

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.

OF 2020

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. R. Sakkrapani ...Petitioner

Whip, Dravida Munnetra Kazhagam,
Tamil Nadu Legislative Assembly,
Fort St. George,
Chennai-600 009
Tamil Nadu

Vs.

1. The Secretary RESPONDENT

Tamil Nadu Legislative Assembly NO.1
Fort St. George,
Chennai 600 009,
Tamil Nadu

2. Mr. P. Dhanapal RESPONDENT

Speaker, NO.2
Tamil Nadu Legislative Assembly,
Fort St. George,
Chennai 600 009,
Tamil Nadu

3. Thiru. O.Panneerselvam, RESPONDENT

Member, NO.3

Tamil Nadu Legislative Assembly,
No.70/145 South Agragaram,
Thenkarai, Periyakulam, Theni
625 601, Tamil Nadu

4. Thiru. Aarukutty
Member,
Tamil Nadu Legislative Assembly,
No.119/23 Lenin Street,
Vilankurichi Post,
Coimbatore-64,
Tamil Nadu
RESPONDENT
NO.4
5. Thiru. Shanmuganathan,
Member,
Tamil Nadu Legislative Assembly,
No.49 A Main Road,
Perunkulam, Pandarvilai Post,
Srivaikundam Tk, T
hoothukudi 628 751,
Tamil Nadu
RESPONDENT
NO.5
6. Thiru Manickam,
Member,
Tamil Nadu Legislative Assembly,
No.3/274 Surveyar Colony,
1st Cross Street,
K Pudur Madurai North Post,
Madurai-7,
Tamil Nadu
RESPONDENT
NO.6

7. Thiru. Manoharan
Member,
Tamil Nadu Legislative Assembly,
No.3/63 Ambedkar North St.,
Vishwanathpperi Post,
Sivagiri Circle 627 757.,
Tamil Nadu
RESPONDENT
NO.7
8. Smt. Manoranjitham
Member,
Tamil Nadu Legislative Assembly,
No.151 Boganapalli Village,
Krishnagiri,
Krishnagiri 635 001, Tamil Nadu
RESPONDENT
NO.8
9. Thiru. K. Pandiarajan
Member,
Tamil Nadu Legislative Assembly,
61, Tas Enclave, Flat No. C3,
3rd Floor, Golden Kings Court,
10th Main Road, Anna Nagar,
Chennai 600 040,
Tamil Nadu
RESPONDENT
NO.9
10. Thiru. Saravanan
Member,
Tamil Nadu Legislative Assembly,
D.No. 24, NewNo.93
Kaainpalayam 3rd Street,
Madurai 9,
RESPONDENT
NO.10

Tamil Nadu

- 11.Thiru. Semmalai
Member,
Tamil Nadu Legislative Assembly,
No.311/197, Alagu Vinayagar Street,
Alagapuram,
Salem, Tamil Nadu
RESPONDENT
NO.11
- 12.Thiru. Chinnaraj
Member,
Tamil Nadu Legislative Assembly,
No.1/139,
Osur Tholampalayam Post,
Seeliyoor (via), Mettupalayam,
Coimbatore 641 113,
Tamil Nadu
RESPONDENT
NO.12
- 13.Thiru. R. Natraj
Member,
Tamil Nadu Legislative Assembly,
New No. H-12/1 O.No. H-9/1
Kambar Street,
Kalashethra Colony,
Besant Nagar, Chennai,
Tamil Nadu
RESPONDENT
NO.13

(ALL ARE CONTESTING RESPONDENTS)

IN THE MATTER OF:

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKS ISSUANCE OF WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT/ORDERS TO THE RESPONDENT NO. 2 TO DISCHARGE HIS CONSTITUTIONAL DUTY AND DECIDE THE DISQUALIFICATION PETITION PENDING SINCE 20.03.2017 AS PER THE LAW LAID DOWN BY THIS HON'BLE COURT.

TO,

**THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
SUPREME COURT OF INDIA**

**THE HUMBLE PETITION
OF THE PETITIONER ABOVE-NAMED**

MOST RESPECTFULLY SHEWETH:

1. That the petitioner is constrained to approach this Hon'ble Court by way of the present Writ Petition under Article 32 of the Constitution of India seeking issuance of Writ, order, direction to the Respondent No. 2, Hon'ble Speaker of the Tamil Nadu Legislative Assembly to discharge his constitutional duty and decide the Disqualification Petition dated 20.03.2017 in accordance with the law laid down by this Hon'ble Court and in compliance of the order of this

Hon'ble Court as recorded in Order dated 14.02.2020 in *Shakkrapani v. Secretary, Tamil Nadu Legislative Assembly & Ors.*. The inaction of Respondent No. 2 in not deciding the issue despite an order of this Hon'ble Court dated 14.02.2020 asking it to decide the matter of disqualification in accordance with law, is arbitrary and violative of Article 14, Article 19, Article 164(1B), Article 191 and the Tenth Schedule of the Constitution of India, and in the teeth of the judgments of this Hon'ble Court.

2. That despite giving an impression that the Hon'ble Speaker, Respondent No. 2, will dispose of the pending disqualification petition expeditiously and in accordance with the judgment in the case of *Keisham Meghachandra Singh*, on the strength of which the Civil Appeals noted above disposed of vide dated 14.02.2020, the same has not been done and the Respondent No. 2 has abdicated his constitutional duty no other option but to approach this Hon'ble Court directly under Article 32 of the Constitution of India. Petitioner has not filed any other petition challenging the same before this Hon'ble Court. Petitioner has not approached any authority by filing representation.
- 3 That the facts of the case in brief are as under:
 - i) On 05.12.2016, Mr. O. Panneerselvam ("OPS") of the All India Anna Dravida Munnetra Kazhagam ("AIADMK") was elected as Chief Minister of Tamil Nadu upon demise of Ms. J. Jayalalitha.
 - ii) Due to internal party differences, OPS resigned from the post of Chief Minister on 05.02.2017.

