

SUPREME COURT OF INDIA

D.Sudhakar

Vs.

D.N.Jeevaraju

C.A.Nos.4510-4514 of 2011

(Altamas Kabir and Cyriac Joseph JJ.)

25.01.2012

JUDGMENT

ALTAMAS KABIR, J.

1. The operative portion of this judgment was pronounced on 13th May, 2011. The full text of the judgment is now being pronounced.

2. Civil Appeal Nos. 4510-4514 of 2011 arising out of SLP(C) Nos. 5966-5970 of 2011 are filed by five Independent Members of the Karnataka Legislative Assembly against a judgment of the Full Bench of the Karnataka High Court upholding an order passed by the Speaker of the Karnataka Legislative Assembly disqualifying them under Paragraph 2(2) of Tenth Schedule of the Constitution of India on the ground that they had joined the Bharatiya Janata Party (BJP) after their election to the Legislative Assembly as Independent candidates. The said order of disqualification was passed by the Speaker on Disqualification Application No.2 of 2010 filed by Shri D.N. Jeevaraju, Chief Whip, BJP, Karnataka Legislative Assembly and Shri C.T. Revi, Member of the Karnataka Legislative Assembly. Civil Appeal Nos. 4517-4521 of 2011 arising out of SLP(C) Nos. 5995-5999 of 2011 are filed by the very same five Independent Members of the Karnataka Legislative Assembly challenging the very same judgment of the Full Bench of the Karnataka High Court upholding the order passed by the Speaker of the Karnataka Legislative Assembly disqualifying them under Paragraph 2(2) of Tenth Schedule of the Constitution of India. The said order was passed by the Speaker on Disqualification Application Nos. 3 to 7 of 2010 filed by the voters from the constituencies represented by the five MLAs. Since the Speaker of the Karnataka Legislative Assembly had passed a Common Order dated 10th October,

2010 on Disqualification Application Nos. 2 to 7 of 2010, the impugned judgment of the Full Bench of the High Court also was a Common Order passed in Writ Petition Nos. 32674-32678/2010 and Writ Petition Nos. 33998-34002/2010. Therefore the basic dispute in these Civil Appeals relates to the validity of the order of disqualification passed by the Speaker of the Karnataka Legislative Assembly against the Appellants on Disqualification Application Nos. 2 to 7 of 2010.

3. The Appellants herein were elected to the Thirteenth Karnataka Legislative Assembly as independent candidates in the elections held in May, 2008. On 30th May, 2008, they were sworn in as Ministers in the Cabinet of the government headed by Shri B.S. Yeddyurappa, who was elected as the leader of the B.J.P. Legislature Party and was sworn in as the Chief Minister of the State of Karnataka. On 6th October, 2010, the Appellants submitted separate letters to the Governor of Karnataka stating that having become disillusioned with the functioning of the Government headed by Shri B.S. Yeddyurappa, in which there was widespread corruption and nepotism, a situation had arisen where the governance of the State could not be carried on in accordance with the provisions of the Constitution of India. The Appellants also indicated that Shri B.S. Yeddyurappa had, therefore, forfeited his right to continue as Chief Minister having lost the confidence of the people and in the interest of the State and the people of Karnataka, they were expressing their lack of confidence in the Government headed by Shri B.S. Yeddyurappa and as such they were withdrawing support to the Government headed by him as the Chief Minister. The Governor was also requested to intervene and institute the constitutional process as constitutional head of the State. On the same day, on the basis of the letters written by the Appellants and others, the Governor of Karnataka asked the Chief Minister to prove his majority on the Floor of the House by 12th October, 2010.

4. On the very next day i.e. on 7th October, 2010, the Respondent Nos.1 and 3, namely, Shri D.N. Jeevaraju and Shri C.T. Ravi, the Chief Whip and the General Secretary of the Bharatiya Janata Party, respectively, filed Complaint No.2 of 2010 dated 6th October, 2010 with the Speaker of the Karnataka Legislative Assembly under Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, hereinafter referred to as the Disqualification Rules, to declare that the Appellants had incurred disqualification on the ground of defection as contained in the Tenth Schedule to the Constitution. On the basis of the said Disqualification Application, on 8th October, 2010 the Speaker issued Show-Cause Notices to the Appellants informing them of the Disqualification Application filed by the Chief Whip of the Bharatiya Janata Party

and the General Secretary thereof, indicating that despite having got elected as independent candidates, they became members of the B.J.P. Legislature Party and also became Ministers and thereby they violated Paragraph 2(2) of the Tenth Schedule to the Constitution. The Appellants were informed that they had acted in violation of paragraph 2(2) of the Tenth Schedule of the Constitution of India and it disqualified them from continuing as Members of the Legislature. The Appellants were given time till 5.00 p.m. on 10th October, 2010, to submit their objections, if any, to the Disqualification Application either in writing or presenting themselves in person, failing which it would be presumed that they had no explanation to offer and further action would thereafter be taken ex-parte in accordance with law. In the meanwhile on 9th October, 2010, Disqualification Application Nos.3 to 7 were filed by some voters against the Appellants and show-cause notices were issued by the Speaker on the same day requiring the Appellants to submit their explanation before 5.00 p.m. on 10th October, 2010.

5. Having come to know about the show-cause notices from the media, the Appellants through an Advocate submitted a letter to the Speaker on 9th October, 2010, indicating that they had come to learn from the media that the show-cause notices had been issued to them as per the orders of the Speaker. In the said letter it was categorically stated that the procedural requirements of Rule 7 of the Disqualification Rules had not been complied with as copies of the Petition and annexures were not supplied to the Appellants and a period of 7 days to submit the reply was not given to them. A specific request was made to the Speaker to supply the said documents and to grant a period of 7 days to submit the reply. Though the documents were not supplied, the Appellants through their Advocate submitted an interim reply on 10th October, 2010, during the proceedings before the Speaker. It was specifically stated in the reply that it was submitted as an interim reply without prejudice to and by way of abundant caution and reserving the right of the Appellants to submit exhaustive reply.

