (three) petitioners wrote their resignation letters by their own hand addressed to the Speaker conveying their decision to resign from being a member of the legislative assembly w.e.f. 17.06.2020 and submit the same to the Speaker through a third party. After submitting their resignation letters to the Speaker and on the same day, all the petitioners jointly announced their resignation before a press conference in the presence of some Congress leaders. The announcement made by the petitioners before the press conference was broadcast in the public domain*

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on the same day itself by some local T.V. Channels. On the next day, i.e., on 18.06.2020, all the petitioners were expelled from the BJP for a period of 6 (six) years for their anti-party activities. None of the petitioners made any effort to promptly informed the Speaker or bring to his notice in time that the resignation tendered by them was not voluntary. If the resignation tendered by the petitioners were not really voluntary as claimed by them, the petitioners have every means or resources to inform or bring to the knowledge of the Speaker promptly and in time that their resignation were not voluntary. We are of the view that any reasonable and prudent man will find it hard to believe that the petitioners, who are elected member of the Legislature and belonging to the political party running the Government, were so helpless and without any means to inform the Speaker promptly and in time that their resignation were not voluntary, if their resignation were really not voluntary.

39. In view of the above, we do not find any material to conclude that the resignation tendered by the petitioners were not voluntary. Conversely, after taking into consideration the facts and circumstances of the present cases, we have no hesitation to hold that the resignation tendered by the petitioners are genuine and voluntary."

SLP(C) No.11971/2021 instituted against the above judgment was dismissed by the Hon'ble Supreme Court on 09.09.2021.

In the instant case, the petitioners had themselves tendered their resignation letters. No third party was involved. The resignation letters were handed over to respondent No.3 on 22.03.2024 by hand and the same day, the resignations were also handed over to respondent No.1 as well in the same manner.

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Getting no response from respondent No.1, the petitioners reiterated their request to accept their resignations to the Speaker in writing under their hand on 26/27.03.2024. Instead of accepting petitioners' resignations, the Speaker issued a show cause notice to them on 27.03.2024. Petitioners then filed this writ petition on 08.04.2024, inter-alia, seeking direction to the Speaker to accept their resignations. According to the petitioners, their actions and conduct make the saying on the wall loud and clear that their resignations were not only genuine, but also voluntary. Their further contention is that even if the allegations in the complaint filed by some members of INC are believed to be correct that the petitioners remained with the members/workers of BJP w.e.f. February, 2024, then also, the fact remains that their resignations were voluntary, therefore, no inquiry was called for to determine voluntariness of their resignations. The inquiry initiated by the Speaker on petitioners' resignations is underway.

6(ii)(e). Timelines of the inquiry:-

The above facts and legal position relevant to these facts have been noticed in order to appreciate the timelines of the inquiry being conducted by the Speaker for taking decision upon petitioners' resignation.

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In ***Shrimanth Balasaheb Patil's***[1] case, Rule 202(2) of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly was involved. In terms of this rule, upon handing over letter of resignation by a member to the Speaker personally and informing him that his resignation was voluntary & genuine and the Speaker has no information or knowledge to the contrary and if he was satisfied, the Speaker may accept the resignation immediately. The Rule, which is almost similar to Rule 287(2) of the Rules of Business of the Himachal Pradesh Legislative Assembly, is extracted hereinafter:-

> *"202.(2) If a Member hands over the letter of resignation to the Speaker personally and informs him that the resignation is voluntary and genuine and the Speaker has no information or knowledge to the contrary, and if he is satisfied, the Speaker may accept resignation immediately."*

Hon'ble Apex Court interpreted the Rule and held that the Speaker has to take an 'immediate' call on the resignation letter. His satisfaction should be based on the information received and after making such inquiry as he thinks fit, but the inquiry cannot be a roving one. If the member appears before him and gives a letter in writing, inquiry would be a limited one. But if the Speaker receives the information that member tendered his resignation under coercion, he may choose to commence a formal inquiry with the

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object to ascertain if the resignation was voluntary and genuine. The observations of Hon'ble Apex Court are as under:-

