Balchandra L. Jarkiholi and ors Vs. B.S. Yeddyurappa and ors.

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Court : Supreme Court of India

Decided On : May-13-2011

Judge : Altamas Kabir; Cyriac Joseph, Jj

Acts : Karnataka Legislative Assembly Rules - Rules 6, 7(2); Constitution of India - Articles 32, 35, 19(1)(a), 136, 226, 227, 212, 122, 191(2); Disqualification Rules - Rules 7, 6

Appeal No. : CIVIL APPEAL NOs.4444-4476 OF 2011 (Arising out of SLP(C)Nos.33123-33155 of 2010); C.A.Nos...4522-4554/2011 @ SLP(C)Nos. 33185- 33217 of 2010 and C.A.Nos...4477-4509/2011 @ SLP(C)Nos.33533-33565 of 2010

Appellant : Balchandra L. Jarkiholi and ors

Respondent : B.S. Yeddyurappa and ors.

Judgement :
1. Leave granted.

2. All the above-mentioned appeals arise out of the order dated 10th October, 2010, passed by the Speaker of the Karnataka State Legislative Assembly on Disqualification Application No.1 of 2010, filed by Shri B.S. Yeddyurappa, the Legislature Party Leader of the Bharatiya Janata Party in Karnataka Legislative Assembly, who is also the Chief Minister of the State of Karnataka, on 6th October, 2010, under Rule 6 of the Karnataka Legislative Assembly

(Disqualification of Members on Ground of Defection) Rules, 1986, against Shri M.P. Renukacharya and 12 others, claiming that the said respondents, who were all Members of the Karnataka Legislative Assembly, would have to be disqualified from the membership of the House under the Tenth Schedule of the Constitution of India. In order to understand the circumstances in which the Disqualification Application came to be filed by Shri Yeddyurappa for disqualification of the 13 named persons from the membership of the Karnakata Legislature, it is necessary to briefly set out in sequence the events preceding the said application.

3. On 6th October, 2010, all the above-mentioned 13 members of the Karnataka Legislative Assembly, belonging to the Bharatiya Janata Party, hereinafter referred to as the "MLAs", wrote identical letters to the Governor of the State indicating that they had been elected as MLAs on Bharatiya Janata Party tickets, but had become disillusioned with the functioning of the Government headed by Shri B.S. Yeddyurappa and were convinced that a situation had arisen in which the Government of the State could not be carried on in accordance with the provisions of the Constitution and that Shri Yeddyurappa had forfeited the confidence of the people as the Chief Minister of the State. Accordingly, in the interest of the State and the people of Karnataka, the legislators expressed their lack of confidence in the Government headed by Shri B.S. Yeddyurappa and withdrew their support to the said Government. The contents of one of the aforesaid letters dated 6th October, 2010, are reproduced hereinbelow : "His Excellency,

I was elected as an MLA on BJP ticket.

I being an MLA of the BJP got disillusioned with the functioning of the Government headed by Shri B.S. Yeddyurappa. There have been widespread corruption, nepotism, favouritism, abuse of power, misusing of government machinery in the functioning of the government headed by Chief Minister Shri B.S. Yeddyurappa and a situation has arisen that the governance of the State cannot be carried on in accordance with the provisions of the Constitution and Shri Yeddyurappa as Chief Minister has forfeited the confidence of the people. In the interest of the State and the people of Karnataka I hereby express my lack of confidence in the government headed by Shri B.S. Yeddyurappa and as such I withdraw my support to the

Government headed by Shri B.S. Yeddyurappa the Chief Minister. I request you to intervene and institute the constitutional process as constitutional head of the State.

With regards,

I remain

Yours faithfully,

Shri H.R. Bharadwaj,

His Excellency Governor of Karnataka,

Raj Bhavan, Bangalore."

Five independent MLAs also expressed lack of confidence and withdrew support to the Government led by Shri B.S. Yeddyurappa.