6. The Appellants further submitted in the interim reply that the notice was in clear violation of the Disqualification Rules, 1986, and especially Rules 6 and 7 thereof. It was mentioned that Rule 7(3) requires copies of the petition and annexures thereto to be forwarded along with the show-cause notice. The notice which was pasted on the doors of the MLA quarters in the MLA hostels at Bangalore, which were locked and used by the legislators only when the House was in session, called upon the Appellants to reply to the notice by 5.00 p.m. on 10th October, 2010, which was in complete violation of Rule 7 of the above-mentioned Rules which laid down a mandatory procedure for dealing with the petition seeking disqualification under the Rules. In fact, even the time to reply to the notices was

reduced to the severe prejudice to the Appellants. It was pointed out that Rule 7 requires that the Appellants should have been given 7 days' time to reply or within such further period as the Speaker may for sufficient cause allow. It was contended that under the said Rule the Speaker could only extend the time by a further period of 7 days, but could not curtail the same from 7 days to 3 days. It was the categorical case of the Appellants that the minimum notice period of 7 days was a mandatory requirement of the basic principles of natural justice in order to enable a MLA to effectively reply to the Show-Cause Notice issued to him seeking his disqualification from the Legislative Assembly. It was mentioned in the reply to the Show-Cause Notice that issuance of such Show-Cause Notice within a truncated period was an abuse and misuse of the constitutional provisions for the purpose of achieving the unconstitutional object of disqualifying sufficient number of Members of the Assembly from the membership of the House in order to prevent them from participating in the Vote of Trust scheduled to be taken by Shri B.S. Yeddiyurappa on the Floor of the House at 11 a.m. on 11th October, 2010. It was contended that the Show-Cause Notice was ex-facie unconstitutional and illegal, besides being motivated and malafide and devoid of jurisdiction.

7. In addition to the above, it was also sought to be explained that it was not the intention of the Appellants to withdraw support to the government formed by the B.J.P., but only to the Government headed by Shri Yeddiyurappa. It was contended that withdrawal of support from the Government headed by Shri B.S. Yeddiyurappa as the Chief Minister of Karnataka, did not fall within the scope and purview of the Tenth Schedule to the Constitution of India. In the reply, the Appellants categorically denied the allegation that they had joined the Bharatiya Janata Party. It was asserted that they remained independents and they had not joined any political party including Bharatiya Janata Party. It was claimed that they were always treated as independents only. It was urged that the conduct of the Appellants did not fall within the meaning of defection or within the scope of para 2(2) of the Tenth Schedule of Constitution of India or the Scheme and object thereof. However, on 10th October, 2010 itself, the Speaker passed an order disqualifying the Appellants from the post of MLA for violation of Para 2 of the Tenth Schedule of the Constitution of India with immediate effect. The said disqualification is the subject matter of this litigation.

8. At this juncture, it is necessary to take note of the fact that 13 MLAs, belonging to the Bharatiya Janata Party, had also withdrawn their support to the Government led by Shri B.S. Yeddiyurappa and had made the same request to the Governor, as had been made by the Appellants herein, for initiating the constitutional process in the wake of their withdrawal of support to the Government led by Shri B.S.

Yeddyurappa. This had resulted in the filing of Disqualification Application No.1 by Shri Yeddyurappa against the said MLAs and ultimately in their disqualification from the membership of the House. The Civil Appeals challenging their disqualification has been heard by this Court and judgment has been reserved. Learned counsel for the Appellants submits that the same issues as were involved in the earlier cases are also involved in the present case, except that while in the case involving the 13 B.J.P. MLAs, the allegation made against them was that they had voluntarily left the Bharatiya Janata Party, in the present case the allegation against the Appellants is that having got elected as independent candidates they had joined the Bharatiya Janata Party by extending support to Shri B.S. Yeddyurappa and by joining his Ministry as Cabinet Ministers. The same grievances as were raised by the 11 B.J.P. MLAs who were disqualified have been raised by the Appellants herein. It has been reiterated on behalf of the Appellants that the very basic requirements of natural justice and administrative fair play had been denied to them. On the other hand, not only were they not served with notice of the disqualification proceedings, but they were not even given sufficient time to deal with the allegations made against them. According to the Appellants, the proceedings before the Speaker, who had acted in hot haste in disqualifying the Appellants before the Vote of Confidence was to be taken by Shri B.S. Yeddyurappa, had been vitiated as a result of such conduct on the part of the Speaker.

9. Appearing in support of the Civil Appeals arising out of SLP(C) Nos.5966-5970 of 2011, Mr. P.P. Rao, learned Senior Advocate, contended that by not allowing the Appellants sufficient time to even reply to the Show-Cause Notices issued to them, in violation of Rule 7 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, the Appellants had been deprived of a valuable opportunity to meet the allegations, although their membership of the House depended on a decision on the said allegations and their response thereto. Mr. Rao also submitted that apart from being denied a proper hearing in terms of the statutory rules, the High Court had erroneously interpreted the provisions of paragraph 2(2) of the Tenth Schedule to the Constitution of India in holding that the Appellants had joined the Bharatiya Janata Party, as alleged by the complainants. Mr. Rao submitted that it had been alleged that the Appellants had joined the Bharatiya Janata Party either when prior to the formation of the Ministry they had given individual letters of support to Shri Yeddyurappa as the leader of the B.J.P. Legislature Party, or when they had joined the Cabinet as Ministers in the B.J.P. Government led by Shri B.S. Yeddyurappa.

10. Mr. Rao then urged that the High Court had also misconstrued the concept of whips being issued to ensure compliance by Members of a particular political party, who were also Members of the Legislature Party of the said political party. Mr. Rao urged that such whip had been issued to the Appellants, who as Members of the Government may have acted in terms thereof, but that did not mean that the Appellants had formally joined the Bharatiya Janata Party, as had been concluded by the Speaker.