- iii) Mr. Edappadi K. Palanisamy (“**EPS**”) was sworn in as Chief Minister on 16.02.2017. On the same day, the Governor of Tamil Nadu directed EPS to prove majority support in his favour by way of a floor test.
- iv) The Tamil Nadu Legislative Assembly was convened for the purpose of the floor test on 18.02.2017. EPS, the Chief Minister and the leader of the legislative party moved the following motion:

“That this House expresses its confidence on the Cabinet headed by the Chief Minister Thiru Edappadi K. Palanisawami”.

The motion was put to vote and carried by 122 MLAs voting in favour of the motion and 11 MLAs voting against the motion.

The record of voting establishes unequivocally the fact that the 11 MLAs voted against the motion were Respondents 3 to 13. True copy of Record of proceedings of the Tamil Nadu Legislative Assembly dated 18.02.2017 is annexed hereto and marked as **ANNEXURE P/1 (Page)**.

- v) On 14.03.2017, a Petition being Dispute No. 2 of 2017 was filed by 3 members of the AIADMK before the Election Commission of India under paragraph 15 of the Election Symbols (Reservation & Allotment) Order, 1968 (“Symbols Order”).

Note: In this petition supported by affidavits sworn by 2 out of the 11 MLA’s, namely, Thiru S. Semmalai and O. Panneerselvam stated as under:

“17.02.2017 - The indirect control and tight supervision was foisted by the Respondent No. 1. Under the undue influence, coercion and illegal influence by the

Respondents, a whip was issued under the AIADMK Party's seal. As per the whip issued, the MLAs of the party were directed to vote in favour of appointment of Mr. Palaniswamy as Chief Minister of Tamil Nadu”

The said affidavits expressly affirm that the facts stated in the petition are based on instructions given to the Advocate.

True copy of the Dispute Petition No.2 of 2017 filed by respondent no.3 before Election Commission of India dated 16.03.2017 is annexed hereto and marked as **Annexure P/2 (Page)**

- vi) On 20.03.2017, some MLAs of the AIADMK presented petitions to Respondent No. 2 under the Members of the Tamil Nadu Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 (“**Disqualification Rules**”) seeking disqualification of the Respondents 3 to 13 on account of voting against the confidence motion, contrary to the direction issued by the AIADMK whip.
- Note:** Respondent No. 2 issued notice after this matter was listed before the Hon'ble Court on 04.02.2020 and thereafter no action has been taken on the said petitions till date.
- vii) The two factions led respectively by the incumbent Chief Minister and O. Panneerselvam merged on 21.08.2017.
- viii) 18 MLAs of the AIADMK wrote to the Governor withdrawing support to the Government headed by the Chief Minister Palaniswami on 22.08.2017.
- ix) The Chief Government Whip presents petition for disqualification of the 18 MLAs on 24.08.2017. On the very same day, Respondent No. 2 issues notice to the 18 MLAs.

x) The Leader of Opposition, M.K. Stalin writes to the Governor on 26.08.2017 seeking direction to the Chief Minister to prove his majority on the floor of the House. True copy of letter dated 26.08.2017 of M.K. Stalin, the leader of opposition to the Governor is annexed herewith and marked as **ANNEXURE P/3** (Page to).

xi) The 18 MLAs were disqualified by a decision of Respondent No. 2 on 18.09.2017.

(**Note 1:** These 18 MLAs were disqualified on an apprehension of their voting against government, whereas, in the present case, despite the 11 MLAs having voted against the trust vote, no action was even initiated by Respondent No. 2.)

(**Note 2:** The malafide of Respondent No. 2 and his selective approach contrary to constitutional norms, is further evident from the fact that while disqualification for meeting the Governor was initiated against 19 MLAs, no action was taken against the 19th MLA (Thiru S.T.K. Jakkaiyan), which is contrary to law. Respondent No. 2 is thus clearly acting in a manner that would ensure that the manufactured majority of this illegal Government continues.

The Writ Petition W.P. No. 26017 of 2017 was filed by the Petitioners before Hon'ble High Court of Madras on 25.09.2017 .

True copy of the Writ Petition No. 26017 of 2017 filed by the petitioners before the Hon'ble High Court of Judicature at Madras on 25.09.2017 is annexed hereto and marked as **ANNEXURE P/4 (Page)**).

xii) Four Writ Petitions bearing W.P. No. 27853 to 27856 of 2017 was also filed by 4 MLAs of AIADMK Party who have moved initial petition before Respondent No. 2 on 20.03.2017 seeking disqualification of these 20 MLAs.

xiii) The Respondents herein filed a transfer petition before this Hon'ble Court being TP (Civil) No. 2063 of 2017 for transfer of the Writ Petition to this Hon'ble Court on the ground that a similar controversy as to whether the Court could direct the Speaker to disqualify MLAs was in issue in SLP (C) No. 33677 of 2015, which has been referred to larger bench.

True copy of the Transfer Petition No. 2063 of 2017 dated 23.10.2017 filed before this Hon'ble Court by Respondents is annexed hereto and marked as **ANNEXURE P/5 (Page)**).