4. On the basis of the aforesaid letters addressed to him, the Governor addressed a letter to the Chief Minister, Shri B.S. Yeddyurappa, on the same day (6.10.2010) informing him that letters had been received from 13 BJP MLAs and 5 independent MLAs, withdrawing their support to the Government. A doubt having arisen about the majority support enjoyed by the Government in the Legislative Assembly, the Governor requested Shri Yeddyurappa to prove that he still continued to command the support of the majority of the Members of the House by introducing and getting passed a suitable motion expressing confidence in his Government in the Legislative Assembly on or before 12th October, 2010 by 5 p.m. In his letter he indicated that the Speaker had also been requested accordingly. On the very same day, Shri B.S. Yeddyurappa, as the leader of the BJP Legislature Party in the Karnataka Legislative Assembly, filed an application before the Speaker under Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, being Disqualification Application No.1 of 2010, praying to declare that all the said thirteen MLAs elected on BJP tickets had incurred disqualification in view of the Tenth Schedule to the Constitution.

5. As will appear from the materials on record, Show-Cause notices were thereafter issued to all the 13 MLAs on 7th October, 2010, informing them of the Disqualification Application filed by Shri Yeddyurappa stating that having been elected to the Assembly as Members of the BJP, they had unilaterally submitted a letter on 6th October, 2010 to the Governor against his Government withdrawing the support given to the Government under his leadership. The Appellants were informed that their act was in violation of paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India and it disqualified them from continuing as Members of the Legislature. Time was given to the Appellants till 5 p.m. on 10th October, 2010, to submit their objections, if any, to the application. They were also directed to appear in person and submit their objections orally or in writing to the Speaker, 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.

6. It also appears that replies were submitted by the Appellants to the Speaker on 9th October, 2010 indicating that having come to learn from the media that a Show-Cause notice had been issued as per the orders of the Speaker and had been 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, they had the contents of the notices read out to them on the basis whereof interim replies to the Show-Cause notices were being submitted. In the interim replies filed by the Appellants on 9th October, 2010, it was categorically indicated that the interim reply was being submitted, without prejudice and by way of abundant caution, as none of the documents seeking disqualification had either been pasted on the doors of the MLA quarters or forwarded to the Appellants along with the Show- Cause notice. Similarly, a copy of the Governor's letter, which was made an enclosure to the Show- Cause notice, was also not pasted on the doors of the residential quarters of the Appellants or otherwise served on them personally. A categorical request was made to the Speaker to supply the said documents and the Appellants reserved their right to give exhaustive replies after going through the aforesaid enclosures to the Show-Cause notice as and when supplied.

7. Having said this, the Appellants submitted 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 with the Show-Cause notice. The notice dated 7th October, 2010 called upon the Appellants to appear and reply by 5 p.m. on 10th October, 2010, which was in flagrant violation of Rule 7 of the aforesaid Rules which laid down a mandatory procedure for dealing with a petition seeking disqualification filed under the Rules.

8. It was pointed out that Rule 7 requires that the Appellants had to be given 7 days' time to reply or such further period as the Speaker may for sufficient cause allow. Under the said Rule the Speaker could only extend the period of 7 days, but could not curtail the time from 7 days to 3 days. It was the categorical case of the Appellants that the minimum notice period of 7 days was a 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. Yeddyurappa on the Floor of the House at 11 a.m. on 11th October, 2010. It was contended that the Show- Cause notices was ex-facie unconstitutional and illegal, besides being motivated and mala fide and devoid of jurisdiction.