11. Mr. Rao contended that neither the Speaker nor the High Court had addressed these issues correctly in relation to the evidence available before him, as had been observed by the Constitution Bench in *Rajendra Singh Rana Ors. Vs. Swami Prasad Maurya Ors.* [(2007) 4 SCC 270]. Mr. Rao submitted that events subsequent to the date on which an independent Member joins a political party is not material for a decision as to whether the particular Member had, in fact, joined the political party or not. Mr. Rao also urged that neither the decision in the case of *Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council Ors.* [(2004) 8 SCC 747], nor the decision in the case of *Jagjit Singh Vs. State of Haryana* [(2006) 11 SCC 1], had any application to the facts of this case, since in the said cases what was sought to be explained by this Court is that the Speaker could not give a finding regarding disqualification on the basis of conduct subsequent to the date on which a M.L.A. becomes disqualified from being a Member of the House. It was also observed that when the view taken by the Tribunal is a reasonable one, the Court would be slow to strike down the view regarding disqualification on the ground that another view was better. Mr. Rao urged that in the instant case, reliance by the Speaker on the decision of this Court in the case of *G. Vishwanath Vs. Speaker* [(1996) 3 SCC 353], is not of much assistance to the Respondents, because even from the conduct of the Appellants, it could not be said that they had joined the B.J.P. Legislature Party. Mr. Rao urged that the fact that the Appellants had attended meetings of the B.J.P. Legislature Party was of little help to the Respondents since in the Attendance Register of the meetings they had been shown as independent Members and a separate group under the heading Independent Co-Members.

12. Mr. Rao urged that the Appellants had always been treated as a separate group from the B.J.P. Legislature Party and it is only in connection with this case that the Respondents had attempted to show that the Appellants had joined the Bharatiya Janata Party and by withdrawing support from the B.J.P. Government led by Shri B.S. Yeddyurappa, they had incurred disqualification under paragraph 2(2) of the Tenth Schedule to the Constitution.

13. Mr. Rao also contended that the Whip issued by the Chief Whip of the B.J.P. Legislature Party did not form part of the documents produced before the Speaker, and, in any event, no Whip was served on the Appellants nor had they signed such a Whip. Therefore, the allegation that they had acted in accordance with such Whip did not and could not arise and the finding of the Speaker to the contrary, was perverse. Mr. Rao added that the Whips which have been subsequently brought on record in W.P.(C)Nos.32674-32678 of 2010, reveal that when the Whips were addressed to the ruling party Members, including the Ministers, they were addressed as Members of the Party, whereas the remaining five Whips were addressed to the Appellants as Hon'ble Ministers.

14. Mr. Rao also submitted that in the Whips issued to the Appellants nowhere had it been indicated that they had joined the Bharatiya Janata Party. Mr. Rao urged that the positive case made out by the Respondents in the application for disqualification was that the Appellants had joined the B.J.P. before they were sworn in as Ministers of Cabinet rank on 30th May, 2008, and not that they joined the B.J.P. later before the issuance of Whips on 29th December, 2009. Mr. Rao repeated his earlier contention that the question before the Speaker for consideration was whether the Appellants had joined the B.J.P. before their being sworn in on 30th May, 2008, or not. It was submitted that it was beyond the Speaker's jurisdiction to decide any matter other than what had been indicated in the Disqualification Application.

15. On the question of scope of judicial review of the Speaker's order, Mr. Rao submitted that although reliance had been placed on paragraph 109 of the decision of this Court in *Kihoto Hollohan Vs. Zachillhu* [(1992) Supp.2 SCC 651], wherein, it was held that judicial review of the order of the Speaker should be confined to jurisdictional errors only, the observations contained in paragraph 103 of the judgment had not been noticed. Mr. Rao submitted that in the said paragraph, it had been clarified that the finality clause in paragraph 6 of the Tenth Schedule to the Constitution does not completely exclude the jurisdiction of the Courts under Articles 136, 226 and 227 of the Constitution, though, it does have the effect of limiting the scope of the Courts' jurisdiction under the said provision. It was further observed that the principle applied by the courts is that inspite of a finality clause it is always open to the High Court or the Supreme Court to examine whether the action of the authority is ultra vires the powers conferred on it or whether the power so exercised was in contravention of a mandatory provision of law. Mr. Rao urged that the judgment in *Kihoto Hollohan's* case (supra) could not be read piecemeal, but would have to be read as a whole.

16. Mr. Rao submitted that in the instant case, the Speaker's order had been made in violation of paragraph 2(2) of the Tenth Schedule by erroneously equating the expression Political Party with the Government of the State. Mr. Rao also submitted that the order of the Speaker had been passed in disregard of the relevant statutory Rules, namely, the Karnataka Disqualification Rules and without reconsidering the materials available with the Speaker under the aforesaid Rules.

17. Mr. Rao then urged that the Speaker has also erred in entertaining the applications of voters in violation of Rule 6 of the aforesaid Rules and also Rule 7(3) which require the Speaker to give a minimum of 7 days' time to reply to the show-cause notice issued by him. Mr. Rao submitted that the order was also liable to be quashed on the ground of violation of the principles of natural justice by not giving the Appellants a reasonable opportunity to present their case effectively.

18. Mr. Rao lastly submitted that the order of the Speaker was perverse and was tailored to suit the Government led by Shri B.S. Yeddyurappa in the Vote of Confidence that was to follow the day after the decision had been pronounced by the Speaker. Mr. Rao also repeated his earlier submissions that the Speaker had proceeded in the matter in great haste to meet the aforesaid deadline.

19. Mr. Rao submitted that the Speaker had acted in a mala fide manner in order to bail out the Chief Minister and to save his own Chair by not referring the case to the Committee of Privileges having regard to the allegations of bias made by the Appellants in their replies to the Show-Cause Notices and deciding the case himself, while continuing to be a Member of the Bharatiya Janata Party while occupying the Chair of the Speaker.