> *"79. ……………………… The rule states that the Speaker has to take a call on the resignation letter addressed to him immediately, having been satisfied of the voluntariness and genuineness. Reading the rule in consonance with Article 190(3)(b) of the Constitution and its proviso, it is clear that the Speaker's satisfaction should be based on the information received and after making such inquiry as he thinks fit. The aforesaid aspects do not require roving inquiry and with the experience of a Speaker, who is the head of the House, he is expected to conduct such inquiry as is necessary and pass an order. If a Member appears before him and gives a letter in writing, an inquiry may be a limited inquiry. But if he receives information that a Member tendered his resignation under coercion, he may choose to commence a formal inquiry to ascertain if the resignation was voluntary and genuine."*

Hon'ble Apex Court also rejected the contention that a Speaker as part of his inquiry, can go into the motive of the member and reject his resignation if it was done under political pressure. It was held that language of Article 190(3)(b) of the Constitution does not permit the Speaker to inquire into the motives behind the resignation. The inquiry should be limited to ascertain if the member intends to relinquish his membership out of his free will. Once it is demonstrated that a member is willing to resign out of his free will, the Speaker has no option, but to accept the resignation. Extraneous factors cannot be taken into account by the Speaker.

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When a member is resigning on political pressure, he is still voluntarily doing so. Once the member tenders his resignation, it would be voluntary and if the writing can be attributed to him, it would be genuine. Hon'ble Court also observed that in the facts of that case, the petitioners had reaffirmed before the Speaker and before the Court that they had voluntarily and genuinely resigned their membership of the House.

In ***Shivraj Singh Chouhan's***[6] case, it was held that the Court cannot fetter the discretion of the Speaker to conduct an inquiry into whether a resignation is voluntary or genuine, but neither can the Speaker exceed the terms of the mandate nor can he conduct an overbroad inquiry into the underlying motives of the Member. In ***Shrimanth Balasaheb Patil's***[6] case, the Court held that inquiry should be limited to ascertain if the member intends to relinquish his membership out of free will. Once it is demonstrated that the member is willing to resign out of his free will, the Speaker has no option, but to accept the resignation. In ***T. Thangzalam Haokip's***[7] case, after taking note of law laid down in *Shrimanth Balasaheb Patil's*[1] case, it was observed by the Court that "In our humble opinion except for the principles laid down by the Hon'ble Apex Court as quoted hereinabove, the Hon'ble Apex Court did not specifically laid down any principle in the aforesaid 2 (two) cases

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that resignation tendered by a member of a Legislature shall be accepted by the Speaker only after holding an enquiry and after verifying the genuineness and voluntariliness of the resignation and that the acceptance of such resignation without holding an enquiry is fatal."

Applying the legal position discussed in para 6(i) and (ii) above to the instant case:-

To be specific, it is a case where petitioners submitted their resignations by hand; reiterated the same many times over in their subsequent communications; requested acceptance of the same; are standing by the same during the ongoing inquiry and what's more have instituted this writ petition invoking Article 226 of the Constitution of India seeking a direction to the Speaker to accept their resignations; despite this inquiry is being continued to determine whether the resignations were voluntary and genuine. Inquiry is held to ascertain whether resignation was voluntary or genuine. If the answer is yes, then, resignation is to be accepted. The best person to say that resignation was voluntary and genuine is the author of the resignation letter. When he says so, ordinarily everyone else including the Speaker, has to respect that wish. There cannot be any probing or roving inquiry to find out the reasons or motive behind such resignation. Holding of an inquiry would

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normally be warranted when the author of resignation letter makes a complaint that resignation submitted to the Speaker on his behalf was not actually his or submitted under some compulsion, duress, threat or he gives credence to someone else's complaint that his resignation was tendered under compulsion. The petitioners affirm their decision of tendering the resignation and have cried out loud that their such resignations were voluntary & genuine and there is no need for the Speaker to determine the veracity of the allegations leveled by third parties or MLAs/Ministers of INC that the resignations were tendered under duress.

Be that as it may. Taking decision on the resignations of the petitioners is within the domain of the Speaker. At this stage, when inquiry is being conducted by him to determine voluntariness or genuineness of the resignations tendered by the petitioners, it is not for the Court to substitute Speaker's decision with its decision or to refrain the Speaker from taking the decision that is within his domain.