9. 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 BJP, but only to the Government headed by Shri Yeddyurappa as the leader of the BJP in the House. It was contended that withdrawing of support from the Government headed by Shri B.S. Yeddyurappa as the Chief Minister of Karnataka did not fall within the scope and purview of the Tenth Schedule to the Constitution of India. It was urged that the conduct of the Appellants did not fall within the meaning of "defection" or within the scope of paragraph 2(1)(a) of the Tenth Schedule or the scheme and object of

the Constitution of India. It was further emphasized that even prima facie, "defection" means leaving the party and joining another, which is not the case as far as the Appellants were concerned who had not left the BJP at all. It was repeatedly emphasized in the reply to the Show-Cause notice that the Appellants had chosen to withdraw their support only to the Government headed by Shri B.S. Yeddyurappa as Chief Minister, as he was corrupt and encouraged corruption, and not to the BJP itself, which could form another Government which could be led by any other person, other than Shri Yeddyurappa, to whom the Appellants would extend support. In the reply to the Show-Cause notice it was, inter alia, stated

as follows :-

"My letter submitted to H.E. Governor of Karnataka of withdrawing the support from the Government headed by Shri B.S. Yeddyurappa as Chief Minister of the State is an act of an honest worker of the BJP party and a member of the Legislative Assembly to salvage the image and reputation of the BJP or the BJP as such. In fact my letter is aimed at cleansing the image of the party by getting rid of Shri B.S. Yeddyurappa as Chief Minister of the State who has been acting as a corrupt despot in violation of the Constitution of India and contrary to the interests of the people of the State."

10. It was also categorically stated that as disciplined soldiers of the BJP the Appellants would continue to support any Government headed by a clean and efficient person who could provide good governance to the people of Karnataka. The Appellants appealed to the Speaker not to become the tool in the hands of a corrupt Chief Minister and not to do anything which could invite strictures from the judiciary. A request was, therefore, made to withdraw the Show-Cause notices and to dismiss the petition dated 6th October, 2010 moved by Shri B.S. Yeddyurappa, in the capacity of the leader of the Legislature Party of the Bharatiya Janata Party and also as the Chief Minister, with mala fide intention and the oblique motive of seeking disqualification of the answering MLAs and preventing them from voting on the confidence motion on 11th October, 2010.

11. The Speaker took up the Disqualification Application No.1 of 2010 filed by Shri B.S. Yeddyurappa, the Respondent No.1 herein, along with the replies to the

Show-Cause notices issued to the thirteen MLAs, who had submitted individual letters to the Governor indicating their withdrawal of support to the Government led by Shri Yeddyurappa. Except for Shri M.P. Renukacharya and Shri Narasimha Nayak, all the other MLAs were represented by their learned advocates before the Speaker. It was noticed during the hearing that Shri Renukacharya had subsequently filed a petition stating that he continued to support the Government and also prayed for withdrawal of any action proposed against him. He reiterated his confidence in the Government headed by Shri Yeddyurappa and alleged that a fraud had been perpetrated at the time when the individual letters were submitted to the Governor and that he had no intention of withdrawing support to the Government in which he had full confidence. A similar stand was taken on behalf of Shri Narasimha Nayak also. In addition to the above, an affidavit along with supporting documents, affirmed by one Shri K.S. Eswarappa, State President of the Bharatiya Janata Party (B.J.P.) was filed and it was taken into consideration by the Speaker. On the basis of the above, the following two issues were framed by the Speaker :

"(a) Whether the respondents are disqualified under paragraph 2(1)(a) of Tenth Schedule of the Constitution of India, as alleged by the Applicant?

(b) Is there a requirement to give seven days' time to the respondents as stated in their objection statement?"

12. Answering the aforesaid issues, the Speaker arrived at the finding that after having been elected from a political party and having consented and supported the formation of a Government by the leader of the said party, the respondents, who are the Appellants herein, other than Shri M.P. Renukacharya and Shri Narasimha Nayak, had voluntarily given up their membership of the party by withdrawing support to the said Government. In arriving at such a conclusion, the Speaker took into consideration the allegations made by Shri Yeddyurappa that after submitting their respective letters to the Governor withdrawing support to the Government, the said respondents had gone from Karnataka to Goa and other places and had declared that they were a separate group and that they were together and that they had withdrawn their support to the Government. The Speaker also took

personal notice of statements alleged to have been made by the Appellants and observed that they had not denied the allegations made by Shri Yeddyurappa that they had negotiated with the State Janata Dal, its members and leader, Shri H.D. Kumaraswamy, regarding formation of another Government. In support of the same, the Speaker relied on media reports and the affidavit filed by Shri Eswarappa. The Speaker recorded that the same had not been denied by the Appellants herein.