20. On the question as to whether the Disqualification Rules were mandatory or directory, Mr. Rao submitted that the decision in *Ravi S. Naik Vs. Union of India* [(1994) Suppl.2 SCC 641] was per incuriam as it had not adverted to the decision of the Constitution Bench in *Kihoto Hollohan's case* (supra), wherein it had been held that the Speaker's decision while exercising power under paragraph 6(1) of the Tenth Schedule to the Constitution did not enjoy the immunity under Articles 122 and 212 from judicial scrutiny as had also been pointed out by K.T. Thomas, J. in *Mayawati Vs. Markandeya Chand* [(1998) 7 SCC 517]. Mr. Rao urged that in any event, the view expressed in *Ravi S. Naik's case* (supra) was no longer good law after the subsequent Constitution Bench decision in *Rajendra Singh Rana's case* (supra), wherein it has been laid down that the Speaker was expected to follow the Rules framed under the Tenth Schedule which had been approved by the Legislative Assembly. Mr. Rao urged that the Speaker had all throughout treated

the Appellants as independent Members as would be evident from the debates of the Assembly.

21. Mr. Rao then submitted that the circumstances leading to the disqualification of the Appellants was quite obviously stage-managed in order to help the Chief Minister to survive the Confidence Vote on 11th October, 2010, by any means and the same will be evident from the affidavits filed later by the voters who had filed Disqualification Petitions, which exposed the involvement of the Speaker and his Office as well as the Political Advisor to the Chief Minister in inducing them to sign such applications. Mr. Rao submitted that the decision of the Speaker having been taken in violation of paragraph 2(2) of the Tenth Schedule, Rules 3, 4, 5, 6 and 7(3) of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, and the principles of natural justice, was perverse and mala fide and was not sustainable either on facts or law.

22. Appearing for the Appellants in the Civil Appeals arising out of SLP (C) Nos.5995-5999 of 2011, Mr. K.K. Venugopal, learned Senior Advocate, reiterated the submissions made by Mr. P.P. Rao in the other set of appeals. Mr. Venugopal submitted that merely because the Appellants had joined the Council of Ministers in the Yeddyurappa Government, it could not be contended that they had joined the Bharatiya Janata Party. Mr. Venugopal submitted that in the past there had been several instances where Members elected as independents to the Lok Sabha had served in the Governments formed by Political Parties but had retained their status as independent Members of the House. Mr. Venugopal referred to the two instances when Mrs. Maneka Gandhi was elected to the Lok Sabha as an independent Member from Pilibhit in Uttar Pradesh and had served as Minister at the Centre in the Governments led by the Bharatiya Janata Party. Similarly, Shri Biswanath Das, Shri S.F. Khonglam and Shri Madhu Koda, who were all independent legislators, became Chief Ministers of the States of Orissa, Meghalaya and Jharkhand.

23. Mr. Venugopal submitted that if by joining the Yeddyurappa Ministry, the Appellants had shed their independent status and had become Members of the Bharatiya Janata Party, then they stood disqualified from the membership of the House at that stage itself. Such a stand had not, however, been taken by the complainants or even the opposition parties, till the Governor directed a Vote of Confidence to be held on 12.10.2010. Mr. Venugopal submitted that the said position would make it very clear that the Appellants continued to enjoy an independent status, although, they had extended their support to the B.J.P.

Government led by Shri Yeddyurappa and had also joined the Ministry as Cabinet Ministers.

24. Mr. Venugopal also repeated Mr. Rao's submissions that even at the B.J.P. Legislature Party meetings the independent status of the Appellants had been duly recognized and in the said meetings they had been shown not as a part of the Bharatiya Janata Party, but as a separate entity with separate serial numbers. It was further urged that it could not also be presumed that by joining the rallies of the Bharatiya Janata Party, the Appellants had joined the Party and had, therefore, laid themselves open to disqualification as Members of the House under the provisions of the paragraph 2(2) of the Tenth Schedule to the Constitution.

25. Mr. Venugopal lastly submitted that the Appellants had denied receipt of the Whips said to have been issued to them by the Chief Whip of the B.J.P. Legislature Party or having acted in accordance therewith. Mr. Venugopal submitted that by no stretch of imagination could it be assumed that the Appellants by their aforesaid acts had joined the Bharatiya Janata Party or had even intended to do so. Mr. Venugopal submitted that the impugned order of the Speaker was motivated and made with the sole intention of disqualifying them from participating in the Vote of Confidence which was to be held on 11th October, 2010.

26. Appearing for the Respondent No.1 Shri D.N. Jeevaraju and others in the Civil Appeals arising out of the Special Leave Petitions filed by Shri D. Sudhakar and others, Mr. Satpal Jain, learned Senior Advocate, submitted that one single incident cannot always be a factor to determine as to whether an independent Member had joined a Political Party or not and that there was no bar in taking cognizance of subsequent events in order to arrive at such a conclusion. It was submitted that even if it be held that the Appellants had joined the Bharatiya Janata Party by joining the Ministry, the Speaker was always entitled to consider the subsequent conduct of the Appellants for purposes of corroboration of the earlier facts. Mr. Jain submitted that paragraph 2(2) of the Tenth Schedule to the Constitution makes it absolutely clear that on the joining of a Political Party an independent stands disqualified, but a declaration to that effect could be made at a later stage.

27. Mr. Jain reiterated the stand which had been taken on behalf of the Respondent No.1 before the Speaker that the Whip which had been issued by the Chief Whip was also meant for the Appellants and had been served on them and they had also acted according to the said Whip. It was urged that this was not a case of support being rendered to the B.J.P. Government led by Shri Yeddyurappa, either from inside or from the outside, but this was a case where the Appellants had wilfully

shed their independent status and had become Members of the ruling Bharatiya Janata Party and by such conduct they stood disqualified as Members of the House by virtue of paragraph 2(2) of the Tenth Schedule to the Constitution.