The Petitioner filed an application for amendment of writ petition and sought permission to amend the prayer to the effect of seeking mandamus to disqualify the respondents MLAs in view of decision of this Hon'ble Court in the case of *Rajender Singh Rana* case. True copy of the Affidavit of the Petitioner in W.MP. No. 30494 of 2017 in W.P No. 26017 of 2017

along with an Application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure 1908 along with Article 226 & 227 of the Constitution of India dated 29.10.2017 filed before the Hon'ble High Court of Judicature at Madras is annexed hereto and is being marked as **ANNEXURE P/6.** (Pg.)

In the said application a reply was filed. True copy of the Counter Affidavit on behalf of Respondent No. 11 dated Nil in W.M.P No. 30494 of 2017 in W.P No. 26017 of 2017 is annexed hereto and is being marked as **ANNEXURE P/7.(Pg.)**

xiv) On 01.12.2017, when the Transfer Petition came up for arguments the Petitioner herein submitted before this Hon'ble Court that they would not press the prayer for writ of mandamus to the Speaker to take a decision before the Hon'ble High Court.

Accordingly, vide order dated 1.12.2017, this Hon'ble Court disposed of the Transfer Petition with a direction to the High Court not to take up the prayer with regard to issue of a mandamus to the Speaker to take appropriate action under the Tenth Schedule of the Constitution.

True copy of the order dated 1.12.2017 passed in T.P. (C) No.2063 of 2017 by this Hon'ble Court is annexed hereto and marked as **ANNEXURE P/8** (Page).

xv) After disposal of the said transfer petition, a detailed Counter Affidavit was filed in the writ petition i.e., W.P. No. 26017 of 2017 sworn by S. Semmalai, Respondent No. 11 (one of the two MLA's, who had

sworn the petition before the Election Commission of India), states thus:

“11. ...It is submitted in the first place there has never been a direction issued to the Respondents for them to follow and therefore, there could be no question of action against the Respondents under the Tenth Schedule.”

Note: It is pertinent that apart from Respondent 11, no other Respondent filed any counter-affidavit in the writ petition. The aforesaid Counter-Affidavit is said to have been sworn by Respondent No. 11 on behalf of himself, as well as Respondents 3 to 10 and 12. It is respectfully submitted that there is nothing on record to show that Respondent 11 was authorized in any manner to swear an affidavit on behalf of Respondents 3 to 10 or Respondent No. 12. In any event, it is not permissible for a person to swear affidavits on behalf of any other person in legal proceedings. Therefore, it is submitted that insofar as Respondents 3 to 10, 12 and 13 are concerned, the averments in the writ petition should be deemed to be admitted.

Insofar as Respondent 11 is concerned, the statement in the Counter-Affidavit is directly contrary to his sworn affidavit before the Election Commission of India. The Respondent No. 11 has thus perjured himself in these proceedings.

True copy of the Counter Affidavit dated nil January, 2018 filed by Respondent No. 11, S. Semmalai in W.P. No. 26017 of 2017 is annexed hereto and marked as **ANNEXURE P/9** (Page

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- xvi) That S. Semmalai, Respondent No. 2 in W.P. No. 27853 of 2017 namely *P. Vetriivel vs. P. Dhanapal & Ors* has stated in his counter affidavit as under:

“7. It is submitted that upon the sudden demise of Dr. J. Jayalalithaa, the Chief Minister of the State on 05.12.2016, a Ministry under the head of Mr. O. Panneerselvam was sworn in on 06.12.2016. Thereafter due to various circumstances which are in relation to persons who are not party before this Hon’ble Court, Mr. O. Panneerselvam was forced to resign as the Chief Minister on 05.02.2017. Thereafter, there were attempts made to make Mrs. V.K. Sasikala as the Chief Minister of the State and the said attempts had not fructified. Thereupon Mr. Edappadi K. Palaniswami was elected as the leader of AIADMK Legislative Party at a meeting held on 14.02.2017 at a Resort at Koovathur. The Respondents herein were not present in the said meeting and were not even issued notice for the said meeting. Admittedly the 11 persons mentioned in Paragraph 6 of the petition had not supported the resolution to appoint Mr. Edapaddi K. Palaniswami as the Leader of the Legislative Party. Thereupon Mr. Edapaddi K. Palaniswami sought to form the government with the support of 122 MLA’s only. Infact the Respondents herein had claimed that they were the original AIADMK party in fact even while a whip was allegedly issued to each MLA independently, there was no direction or whip that was received by the Respondent herein from Mr. S. Rajendiran. The 122 MLA’s who had supported Mr. Edapaddi K. Palaniswami as the leader of the legislative party were bound by the direction whereas the respondents who had not signed the said memorandum or received any direction cannot be claimed to be under a direction from the party.”

A copy of the Counter Affidavit of Respondent No. 2 in W.P No. 27853 of 2017 dated nil February 2018 is annexed hereto and is being marked as **ANNEXURE P/10. (Pg)**

- xvii) The arguments on the petition was heard by the Hon’ble High Court during January- February, 2018. In fact, during the argument the issue of amendment application was placed. The Hon’ble Court having regard to the order of this Hon’ble Court in TP as well

as the fact that Counter affidavit has been filed in the matter, heard the arguments on the issues (1) whether High Court can issue mandamus and disqualify the member of house; and (2) whether these 11 MLAs has violated Para 2 (1) (b) of Tenth Schedule of the Constitution.