The petitioners tendered their resignations by hand to the Speaker on 22.03.2024. They sent their representations to the Speaker on 26/27.03.2024, reiterating their request to accept their resignation letters. This writ petition with prayer for issuance of direction to the Speaker to accept their resignations was filed on

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08.04.2024. In the meanwhile, the petitioners appeared before the Speaker pursuant to the show cause notice issued to them by the Speaker on 10.04.2024. The documents enclosed with the reply make it evident that the Speaker personally interacted with the petitioners on 10.04.2024 and asked questions from the petitioners including the ones requiring the petitioners to give reasons for tendering their resignation letters. The petitioners reiterated their request for accepting their resignation letters. They affirmed that the resignation letters were tendered by them out of their own free volition and were genuine & voluntary.

One cannot be unmindful of the fact that Rule 287 of the Rules of Procedure and Conduct of Business enjoins the Speaker to take a call on the resignation letter 'immediately'. He may conduct an inquiry to confirm as to whether resignation letters were voluntary and genuine, but with the caveat that such inquiry cannot partake the nature of an overbroad or roving inquiry. The argument raised for respondents No.1 and 3 is that there is no timeline fixed for the Speaker to take decision on the resignation in the Constitution and that Rule 287 of the Rules of Procedure & Conduct of Business in the State Legislative Assembly (which mandates the Speaker to take 'immediate' decision on the resignation letter in case it is submitted by hand & the author of the

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resignation letter affirms the voluntary and genuine submission of the same) runs contrary to the constitutional provisions, cannot be accepted. Rule 287 supplements the provisions of Article 190(3)(b) of the Constitution of India. It only provides for a prompt call on resignation where the person tendering it affirms the same & stands by it and the Speaker has no contrary information. Rule 287 is not under challenge. The respondents in their pleadings and impugned show cause notice have also professed to have proceeded in terms of constitutional provisions and Rule 287. In cases where the Speaker has some contrary information about voluntariness and genuineness of resignations, he can conduct an inquiry to satisfy himself about the genuineness and voluntary submission of the resignation. In case the author of the resignation letter stands by the resignation, Speaker then has no option, but to accept the same. As noticed above, in ***Shrimanth Balasaheb Patil's***[1] case, similar provision about the immediate acceptance of the resignation in such circumstances, was noticed and accepted by the Hon'ble Supreme Court.

The submission of the petitioners has also to be kept in view that failure of the Speaker to take prompt decision on their resignations violates their right to resign from the Legislative Assembly. More so, in the factual position of the case, where the

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petitioners have affirmed that their resignations were voluntary and genuine. Sitting on the resignations of the petitioners, holding an inquiry on the resignation letters even when the petitioners are affirming by the same, asking in-depth questions from the petitioners about the reasons and motive behind their resignations, would virtually amount to conducting a probing, roving & overbroad inquiry, which may not be warranted in the given facts of the case. It is for this reason and in such circumstances, the significance of 'immediate' decision as contemplated by Rules 287 of the Rules of Procedure and Business comes into play.

7. Result

No doubt, the petitioners' prayer is for directing the Speaker to accept their resignations and for quashing the show cause notice dated 27.03.2024, however, it is well settled that power to mould relief is always available to the Court possessed with power to issue high prerogative writs. In the facts of a given case, a writ petitioner may not be entitled to the specific relief claimed by him, but this itself will not preclude the Writ Court to grant such other relief, to which he is otherwise entitled. Lesser relief of the relief prayed for can be granted. [Reference: *(2008) 17 SCC 491, Bachhaj Nahar Versus Nilima Mandal and another; (2011) 1 SCC 484, M. Sudakar Versus V. Manoharan and others; (2013) 4 SCC*

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690, Rajesh Kumar and others Versus State of Bihar and others; and *(2019) 7 SCC 76, Sopanrao and another Versus Syed Mehmood and others*]. In the given facts and circumstances of the case, the ends of justice would be served in case the Speaker is directed to take decision on petitioners' resignations within a reasonable time. Looking to the admitted facts as have come out, two weeks would be reasonable time to take decision upon the resignations submitted by the petitioners.

In light of above entire discussion, this writ petition is disposed of by directing respondent no.1-the Speaker of the Himachal Pradesh State Legislative Assembly to take decision upon the resignations tendered on 22.03.2024 by the petitioners from the Himachal Pradesh Legislative Assembly within two weeks from the date on which this judgment is intimated to him.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

(Jyotsna Rewal Dua)
Judge

May 08, 2024
Mukesh

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