28. On the allegation with regard to the mala fides, Mr. Jain submitted that the same would have to be considered in the light of the circumstances in which the order of the Speaker came to be passed. It was submitted that once the question of disqualification of the Appellants was brought to his notice before the Vote of Confidence was to take place, it became the constitutional duty of the Speaker to decide the same before the Vote of Confidence was taken in order to ensure that persons who were not eligible to vote, did not participate in the Vote of Confidence to be taken on 11th October, 2010.

29. Mr. Jain referred to and relied on the decisions of this Court in Dr. Mahachandra Prasad Singh's case (supra) and Jagjit Singh's case (supra) in support of his contention that in order to incur disqualification under paragraph 2(2) of the Tenth Schedule to the Constitution, it was not always necessary that a written communication would have to be made to the Party in that regard.

30. Mr. Jain also contended that in the translated copy of the Whip which had been issued by the Chief Whip of the B.J.P. Legislature Party, the very vital words describing the Appellants as Legislators of the Ruling Party had been omitted. Mr. Jain submitted that this fact had not been noticed by the High Court, particularly, since the Whip was a single-line Whip. Mr. Jain submitted that the Whip had been issued to all Members of the Bharatiya Janata Party and its Ministers in the same fashion as it had been issued to the Appellants. Mr. Jain submitted that the order of the Speaker disqualifying the Appellants from the Membership of the House did not call for any interference and the Appeals were liable to be dismissed.

31. While dealing with the submissions of Mr. P.P. Rao and Mr. Venugopal, Mr. Soli J. Sorabjee, learned Senior advocate, who appeared for Shri C.T. Ravi, the Respondent No.3 in the Civil Appeals arising out of the Special Leave Petitions filed by Shri D. Sudhakar and others, submitted that the provisions of paragraph 6 of the Tenth Schedule to the Constitution made it quite clear that the decision relating to disqualification on ground of defection was final and, accordingly, the scope of judicial review available against the order of the Speaker in exercise of powers under the Tenth Schedule to the Constitution was extremely limited, as had been indicated in Kihoto Hollohan's case (supra), and was confined and limited to infirmities based on (a) violation of constitutional mandate; (b) mala fides; (c) non-compliance with the rules of natural justice; and (d) perversity. Mr. Sorabjee

submitted that the Speaker's order impugned in the Appeals did not suffer from any of the above-mentioned infirmities and hence no judicial review was available to the Appellants in the present case.

32. Mr. Sorabjee also relied heavily on the decision of this Court in Ravi S. Naik's case (supra) and also in Dr. Mahachandra Prasad Singh's case (supra), where the Disqualification Rules framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule to the Constitution, was held to enjoy a status which was subordinate to the Constitution and could not be equated with the provisions of the Constitution. They could not, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules did not also afford a ground for judicial review. Mr. Sorabjee submitted that the aforesaid questions were no longer *res integra* and had been authoritatively settled by the aforesaid decision of this Court.

33. On the question of *mala fides*, Mr. Sorabjee submitted that as had been observed by this Court in Sangramsinh P. Gaekwad Vs. Shantadevi P. Gaekwad [(2005) 11 SCC 314], a series of repetitive and almost abusive allegations against the Speaker was not sufficient to support a charge of *mala fides*, especially when it is leveled against a high functionary such as the Speaker. Mr. Sorabjee submitted that the law, as was also stated by this Court in E.P. Royappa Vs. State of Tamil Nadu [(1974) 4 SCC 3], is clear that the burden of establishing *mala fides* is very heavily on the person who alleges it, since the allegations of *mala fides* are often more easily made than proved. Mr. Sorabjee submitted that the Court could not and should not uphold a plea of *mala fides* on the basis of mere probabilities.

34. On the question of undue haste, which was one of the pillars of the submissions relating to *mala fides*, Mr. Sorabjee submitted that the Speaker was bound to a schedule which had been set by the Governor for holding the Vote of Confidence and he, therefore, had no option but to reduce the time for the Appellants to show cause as to why they should not be disqualified from the membership of the House to a period which was less than 7 days, as was stipulated under Rule 7 of the Disqualification Rules.

35. On the question of natural justice, Mr. Sorabjee once again referred to the observations made by this Court in Ravi S. Naik's case (supra), wherein it was observed that the rules of natural justice were not immutable but flexible. Mr. Sorabjee submitted that the same view had been reiterated in Jagjit Singh's case (supra) also. Mr. Sorabjee contended that even if a different view was possible from the view which had been taken by the Speaker, unless the decision of the

Speaker was shown to be wholly perverse or contrary to the provisions of the Constitution, the same ought not to be discarded and substituted for a different view which this Court may also consider to be possible.

36. Mr. Sorabjee concluded on the note that the essence of being an independent lies in his acting according to the dictates of his independent conscience, untrammelled by the dictates of the Whip of any political party. Accordingly, an independent could support a proposal of the Government or oppose it, but that would be according to his independent conscience and if such an independent member joins as a Minister in the Government formed by a political party, his independence is compromised and as indicated in Kihoto Hollohan's case (supra), it was for him to resign his membership of the House and go back to the Electorate for a fresh mandate.