After conclusion of hearing written submissions were filed by the parties. True copy of written submissions dated 05.03.2018 filed by the Petitioner in W.P No. 26017 of 2017 before the Hon'ble High Court of Judicature at Madras is annexed hereto and marked as **ANNEXURE P/11** (Page _____).

- xviii) The Hon'ble High Court vide impugned judgment dated 27.04.2018 was pleased to dismiss the Writ Petition on the ground that since the question of issuance of Writ of Mandamus to the Speaker was pending consideration before this Hon'ble Court, it is not possible for the Hon'ble High Court to pass orders to disqualify the concerned MLAs.

On an oral application, the Hon'ble High Court granted leave to the petitioner to appeal against the impugned judgment. True Copy of the Order dated 27.04.2018 passed by the Hon'ble High Court of Judicature at Madras in W.P No. 26017 of 2018 is annexed herewith and marked as **ANNEXURE P/12** (Page ____ to ____).

- xix) Civil Appeal No. 5156/2018 being *R. Shakkrapani v. Secretary, Tamil Nadu Legislative Assembly & Ors.* was filed before this Hon'ble Court wherein the

Hon'ble Court was pleased to issue notice on 09.07.2018.

- xx) On 21.01.2020, in the case of *Keisham Meghachandra Singh v. The Hon'ble Speaker Manipur Legislative Assembly & Ors.*, (2020 SCC OnLine SC 55), Hon'ble Court held that the Speaker, 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 infringed the Tenth Schedule is to be adhered to.

In this case, the Hon'ble Court directed the Speaker to decide the disqualification petitions pending before him within a period of four weeks from the date on which the judgment is intimated to him and stated that in case no decision is forthcoming even after a period of four weeks, any party to the proceedings may approach the Court for further directions/reliefs in the matter

- xxi) The Civil Appeal No. 5156/2018 being *R. Shakkrapani v. Secretary, Tamil Nadu Legislative Assembly & Ors.* was listed before this Hon'ble Court on 04.02.2020 whereby the Ld. Advocate General, Tamil Nadu sought time to seek instructions from his client.

True copy of the Order dated 04.02.2020 in Civil Appeal No. 5156/2018, being *R. Shakkrapani v. Secretary, Tamil Nadu Legislative Assembly & Ors.* is annexed herewith and marked as **ANNEXURE P/13** (Page ___ to ___).

- xxii) On 14.02.2020, the Civil Appeal No. 5156/2018 was heard and the Ld. Advocate General for the State of Tamil Nadu informed the Hon'ble Court that the Respondent No. 2, Hon'ble Speaker of the Tamil Nadu Assembly has issued notice in the disqualification petition, this Hon'ble Court having regard to the judgment in *Keisham Meghachandra* case and the facts and circumstances passed following order:

“Shri Vijay Narayan, learned Advocate General for the State of Tamil Nadu states that the Speaker of the Tamil Nadu Assembly has issued notice on the disqualification petition in question. There is no reason to entertain these appeals any further. Hence, these appeals are disposed of as having become infructuous. Needless to say that the Speaker will take a decision in accordance with law.”

True copy of the Order dated 14.02.2020 in Civil Appeal No. 5156/2018, being *R. Shakkrapani v. Secretary, Tamil Nadu Legislative Assembly & Ors.* is annexed herewith and marked as **ANNEXURE P/14** (Page ___ to ___).

- xxiii) That in the case of *Keisham Meghachandra*, on the expiry of four weeks from the date of judgment, a Miscellaneous Application was filed by the Speaker wherein the Speaker sought 8 more weeks to decide the Disqualification Pending before him. During the hearing, the said application was not pressed and the

Ld. Additional Solicitor General appeared on behalf of the Speaker and assured the court that a decision was forthcoming within the next 10 days.

That the case of *Keisham Meghachandra* was again listed before the Hon'ble Court on 18.03.2020, where noting that no decision had been taken by the Speaker, the Hon'ble court held that:

“Having heard learned senior counsel for both the parties, given the extraordinary facts in the present case, we are constrained to use our powers under Article 142 of the Constitution of India. Respondent No. 3 is restrained from entering the Legislative Assembly till further orders of this Court. Needless to add, he will cease to be a Minister of the Cabinet immediately.”

xxiv) As no action was taken by Respondent No. 2 thereafter, the Petitioner made a representation to Respondent No. 2 seeking expeditious disposal of petition dated 20.03.2017.

True copy of the Representation made by the Petitioner to Respondent No. 2 dated 21.05.2020 is annexed hereto and marked as **ANNEXURE P/15 (Pg. ___ to _____)**.

xxv. That the Disqualification Petition is still pending before Respondent No. 2 since 20.03.2017 and no action has been taken by Respondent No. 2 since notice was issued. True copy of the Disqualification Petition dated 20.03.2017 is annexed hereto and marked as **Annexure P/16 (Page)**.

4 That the Petitioner further declares he has not filed any other similar Writ Petition on the same ground for the same cause

of action, in this Hon'ble Court or any other court claiming similar relief. Though earlier a Civil Appeal bearing no 5156 of 2018 has been filed by the Petitioner herein challenging the order of the Hon'ble High Court, refusing to disqualify these 11 MLAs i.e. respondent no 3-13, which was disposed of vide order dated 14.02.2020 asking the Respondent no 2 to decide the issue in accordance with law.

- 5 That the Petitioner has no other alternate, effective and efficacious remedy other than to approach this Hon'ble Court through the present writ petition preferred under Article 32 of the Constitution of India on the following amongst other grounds.