13. Referring to the Tenth Schedule and certain decisions of this Court as to how statutory provisions are to be interpreted in order to avoid mischief and to advance remedy in the light of Heyden's Rule, the Speaker extracted a portion of a passage from Lord Denning's judgment in Seaford Court Estates Ltd. v. Asher, wherein Lord Denning had stated that a Judge must not alter the material of which the Act is woven, but he can and should iron out the creases. The Speaker was of the view that in the event of a difference of opinion regarding leadership in a political party, the matter had to be discussed in the platform of the party and not by writing a letter to the Governor withdrawing support to the Government. The Speaker also observed that the Governor never elects the leader of the legislature party. Accordingly, from the conduct of the Appellants in writing to the Governor that they had withdrawn support, joining hands with the leader of another party and issuing statements to the media, it was evident that by their conduct the Appellants had become liable to be disqualified under the Tenth Schedule. In coming to the said conclusion, the Speaker placed reliance on several decisions of this Court and in particular, the decision in Ravi S. Naik v. Union of India [(1994) Suppl.2 SCC 641], wherein the question of a member voluntarily giving up his membership of a political party was considered in detail. Special emphasis was laid on the observation made in the said decision to the effect that a person can voluntarily give up his membership of a political party even though he may not have tendered his resignation from the membership of the party. In the said decision it was further observed that even in the absence of a formal resignation from membership, an inference could be drawn from the conduct of a member that he had voluntarily given up his membership of the political party to which he belonged.

14. The Speaker also referred to and relied on the decision of this Court in Jagjit Singh v. State of Haryana [(2006) 11 SCC 1], wherein, it was expressed that to determine whether an independent member had joined a political party, the test to be considered was whether he had fulfilled the formalities for joining a political party. The test was whether he had given up his independent character on which he was elected by the electorate.

15. Yet another decision relied upon by the Speaker was the decision in Rajendra Singh Rana & Ors. v. Swami Prasad Maurya & Ors. [(2007) 4 SCC 270], wherein the question of voluntarily giving up membership of a political party was also under consideration. The Speaker relied on paragraphs 48 and 49 of the said judgment, wherein it was indicated that the act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government would itself amount to an act of voluntarily giving up the membership of the party on whose ticket the member was elected.

16. The Speaker observed that the Appellants herein had not denied their conduct anywhere and had justified the same even during their arguments. The Speaker was of the view that by their conduct the Appellants had voluntarily given up the membership of the party from which they were elected, which attracted disqualification under the Tenth Schedule. The Speaker further held that the act of withdrawing support and acting against the leader of the party from which they had been elected, amounted to violation of the object of the Tenth Schedule and that any law should be interpreted by keeping in mind the purpose for which it was enacted.

17. The Speaker then took note of the retraction by Shri M.P. Renukacharya and Shri Narasimha Nayak, indicating that they had no intention of withdrawing support to the Government led by Shri Yeddyurappa and that they extended support to the party and the Government and their elected leader. The Speaker also relied on the affidavit filed by Shri K.S. Eswarappa and on considering the same, arrived at the decision that the said two MLAs were not disqualified under the Tenth Schedule of the Constitution. As far as the Appellants are concerned, the Speaker held that in view of the reasons stated and the factual background, he was convinced that they

were disqualified from their respective posts of MLAs under paragraph 2(1)(a) of the Tenth Schedule of the Constitution.