37. While adopting Mr. Satpal Jain's and Mr. Sorabjee's submissions, Mr. Jaideep Gupta, learned Senior Advocate, who appeared for the Respondent Nos.4 and 5 in the Civil Appeals arising out of the Special Leave Petitions filed by Sri Shivraj S. Thangadgi and others, submitted that the said Respondents as voters of the Constituency which had elected the Appellants as independents were aggrieved by the fact that the Appellants had acted in a manner which was contradictory to the object underlining the provisions in the Tenth Schedule to the Constitution, namely, to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundation of our democracy. Mr. Gupta also relied on the decisions of this Court in Kihoto Hollohan's case (supra) and G. Vishwanath's case (supra). Although, the locus standi of the Respondent Nos.4 and 5 to maintain a complaint under the Disqualification Rules was strongly disputed in the absence of any mention of a voter having a right to file a complaint, Mr. Gupta submitted that even if no rules had been framed by the Speaker under paragraph 8 of the Tenth Schedule to the Constitution, the Speaker was still vested with the authority to take action against an independent member on information received by him. Mr. Gupta also relied on the decisions cited by Mr. Satpal Jain and Mr. Soli J. Sorabjee in support of his aforesaid contention and submitted that the order of the Speaker impugned in these appeals did not call for any interference and the Appeals were, therefore, liable to be dismissed.

38. Appearing for Shri B.S. Yeddyurappa in these appeals, Mr. P.S. Narsimha, learned Senior Advocate, urged that the allegations made against Shri Yeddyurappa of colluding with the Speaker to obtain an order of disqualification of the Appellants before the date scheduled for the Vote of Confidence in the House, was wholly unjustified and uncalled for. Mr. Narsimha submitted that Shri

Yeddyurappa was duty bound to inform the Speaker of any incident or incidents that may have occurred after the Members had been elected to the House, which would disqualify them from the membership thereof and Shri Yeddyurappa had, therefore, acted as part of the duties of his office in informing the Speaker by way of the Disqualification Application regarding the conduct of the Appellants as well as some of the other MLAs belonging to the Bharatiya Janata Party.

39. Referring to the concept of collective responsibility of the Council of Ministers as envisaged in Article 75 of the Constitution, Mr. Narsimha submitted that as had been commented upon in M.P. Jain's Indian Constitutional Law, (Sixth Edition), a notable principle underlying the working of Parliamentary Government is the principle of collective responsibility which represents ministerial accountability to the legislature and that Article 75(3) lays down that the Council of Ministers shall be collectively responsible to the Lok Sabha. Mr. Narsimha urged that the principle of collective responsibility ensured the unity of the Members of the Government and also made sure that each individual Minister took responsibility in regard to Cabinet decisions and to take action to implement the same.

40. Mr. Narsimha submitted that as soon as the Appellants joined the Ministry led by Shri Yeddyurappa as Ministers, they divested themselves of their independent character and became collectively responsible to the other Members of the Cabinet and the Members of the State Assembly for governance of the State.

41. Most of the grounds taken in the present set of appeals were also taken in the Civil Appeals arising out of Special Leave Petition Nos.33123- 33155 of 2010 and other connected appeals filed by Balachandra L. Jarkiholi and others. As indicated hereinbefore the only point of difference between the two sets of appeals is that while in the earlier set of appeals the issue involved was whether the Appellants had voluntarily given up their membership of the Bharatiya Janata Party so as to attract the disqualification provisions contained in paragraph 2(a) of the Tenth Schedule to the Constitution, in the present set of appeals the question is whether the Appellants having been elected as independent members of the Karnataka Assembly had incurred disqualification from the membership of the House in terms of paragraph 2(2) of the Tenth Schedule of the Constitution by joining the Bharatiya Janata Party through their acts of extending support to a government led by Shri B.S. Yeddyurappa and becoming Ministers in the said government.

42. From the facts as disclosed during the hearing and the materials on record, it is the admitted case of both the parties that the Appellants had been elected to the 13th Karnataka Legislative Assembly as independent candidates in the elections

held in May 2008. It is also not disputed that immediately after the declaration of the results of the Assembly Elections on 25.5.2008, Shri B. S. Yeddyurappa secured letters of support from the Appellants herein on 26th May, 2008, and on the same day he addressed a letter to the Governor claiming majority support of the House which included the support of the Appellants herein, with a request to the Governor to appoint him as Chief Minister of the State. It is also undisputed that on 30.5.2008 Shri Yeddyurappa was sworn in as Chief Minister of Karnataka along with the Appellants as Cabinet Ministers and on 4.6.2008, he proved his majority in the House.

43. The question with which we are concerned is whether by their said acts, or acts subsequent thereto, the Appellants could be said to have joined the Bharatiya Janata Party.

44. After having been sworn in as Ministers in the Government led by Shri Yeddyurappa, the Appellants undisputedly attended meetings of the B.J.P. Legislature Party and had also participated in rallies and public meetings which had been conducted by the said party. The Speaker, as well as the Full Bench of the High Court, came to the conclusion that by offering letters of support to Shri Yeddyurappa and joining his Council of Ministers, the Appellants had shed their independent status and had joined the Bharatiya Janata Party, and the same was subsequently corroborated by their further action in attending the meetings of the B.J.P. Legislature Party and participating in its programmes. Both the Speaker and the High Court, therefore, held that the Appellants had become disqualified from the Membership of the House under paragraph 2(2) of the Tenth Schedule of the Constitution.

45. In the absence of any written and/or documentary proof of the Appellants having joined the Bharatiya Janata Party, both the Speaker and the High Court relied on the decision of this Court in Ravi Naik's case (supra), which was subsequently followed in Dr. Mahachandra Prasad Singh's case (supra) and Jagjit Singh's case (supra), in which it was held that in order to incur disqualification under paragraph 2(2) of the Tenth Schedule to the Constitution it was not always necessary that a written communication would have to be made to the political party in that regard. As far as issuance of Whip by the Chief Whip of the Bharatiya Janata Party is concerned, such an act would not ipso facto be taken as conclusive proof that the Appellants had joined Bharatiya Janata Party. Furthermore, in the face of denial by the Appellants of having been served with the Whip, there is nothing on record to prove that they were actually received by the Appellants.