GROUND

- A. That Respondent No. 2, the Speaker of the Tamil Nadu Legislative Assembly, has abandoned his jurisdiction/duty to decide disqualification petition which has been pending since 20.03.2017.
- B. That the inaction of Respondent No. 2 in not deciding the issue despite an order of this Hon'ble Court dated 14.02.2020 asking it to decide the matter of disqualification in accordance with law, is arbitrary and violative of Article 14, Article 19, Article 164(1B), Article 191 and the Tenth Schedule of the Constitution of India, and in the teeth of the judgments of this Hon'ble Court.
- C. That the admitted/undisputed facts of the case were that on 18.2.2017 Mr. Edappadi K. Palaniswamy after being sworn as Chief Minister and he decided to seek a vote of confidence for which a whip was issued on 17.02.2017 by the Chief Whip of AIADMK Party to the MLAs of the Party, directing them to vote in favour of appointment of

Mr. Palaniswamy as the Chief Minister. The 11 Respondent MLAs, belonging to AIADMK voted against the trust vote. The act of voting of 11 MLAs against the resolution/ whip was not condoned by the party. On 20.03.2017 the petition for disqualification of these 11 members were filed before Respondent No. 2 under the Disqualification Rules, 1986. Respondent No. 2, despite having found the aforesaid petition in order, did not act and thus abandoned his jurisdiction under Tenth Schedule of the Constitution.

- D. That in the case of *Keisham Meghachandra Singh*, the Hon'ble Court has held that:

*29. A reading of the aforesaid decisions, therefore, shows that what was meant to be outside the pale of judicial review in paragraph 110 of Kihoto Hollohan (supra) are quia timet actions in the sense of injunctions to prevent the Speaker from making a decision on the ground of imminent apprehended danger which will be irreparable in the sense that if the Speaker proceeds to decide that the person be disqualified, he would incur the penalty of forfeiting his membership of the House for a long period. Paragraphs 110 and 111 of Kihoto Hollohan (supra) do not, therefore, in any manner, interdict judicial review in aid of the Speaker arriving at a prompt decision as to disqualification under the provisions of the Tenth Schedule. Indeed, the Speaker, in acting as a Tribunal under the Tenth Schedule is bound to decide disqualification petitions within a reasonable period. What is reasonable will depend on the facts of each case, but absent exceptional circumstances for which there is good reason, a period of three months from the date on which the petition is filed is the outer limit within which disqualification petitions filed before the Speaker must be decided if the constitutional objective of disqualifying persons who have infringed the Tenth Schedule is to be adhered to. This period has been fixed keeping in mind the fact that ordinarily the life of the Lok Sabha and the Legislative Assembly of the States is 5 years and the fact that persons who have incurred such disqualification do not deserve to be MPs/MLAs even for a single day, as found in *Rajendra Singh Rana (supra)*, if they have infringed the provisions of the Tenth Schedule.*

- E. That in the case of *Keisham Meghachandra Singh*, this Hon'ble Court noted that the life of the Legislative Assembly is to come to end in March, 2022 and held that:

“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.”

- F. That after the judgment *Keisham Meghachandra Singh’s* case, was passed, the Civil Appeal No. 5156/2018 being *R. Shakkrapani v. Secretary, Tamil Nadu Legislative Assembly & Ors.* was listed before the Hon’ble Court where the Hon’ble Court relied upon the statement of the Ld. Advocate General for the State of Tamil Nadu that Respondent No. 2 had issued notice on the disqualification petition in question and disposed of the Appeal vide Order dated 14.02.2020, noting that, “*Needless to say, that the Speaker will take a decision in accordance with law.*”
- G. That vide Order dated 18.03.2020 in the case of *Keisham Meghachandra Singh*, this Hon’ble Court noted the inaction of the Speaker despite several assurances and directed as follows:
- “Having heard learned senior counsel for both the parties, given the extraordinary facts in the present case, we are constrained to use our powers under Article 142 of the Constitution of India. Respondent No. 3 is restrained from entering the Legislative Assembly till further orders of this Court. Needless to add, he will cease to be a Minister of the Cabinet immediately.”*
- H. That the situation in the present case is similar to the situation in the case of *Keisham Maghachandra* where despite several assurances, the Speaker had deliberately failed to take action.
- I. That in the present case, notice by Respondent no 1 was issued in February 2020 only on the query of this Hon’ble Court put to Respodnents, almost 3 years after the Disqualification Petition was brought before Respondent

No. 2.

- J. That despite portraying before this Hon'ble Court that as the notice has been issued, matter will be decided in accordance with law expeditiously, no steps have been taken by Respondent No. 2 towards deciding the Disqualification Petition, even though the Tamil Nadu Legislative Assembly has been continuing to sit regularly during the Budget Session and has met 5 times in February, 2020, and heard demands for grants over at least 12 days in March, 2020 till 24th March and the continuance of the Secretariat of Respondent No. 2 even during this time.
- K. That in the present case, the entire objective of the Respondent No. 2's inaction for almost 3 years is to see that the proceedings are not taken up till the entire period of the Legislative Assembly comes to an end, so that the Disqualification Petitions are rendered infructuous.
- L. That continuation of the 11 members of AIADMK who voted in violation of their party directions and became disqualified under Para 2 (1) (b) of the Tenth Schedule, as MLAs for even a single day is contrary to the constitutional mandate and against the judgments and the law laid down by this Hon'ble Court, and the same amounts to constitutional illegality and cannot be permitted to continue.
- M. That some of these disqualified members are holding the positions of Ministers in the Cabinet and the same is illegal and cannot be permitted to continue.
- N. That the present case was one which required no further factual inquiry and Respondent No. 2 ought to have immediately proceeded to disqualify the 11 MLAs. As held by this Hon'ble Court in *Mahachandra Prasad's* case:

"7. ...It is to be noted that the Tenth Schedule does not confer any

discretion on the Chairman or Speaker of the House. Their role is only in the domain of ascertaining the relevant facts. Once the facts gathered or placed show that a member of the House has done any such act which comes within the purview of sub-paragraph (1), (2) or (3) of Paragraph 2 of the Tenth Schedule, the disqualification will apply and the Chairman or the Speaker of the House will have to make a decision to that effect.”