18. The Speaker then took up the objection taken on behalf of the Appellants herein that the Show-Cause notice to the Appellants had been issued in violation of the provisions of Rules 6 and 7 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986, hereinafter referred to as "the Disqualification Rules,1986", inasmuch as, they were not given seven days' time to reply to the Show-Cause notice, as contemplated by Rule 7(3) of the aforesaid Rules. The Speaker, without answering the objection raised, skirted the issue by stating that it was sufficient for attracting the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India that the Appellants herein had admitted that they had withdrawn support to the Government. The Speaker further recorded that the Appellants had been represented by counsel who had justified the withdrawal of support and "recognizing themselves with the leader and MLAs of another party". Without giving details, the Speaker observed that this Court had stated that the Disqualification Rules were directory and not mandatory as they were to be followed for the sake of convenience. The stand taken by the Speaker was that since the Appellants had appeared and filed objection and submitted detailed arguments, the objection taken with regard to insufficient time being given in violation of the Rules to reply to the Show-Cause notice, was only a technical objection and was not relevant to a decision in the matter. On the basis of his aforesaid reasoning, the Speaker rejected the objection filed on behalf of Appellants and went on to disqualify the Appellants herein under paragraph 2(1)(a) of the Tenth Schedule to the Constitution with immediate effect. The application seeking disqualification of Shri M.P. Renukacharya and Shri Narasimha Nayak was dismissed.

19. The Appellants herein challenged the decision of the Speaker in Writ Petition Nos.32660-32670 of 2010, which were listed for hearing before the Chief Justice of Karnataka and the Hon'ble Mr. Justice N. Kumar. In his judgment, the Hon'ble Chief Justice took up the objections taken on behalf of the Appellants herein, beginning with the objection that the application for disqualification filed by Shri

Yeddyurappa was not in conformity with Rules 6 and 7 of the Defection Rules. Referring to Sub-rules (5) and (6) of Rule 6, the Chief Justice held that there had been substantive compliance with the said Rules which had been held to be directory in nature and that it would not be possible merely on account of the violation of the procedure contemplated under the Rules to set aside the order of the Speaker, unless the violation of the procedure was shown to have resulted in prejudice to the Appellants. Repeating the reasons given by the Speaker to reject the objection of the Appellants on the aforesaid score and relying on the judgments rendered by this Court in Ravi S. Naik's case (supra) and in the case of Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council & Ors. [(2004) 8 SCC 747] the Chief Justice held that it was not possible to accept the contentions of the learned counsel for the Appellants and rejected the same.

20. On the second contention relating to violation of the rules of natural justice and the proceedings conducted by the Speaker in extreme haste, thereby depriving the Appellants of a reasonable opportunity of defending themselves, the Chief Justice, placing reliance on the decision in Ravi S. Naik's case (supra), negated the submissions made on behalf of the Appellants upon holding that since no prejudice had been caused to the Appellants, it was difficult to accept the contention advanced on their behalf that the entire proceedings of the Speaker deserved to be set aside.

21. Regarding the other objection taken on behalf of the Appellants on the question of reliance having been placed on the affidavit filed by the State President of the Bharatiya Janata Party, the Chief Justice held that none of the Appellants had disputed the factual position expressed in the newspaper cuttings which formed part of the affidavit and that the submission made on behalf of the Appellants that had they been afforded proper time to deal with the said affidavit, they would have been able to show that the facts recorded in the newspaper article were incorrect, was, therefore, without any basis.

22. On the main question as to whether the action of the Appellants had attracted the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution, the Chief Justice came to a categorical finding that the Appellants had defected from

the Bharatiya Janata Party and had voluntarily given up their membership thereof. Furthermore, while doing so, the Appellants had indicated that the constitutional machinery had broken down leading to a situation where the governance of the State could not be carried on in accordance with the Constitution and requested the Governor to intervene and institute the constitutional process as the constitutional head of the State. Referring to the wordings of Article 356 of the Constitution which provides for proclaiming President's Rule in a State where it was no longer possible to carry on the governance of the State in accordance with the provisions of the Constitution of India, the Chief Justice agreed with the view expressed by the Speaker that by withdrawing support from the Government led by Shri Yeddyurappa, the Appellants had voluntarily chosen to disassociate themselves from the Bharatiya Janata Party with the intention of bringing down the Government.