46. The decisions referred to hereinabove have settled certain principles of law relating to interpretation of the provisions of the Tenth Schedule to the Constitution, but the said principles have to be applied in each case in its own set of facts. In the facts of this case, there is no material or evidence to show that the Appellants had at any time joined the B.J.P. Even as independents, the Appellants could extend support to a government formed by a political party and could become a Minister in such government. There is no legal bar against such extension of support or joining the government. Hence, such extension of support or joining the government as Minister by an independent does not by itself mean that he has joined the political party which formed the government. There is also no evidence to show that the Appellants were accepted and treated as members of the B.J.P. by that political party. It is to be noted that the Petitioners before the Speaker had no grievance about the Appellants supporting the B.J.P. Government and becoming Ministers in the government, for more than two years. Only when the Appellants withdrew support to the government led by Shri Yeddyurappa and a Confidence Vote was scheduled to be held, the Petitioners raked up the issue of alleged disqualification. The Appellants, even while participating in the meetings of the B.J.P. Legislature Party, were shown separately in a category different from the other participants in such meetings, which clearly indicates that the Appellants, though Ministers in the Government led by Shri Yeddyurappa, were treated differently from members of B.J.P. and were considered to be only lending support to the Government led by Shri Yeddyurappa, without losing their independent status. Mere participation in the rallies or public meetings organised by the B.J.P. cannot lead to the conclusion that the Appellants had joined the B.J.P.

47. The results of the election were declared on 25th May, 2008. Sri B.S. Yeddyurappa was elected as Leader of the B.J.P. Legislature Party on 26th May, 2008. The Appellants who had been elected as Independents declared their support to Sri Yeddyurappa as Chief Minister on 26th May, 2008. In the Notification dated 27th May, 2008 constituting the Legislative Assembly, the Appellants were shown as Independents. In the statement submitted by the Leader of the B.J.P. Legislature Party, the names of Appellants were not included in the list of B.J.P. members. In the Registers maintained by the Speaker under Rules 3 & 4 of the Disqualification Rules, the Appellants were shown as Independents and at any time after they were sworn in as Ministers on 30th May, 2008, no change was effected in the Registers. No information was furnished either by the Appellants or by the B.J.P. Legislature Party to include the Appellants among B.J.P. members. Thus, as per the Records of the Legislative Assembly, the Appellants were not members of B.J.P. when the order of disqualification was passed by the Speaker.

48. We are unable to accept the submission made on behalf of the Respondents that by extending support to Shri Yeddyurappa in the formation of the Bharatiya Janata Party led government, the Appellants had sacrificed their independent identities. The fact that the said Appellants also joined the Council of Ministers does not also point to such an eventuality. It is no doubt true that an independent legislator does not always have to express his intention to join a party in writing, but the mere extension of support to Shri Yeddyurappa and the decision to join his Cabinet, in our view, were not sufficient to conclude that the Appellants had decided to join and/or had actually joined the Bharatiya Janata Party, particularly on account of the subsequent conduct in which they were treated differently from the Members of the Bharatiya Janata Party. In view of our finding that the Appellants had not joined any political party as alleged, the order of disqualification passed by the Speaker was against the Constitutional mandate in para 2(2) of the Tenth Schedule of the Constitution.

49. This leaves us with the other question as to whether the Speaker acted in contravention of the provisions of Rule 7(3) of the Disqualification Rules under which a Member of the House, to whom a Show-Cause Notice is issued, has to be given 7 days' time or more to reply to the Show-Cause Notice. The question which immediately follows is whether the Speaker acted in hot haste in disposing of the Disqualification Application against the Appellants for their disqualification from the House. Yet another question which arises is with regard to the scope of judicial review of an order passed by the Speaker under paragraph 2(2) of the Tenth Schedule to the Constitution, having regard to the provisions of Article 212 thereof.

50. There is no denying the fact that the Show- Cause Notices issued to the Appellants were not in conformity with the provisions of Rules 6 and 7 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, inasmuch as, the Appellants were not given 7 days' time to reply to the Show- Cause Notices as contemplated under Rule 7(3) of the aforesaid Rules. Without replying to the said objection raised, the Speaker avoided the issue by stating that it was sufficient for attracting the provisions of paragraph 2(2) of the Tenth Schedule to the Constitution that the Appellants herein had admitted that they had withdrawn support to the Government led by Shri B.S. Yeddyurappa. The Speaker further recorded that the Appellants had been represented by counsel who had justified the withdrawal of support to the Government led by Shri Yeddyurappa. Without giving further details, the Speaker observed that the Disqualification Rules had been held by this Court to be directory and not mandatory, as they were to be followed for the sake of convenience. The

provisions of Rule 7(3) of the Disqualification Rules were held by the High Court to be directory in nature and that deviation from the said Rules could not and did not vitiate the procedure contemplated under the Rules, unless the violation of the procedure is shown to have resulted in prejudice to the Appellants. The Speaker wrongly relied upon the affidavit filed by Shri K.S. Eswarappa, State President of the B.J.P., although there was nothing on record to support the allegations which had been made therein. In fact, the said affidavit had not been served on the Appellants. Since Shri K.S. Eswarappa was not a party to the proceedings, the Speaker should have caused service of copies of the same on the Appellants to meet the allegations made therein. Coupled with the fact that the Speaker had violated the provisions of Rule 7(3) of the Disqualification Rules in giving the Appellants less than 7 days' time to reply to the Show-Cause Notices issued to them, failure of the Speaker to cause service of copies of the affidavit affirmed by Shri K.S. Eswarappa amounted to denial of natural justice to the Appellants, besides revealing a partisan attitude in the Speaker's approach in disposing of the Disqualification Application filed by Shri B.S. Yeddyurappa. If the Speaker had wanted to rely on the statements made in the aforesaid affidavit, he should have given the Appellants an opportunity of questioning the deponent as to the truth of the statements made in his affidavit. This conduct on the part of the Speaker also indicates the hot haste with which the Speaker disposed of the Disqualification Application, raising doubts as to the bona fides of the action taken by him. The explanation given by the Speaker as to why the notices to show cause had been issued to the Appellants under Rule 7 of the Disqualification Rules, giving the Appellants only 3 days' time to respond to the same, is not very convincing. There was no compulsion on the Speaker to decide the Disqualification Applications in such a great hurry, within the time specified by the Governor for the holding of a Vote of Confidence in the government headed by Shri B.S. Yeddyurappa. It would appear that such a course of action was adopted by the Speaker on 10th October, 2010, since the Vote of Confidence on the Floor of the House was to be held on 12th October, 2010. We have no hesitation to hold that the Speaker's order was in violation of Rules 6 & 7 of the Disqualification Rules and the rules of natural justice and that such violation resulted in prejudice to the Appellants. Therefore, we hold that even if Rules 6 & 7 are only directory and not mandatory, the violation of Rules 6 & 7 resulting in violation of the rules of natural justice has vitiated the order of the Speaker and it is liable to be set aside.