- O. That under paragraph 2(1)(b) of the Tenth Schedule, the requirement is that i) there should be a direction ii) the concerned member of the House should be aware of such a direction; iii) the member should have acted in contravention of such direction. In the instant case issuance of a direction, knowledge of such direction and voting contrary to the direction by these 11 respondent MLAs are indisputably established and therefore, paragraph 2 (1) (b) is clearly attracted and these 11 MLAs stand disqualified on 18.02.2017.
- P. That for attracting Tenth Schedule paragraph 2(1)(b) it is not necessary that the direction is issued in writing or direction should only be in the form of a whip. A direction could be oral or could be in any form.
- Q. That when it is established that one has voted against the whip, then whether formal communication regarding issuance of such whip was made or not is not a mandatory requirement. It is submitted that mere knowledge of such whip or direction is enough. It is not disputed that such a direction was issued to all the MLAs of AIADMK to which they also belong. It is submitted that it is not the case of the Respondent that they obtained prior permission or that the voting contrary to whip was condoned. Hence, in the instant case no enquiry or any fact is necessary in view of the pleadings before this Hon’ble Court.

R. That the law laid down this Hon'ble Court in *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council*, (2004) 8 SCC 747 that where para 2(1)(b) of the Tenth Schedule is attracted, an inquiry into the following aspects may become necessary:

"15. ...For attracting clause (b) it is necessary that the member of the House (i) either votes or abstains from voting; (ii) contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf; (iii) without obtaining the prior permission of such political party, person or authority; and (iv) such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. Therefore, for the purpose of clause (b), inquiry into several factual aspects has to be conducted...."

S. That the present case is a classic example of the principle of *res ipsa loquitur*, where there is no scope to dispute the existence of facts that constitute the elements necessary to be established for disqualification under para 2(1)(b) of the Tenth Schedule. The four elements identified in *Mahachandra Prasad's* case stand established in the instant case by facts that are either undisputed or expressly admitted, as is clear from the below:

- i. "votes or abstains from voting" – voting by the 11 MLAs against the motion of confidence is established from the proceedings of the Legislative Assembly, undisputed and admitted.
- ii. "contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf" – issuance of a direction to vote in favour of the motion of confidence is admitted for the reasons submitted above.

The fact that votes were cast against the motion is thus clearly contrary to the direction issued.

As for the prior permission or condonation, it was not the Respondents' case that either of these were done in this case.

- T. That the crucial date for deciding whether the action of the 11 MLAs attracts disqualification under Tenth Schedule is 18.02.2017 and it is with respect to this date that a decision was to be taken by Respondent No. 2.
- U. That the disqualification under Para 2 of the Tenth Schedule “comes into force or becomes effective on the happening of the event” [Para 7] of *Mahachandra Prasad's* case and thus the subsequent action of rejoining party etc. would have no effect whatsoever. Since the 11 MLA's have violated the whip or voted contrary to the direction of the party and it was not condoned within 15 days they stood disqualified from 18.2.2017.
- V. That in the case of *Rajendra Singh Rana*, this Hon'ble Court held that where MLAs are found to be disqualified,
“their continuance in the Assembly even for a day would be illegal and unconstitutional and their holding office as Ministers would also be illegal at least after the expiry of six months from the date of their taking charge of the offices of Ministers”. [Para 45]
- W. That in the facts and circumstances of the present case Respondent No. 2's failure to decide the disqualification petition constitutes a constitutional illegality.
- X. That the significance of voting against a motion seeking confidence is recognized in *Kihoto Hollohan v. Zachillhu*, [1992 Supp (2) SCC 651], wherein, while discussing the matters that what would attract disqualification, it was held

as follows:

“122. ...This would be possible if Paragraph 2(1)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political party to which the Member belongs went to the polls. For this purpose the direction given by the political party to a Member belonging to it, the violation of which may entail disqualification under Paragraph 2(1)(b), would have to be limited to a vote on motion of confidence or no confidence in the government or where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a Member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate.”

- Y. That Paragraph 6 of the Tenth Schedule mandates that any question as to whether a member of a House has become subject to disqualification shall be referred for the decision of the Chairman or Speaker of the House. Paragraph 8 provides for making rules for giving effect to the provisions of the Tenth Schedule under which, the Disqualification Rules have been framed. In terms of Rule 7 of the Disqualification Rules, upon receipt of a petition seeking disqualification, the Speaker is enjoined to: (i) consider whether it complies with the requirements under Rule 6 (sub-rule (1)); (ii) dismiss the petition if it doesn't comply with such requirements (sub-rule (2)); and (iii) if the petition complies with the requirements under Rule 6, then cause copies of the petition to be forwarded inter alia to the member in relation to whom the petition has been made

(sub-rule (3)). Further procedure for dealing with and disposing of the petition is also elaborated.