23. The Chief Justice also rejected the allegations of mala fide on account of the speed with which the Speaker had conducted the disqualification proceedings within five days i.e. one day ahead of the Trust Vote which was to be taken by Shri Yeddyurappa on the Floor of the Assembly. The Chief Justice, accordingly, found no merit in any of the contentions raised on behalf of the Appellants and holding that the order of the Speaker did not suffer from any infirmity, dismissed the Writ Petitions filed by the Appellants.

24. Mr. Justice N. Kumar, who, along with the Chief Justice, heard the writ petition filed by the Appellants herein, in his separate judgment, differed with the views expressed by the Chief Justice in regard to the interpretation of paragraph 2(1)(a) of the Tenth Schedule of the Constitution. Observing that in a parliamentary democracy the mandate to rule the State is given not to any individual but to a political party, the learned Judge further observed that the Council of Ministers headed by the Chief Minister can continue in the office as long as they enjoyed the confidence of the majority of the Members of the House. If the House expressed no confidence in the Chief Minister, it was not only the Chief Minister, but his entire Council of Ministers who cease to be in office. Regarding interpretation of the provisions of paragraph 2(1)(a) of the Tenth Schedule of the Constitution, Kumar,J., referred to the decisions rendered by this Court in - (1) Kihoto Hollohan

v. Zachillhu & Ors. [(1992) Supp.2 SCC 651]; (2) G. Viswanathan v. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras & Anr. [(1996) 2 SCC 353]; (3) Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council & Ors. [(2004) 8 SCC 747]; and (4) Rajendra Singh Rana & Ors v. Swami Prasad Maurya & Ors. [(2007) 4 SCC 270], and held that from the scheme of the Tenth Schedule it was clear that the same applied only to a Member of the House. Such Member could be elected on the ticket of any political party or as an Independent, but a member of a political party who is elected as a Member of the House, would automatically become a member of the Legislature Party in the said House. The learned Judge held that paragraph 2 of the Tenth Schedule deals with disqualification of Members of the House. The learned Judge also held that paragraph 2(1) deals with disqualification of a Member of a House who belongs to a political party, while paragraph 2(2) deals with disqualification of a Member of a House elected as an Independent. In the case of a Member of a House elected as an Independent candidate, the question of his voluntarily giving up his membership of a political party would not arise. Similarly, when he did not belong to any political party, the question of voting or abstaining from voting in such House contrary to the directions issued by the political party would not arise. The learned Judge observed that once a person gets elected as an Independent candidate, the mandate of the voters is that he should remain independent throughout his tenure in the House and under no circumstances could he join any political party. However, in the case of a Member of the House belonging to a political party, the disqualification occurs when he voluntarily gives up the membership of that political party. It is because of the mandate of the people that he should continue to be the member of that political party which set him up as a candidate for the election. He was, however, free to give up his membership of the party, but for the said purpose he had to resign from the membership of the House as well as the membership of the political party and then contest the election in the vacancy caused because of his resignation and then only he would have an independent course of choice.

25. After analyzing the intent behind the inclusion of the Tenth Schedule to the Constitution, the learned Judge also observed that the anti-defection law was enacted to prevent floor crossing and destabilizing the Government which is duly

elected for a term. If, however, a Member of the House voluntarily gave up his membership of a political party, the object of the anti-defection law was to prevent him from extending support to the opposition party to form the Government by his vote or to ensure that if he has resigned from the membership of a party, his support was not available for forming an alternative Government by the opposition party. The learned Judge observed that if a Member violates the above conditions, the Parliament has taken care to see by enacting the Tenth Schedule that such Member would be instantly disqualified from being a Member of the House. Once the act of disqualification occurred, the question of condoning such act or taking him back to the party on his tendering an apology or expressing his intention to come back to the party, would not arise. Therefore, if the act falls within the ambit of paragraph 2(1)(a) of the Tenth Schedule, his membership becomes void. However, if such disqualification was incurred under paragraph 2(1)(b), such disqualification did not render his membership void but it was voidable at the option of the political party.