51. We are next faced with the question as to the manner in which the Disqualification Applications were proceeded with and disposed of by the Speaker. On 6th October, 2010, on receipt of identical letters from the Appellants withdrawing support to the B.J.P. Government led by Shri B.S. Yeddyurappa, the

Governor on the very same day wrote a letter to the Chief Minister informing him of the developments regarding the withdrawal of support of the 5 independent MLAs and 13 B.J.P. MLAs and requesting him to prove his majority on the Floor of the House on or before 12th October, 2010 by 5.00 p.m. The Speaker was also requested to take steps accordingly. On the very same day, Shri B.S. Yeddyurappa, as the leader of the B.J.P. in the Legislative Assembly, filed an application before the Speaker under Rule 6 of the Disqualification Rules, 1986, for a declaration that all the 13 MLAs elected on B.J.P. tickets along with two other independent MLAs, had incurred disqualification under the Tenth Schedule to the Constitution. Immediately thereafter, on 7th October, 2010, the Speaker issued Show-Cause Notices to the concerned MLAs informing them of the Disqualification Application filed by Shri B.S. Yeddyurappa and also informing them that by withdrawing support to the Government led by Shri B.S. Yeddyurappa, they were disqualified from continuing as Members of the House in view of paragraph 2(1)(a) of the Tenth Schedule to the Constitution. On 7th October, 2010 itself, Petitions were filed against the Appellants by the Respondents and the Speaker on 8th October, 2010 issued show-cause notices to the Appellants. The Appellants and the B.J.P. MLAs to whom show- cause notices were issued were given time till 5.00 p.m. on 10th October, 2010, to submit their objection, if any, to the said application. Apart from the fact that the Appellants were not given 7 days' time to file their reply to the Show-Cause Notices, the High Court did not give serious consideration to the fact that even service of the Show-Cause Notices on the Appellants and the 13 MLAs belonging to the Bharatiya Janata Party had not been properly effected. Furthermore, the MLAs who were sought to be disqualified were also not served with copies of the Affidavit filed by Shri K.S. Eswarappa, although the Speaker relied heavily on the contents thereof in arriving at the conclusion that they stood disqualified under paragraph 2(1)(a)/2(2) of the Tenth Schedule to the Constitution. The MLAs were not supplied with copies of the affidavits filed by Sri M.P. Renukacharya and Shri Narasimha Nayak, whereby they had retracted the statements which they had made in their letters submitted to the Governor on 6th October, 2010. What is even more glaring is the fact that the Speaker not only relied upon the contents of the said affidavits, but also dismissed the Disqualification Application against them on the basis of such retraction, after having held in the case of 13 MLAs belonging to the Bharatiya Janata Party that they had violated the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution immediately upon their intention to withdraw their support to the Government led by Shri B.S. Yeddyurappa was communicated to the Governor.

52. It is obvious from the procedure adopted by the Speaker that he was trying to meet the time schedule set by the Governor for the trial of strength in the Assembly

and to ensure that the Appellants and the 13 B.J.P. MLAs stood disqualified prior to the date on which the Floor test was to be held. Having concluded the hearing on 10th October, 2010 by 5.00 p.m., the Speaker passed detailed orders, in which various judgments, both of Indian Courts and foreign Courts, and principles of law from various authorities were referred to, on the same day, holding that the Appellants and the other MLAs stood disqualified as Members of the House. The Vote of Confidence took place on 11th October, 2010, in which the disqualified Members could not participate, and in their absence Shri B.S. Yeddyurappa was able to prove his majority in the House.

53. Unless it was to ensure that the Trust Vote did not go against the Chief Minister, there was hardly any reason for the Speaker to have taken up the Disqualification Applications in such a great haste.

54. We cannot lose sight of the fact that although the same allegations as had been made by Shri Yeddyurappa against the disqualified B.J.P. MLAs, were made also against Shri M.P. Renukacharya and Shri Narasimha Nayak, whose retraction was accepted by the Speaker, despite the view expressed by him that upon submitting the letter withdrawing support to the B.J.P. Government led by Shri B.S. Yeddyurappa, all the MLAs stood immediately disqualified under paragraph 2(1)(a) of the Tenth Schedule to the Constitution, the said two legislators were not disqualified and they were allowed to participate in the Confidence Vote, for reasons which are obvious.

55. Therefore, we hold that the impugned order of the Speaker is vitiated by mala fides.

56. On the question of justiciability of the Speaker's order on account of the expression of finality in paragraph 2 of the Tenth Schedule to the Constitution, it is now well-settled that such finality did not bar the jurisdiction of the superior Courts under Articles 32, 226 and 136 of the Constitution to judicially review the order of the Speaker. Under paragraph 2 of the Tenth Schedule to the Constitution, the Speaker discharges quasi-judicial functions, which makes an order passed by him in such capacity, subject to judicial review.

57. We are, therefore, unable to sustain the decision of the Speaker, as affirmed by the High Court on all counts, and we, accordingly, allow the appeals and set aside the orders passed by the Speaker on 11th October, 2010 and by the Full Bench of the High Court on 14th February, 2011.

58. There will, however, be no order as to costs.