- Z. That in the instant case, the Respondent No. 2 has violated the mandate under the aforesaid rules, inasmuch as the Respondent No. 2 has issued notice only after passing of almost three years, only when the issue was raised before this Hon'ble Court and has taken no further action in the matter thereafter. Such inaction in itself constitutes a constitutional illegality.
- AA. That the principle of *ubi jus ibi remedium* has been recognized as a basic principle of jurisprudence by this Hon'ble Court in *Sardar Amarjit Singh Kalra v. Promod Gupta and others*, reported in 2003 3 SCC 272, where this Hon'ble Court has held that "*as far as possible, Courts must always aim to preserve and protect the rights of parties and extend help to enforce them rather than deny relief and thereby render the rights themselves otiose.*" In the present case the right of the person to initiate proceedings under the Tenth Schedule stood violated since Speaker refused to do the same and hence the Hon'ble Court is dutybound to do the same.
- BB. That the mala fide of the Respondent No. 2 is also evident from his haste in disqualifying 18 MLAs, while taking no action with respect to the defection of Respondent Nos. 3-13.
- CC. That the mala fides in the actions of Respondent No. 2 are writ large from the following facts. On 18.2.2017, the 11 MLAs (Respondent Nos. 3-13) voted against the motion of Chief Minister seeking vote of confidence. On 20.3.2017 Petitions for disqualification of the said MLAs were moved

before Respondent No. 2. No action taken and even notice not issued up till February 2020. On 21.8.2017 the two factions led respectively by the incumbent Chief Minister and O. Panneerselvam merged. On 22.8.2017 18 MLAs of the AIADMK wrote to the Governor withdrawing support to the Government headed by the Chief Minister Palaniswami. On 24.8.2017 Chief Government Whip presents petition for disqualification of the 18 MLAs. In a stark contrast, on the very same day, Respondent No. 2 issued notice to the 18 MLAs. On 26.8.2017 Leader of Opposition, M.K. Stalin writes to the Governor seeking direction to the Chief Minister to prove his majority on the floor of the House. On 28.8.2017 within two days, the Privileges Committee issued show cause notices to M.K. Stalin and 20 other MLAs of the DMK in respect of an incident relating to 19th July 2017. On 14.9.2017 DMK moved the Hon'ble High Court seeking direction for a trust vote. Given that such petition has been filed, Respondent No. 2 expedited the proceedings for disqualification of the 18 MLAs. The Hon'ble High Court was pleased to direct that no floor test be held till 20th September 2017. The 18 MLAs were disqualified by a decision of Respondent No. 2.

DD. That this Hon'ble Court in *V.M. Tarkunde v. Union of India*, (1983) 1 SCC 428 @ para 5, wherein it is held that malafides can be attributed not only to actions but also to inactions:

"5. It is well settled that exercise as well as non-exercise of a constitutional power for extraneous or non-germane considerations is mala fide and unconstitutional and this principle will apply to power contained in Article 224(1) of the Constitution...."

EE. It is well settled law that action or inaction, if tainted with malafides is unconstitutional and vitiated. [Ref: *State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222 @ paras 49,

50; *Tandon Bros. v. State of W.B.*, (2001) 5 SCC 664 @ paras 34, 35; *State of Assam v. Banshidhar Shewbhagavan & Co.*, (1981) 4 SCC 283 @ Para 8]

FF. That in the instant case, bias is manifest and it is not a question of mere likelihood of bias. That Respondent No. 2 is a quasi-judicial authority for the purpose of taking decisions under the Tenth Schedule and is bound by principles of natural justice including the rule against bias. (Ref: *P.D. Dinakaran (1) v. Judges Inquiry Committee*, (2011) 8 SCC 380, @ paragraphs 41, 71).

GG. That each of the grounds for scope of judicial review in respect of matters under the Tenth Schedule laid down in the *Kihoto Hollohan* case, namely (i) infirmities based on violation of constitutional mandate; (ii) malafides; (iii) non-compliance with rules of natural justice; and (iv) perversity, is made out in the present case as demonstrated below:

- i. Violation of constitutional mandate: Where the Speaker has abstained from deciding a petition for disqualification, there is clear violation of the constitutional mandate under Para 6 of the Tenth Schedule read with Para 8 of the Tenth Schedule and the Disqualification Rules, which enjoin the Speaker to decide such petition.
- ii. Mala fides: As demonstrated above, the actions of the Respondent No. 2 smack of mala fides.
- iii. Non-compliance with rules of natural justice: Bias on the part of Respondent No. 2 also violates the principles of natural justice.
- iv. Perversity: The complete failure of Respondent No. 2 to take any action, in as much as even the notice

was issued only when the matter was heard by this Hon'ble Court i.e. after a lapse of almost 3 years, is perverse as it is evident that the Respondent No. 2 seeks to ostensibly keep the disqualification proceedings pending so as to prevent any intervention by this Hon'ble Court. In fact, the Respondents contended before the Hon'ble High Court that in the absence of an order having been passed by the Speaker under the Tenth Schedule, there can be no judicial review by this Hon'ble Court.

- HH. That an interpretation that a court cannot exercise its powers of judicial review unless some order is passed by the Speaker effectively validates complete abandonment of jurisdiction by a Speaker contrary to the constitutional mandate to decide a matter. Judicial review could then be conveniently avoided on the pretext that no order has been passed by the Speaker. Such interpretation is dangerous as it would be the easiest way to subvert democratic principles and the mandate under the Constitution that persons who have incurred disqualification cannot continue as legislators or ministers. It is also contrary to the judgment in the case of *Rajendra Singh Rana*.
- II. That people who are not authorized to continue in the assembly even for a single day after incurring disqualification, are sitting in the assembly, participating, voting and passing budget, framing laws even though they have no right to do so. It is submitted that two of the Respondent MLAs are cabinet ministers, they are part of the executive which takes all the policy and administrative

decisions on the basis of which the cabinet takes decision which is abided by the Hon'ble Governor. It is submitted that the presence of such MLAs, after incurring disqualification, taints all the cabinet decisions. It is submitted that such an infraction of the Constitution cannot be permitted by this Hon'ble Court even for a day.

- JJ. That the Respondents 3-13 have taken inconsistent stand regarding issuance of the whip. That, while on the one hand in Petition Dispute No. 2 of 2017 before ECI it was categorically admitted that a Whip was issued which was supported by affidavits sworn by 3 members, two out of whom are OPS and Thiru Semmalai i.e., Respondents 3 and 11 respectively. On the other hand, in the Counter affidavit before the Hon'ble High Court sworn by S. Semmalai, Respondent No. 11 (one of the two MLA's, who had sworn the petition before the Election Commission of India) it was stated that there has never been a direction issued to the Respondents for them to follow and therefore, there could be no question of action against the Respondents under the Tenth Schedule.
- KK. That when the Petitioners have specifically alleged in the Writ Petition before the Hon'ble High Court that Respondents 3 to 13 voted against a direction issued by the AIADMK, while Respondent No. 11 swore a Counter-Affidavit on behalf of himself, as well as Respondents 3 to 10 and 12. The same cannot be taken as a reply on behalf of all as there is nothing on record to show that Respondent 11 has been authorized in any manner to swear an affidavit on behalf of Respondents 3 to 10 or Respondent No. 12. In any event, it is not permissible for a person to swear affidavits

on behalf of any other person in legal proceedings. that the Respondent 11 had further changed his stand in his Counter-Affidavit in W.P. No. 27853 of 2017 namely *P. Vetrivel vs. P. Dhanapal & Ors.* where he is Respondent No. 2 and had stated that a Whip was issued but not to these 11 MLAs.

- LL. That the affidavit before the Election Commission of India was sworn on 14th March 2017, i.e., before the petitions for disqualification were submitted to Respondent No. 2 on 20.03.2017. It was hence the most contemporaneous and natural version. Having admitted to issuance as well as defiance of a whip in the said petition, it was clear that the MLAs concerned were adopting an entirely inconsistent stand before the Hon'ble Courts only to prevent a decision on disqualification. Further, the fact that two different stands have been taken in the two writ petitions only renders the version of the events presented by the Respondents, liable to be disregarded. That the admission before the Election Commission of India should have been treated as being conclusive as to issuance of a whip by the AIADMK to vote in favour of the confidence motion.
- MM. That the Election Commission of India while dealing with a dispute under Para 15 acts as a Tribunal, therefore, admissions made before the Election Commission are to be treated as admission in judicial proceedings.
- NN. That in any event, when a vote of confidence is sought by the ruling party, the motion itself constitutes a direction to the members of the legislature belonging to the said party to vote in favour of such motion.
- OO. That, it was apparent, clear and without an iota of the doubt that by voting against the Chief Minister of the AIADMK

in confidence vote, the Respondents 3-13 had voluntarily given up the membership of the party on 18.2.2017. It is submitted that subsequent coming back to the party will be of no help as issue had to be decided with reference to 18.2.2017.

PP. That this Hon'ble Court has held in the case of *Kihoto* that an action of a Speaker is open to judicial review in case such action violates constitutional mandate, malafide or perverse or is in violation of principles of natural justice. In the instant case, inaction of the Respondent No.1 clearly violates the constitutional mandate inasmuch as this Hon'ble Court in *Keisham Meghachandra Singh's* decision laid down the law requiring all the Speakers in the country to decide the Disqualification Petitions within a period of three months.

QQ. That the Respondent No. 2 in the instant case has also acted in violation of the constitutional mandate by not deciding the dispute and sitting over it despite the order dated 14.02.2020 requiring the Respondent No.1 to decide the matter in accordance with law has acted with legal malice and, therefore, the action of the Respondent No.1 is liable to be scrutinized and set right by declaring the Respondent Nos. 3 to 13 as disqualified, or in the alternative directing the Respondent No.1 to conclude the proceedings forthwith.

6 That there is no delay or laches on the part of the Petitioner to approach this Hon'ble Court for the redressal of his grievances pertaining to the infringement of fundamental and constitutional rights enshrined under Article 14, 19, 164 (1B), 191 and Tenth Schedule of the Constitution of India.

PRAYER

It is therefore, in the interest of justice and in the facts and circumstances of the case, most humbly and respectfully prayed that the Hon'ble Court may graciously be pleased to:

- i) hold that the deliberate action of Respondent No. 2 in not deciding the Disqualification Petition is arbitrary and violative of Article 14, Article 19, Article 165 (2) and the Tenth Schedule of the Constitution of India.
- ii) issue a writ of mandamus directing Respondent No. 2 to declare that Respondent Nos. 3-13 are disqualified or in the alternative, direct Respondent No. 2 to decide the Disqualification Petition forthwith.
- iii) issue such other writs, orders or direction which this Hon'ble Court may deem fit and proper to issue in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS AND JUSTICE, YOUR PETITIONER, AS IN DUTY BOUND, SHALL EVER PRAY.

DRAWN & FILED BY

AMIT ANAND TIWARI
ADVOCATE FOR THE PETITIONER

Drawn on: 06.06.2020

Filed on : 08.06.2020