26. The learned Judge went on to further hold that when a Member of a House expressed his no- confidence in the leader of a Legislature Party and if he happened to be the Chief Minister who is heading the Council of Ministers and had written to the Governor in that regard, such act by itself would not amount to an act of floor crossing. Similarly, if the Governor, after taking note of the expression of no-confidence, was satisfied that the Chief Minister had lost majority support in the House, he could call upon the Chief Minister to prove his majority on the Floor of the House. It was further observed that if the Chief Minister, on such request, failed to establish that he enjoyed the support of the majority of the Members, his Ministry would fall, but such act of the Member of the House would not constitute `defection' under the Tenth Schedule. By such act, the political party which had formed the Government, would not lose its right to form a Government again. It is not as if the Governor can recommend the imposition of President's Rule under Article 356 of the Constitution or call upon the leader of the opposition to form an alternative Government after the fall of the earlier Government. Before embarking upon either of the two options, the Governor was expected to explore the possibility of formation of an alternative Government. The Speaker could call upon the leader who enjoyed the majority support of the Members of the House to form

an alternative Government. In such case it was open to the political party, whose Government had fallen on the Floor of the House, to once again stake a claim before the Governor, either with the same leader or another leader elected by the party, by showing the majority support of the Members of the House. In that a situation, the stability of the Government of the political party is not disturbed. On the other hand, what is disturbed by such an act is the Government of the political party with a particular leader in whom the Members of the House belonging to the same political party have no confidence. But this would not mean that the member of the political party to which the Chief Minister belonged had given up his membership of the political party. Other provisions have been made in the Constitution for dealing with such dissenting members. In such a case, by issuing a whip, those who had expressed their no-confidence in the leader of the House, can be directed to vote in his favour at the time of voting on the floor of the House. Once such direction is given, the member concerned can neither abstain from voting nor vote contrary to the direction. If he does so, he incurs disqualification under paragraph 2(1)(b) of the Tenth Schedule to the Constitution. The learned Judge observed further that, in fact, the said provision also provides for such an act being condoned so that by persuasion or by entering into an understanding, their support could still be relied upon by the party to save the Government before voting or in forming a fresh Government after such voting, if in the voting the Government fails. The said dissent amounts to the dissent within the party itself.

27. The learned Judge observed that the two grounds set out in paragraph 2 of the Tenth Schedule to the Constitution are mutually exclusive and operate in two different fields. While paragraph 2(1)(a) deals with the Member who voluntarily walks out of the party, paragraph 2(1)(b) deals with the Member who remains in the party but acts in a manner which is contrary to the directions of the party. The learned Judge, however, went on to observe that if a Member voluntarily gives up his membership from the party, then paragraph 2(1)(b) is no longer attracted. In either event, it is the political party which is aggrieved by such conduct. However, it was left to the party to condone the conduct contemplated in paragraph 2(1)(b), but such conduct would have to be condoned within 15 days from the date of such voting or abstention.

28. Having dealt with the various decisions referred to hereinabove, the learned Judge came to the conclusion that it was clear that an act of no confidence in the leader of the legislative party does not amount to his voluntarily giving up the membership of the political party. Similarly, his act of expressing no confidence in the Government formed by the party, with a particular leader as Chief Minister, would not also amount to a voluntary act of giving up the membership of the political party. The learned Judge further observed that deserting the leader and deserting the Government is not synonymous with deserting the party. If a Minister resigned from the Ministry, it would not amount to defection. What constitutes defection under paragraph 2(1)(a) of the Tenth Schedule is deserting the party. The learned Judge observed that dissent is not defection and the Tenth Schedule while recognising dissent prohibits defection.

29. The learned Judge also considered the case of Shri M.P. Renukacharya and Shri Narasimha Nayak, who were among the 13 members against whom the disqualification petition had been filed by the Chief Minister. The learned Judge pointed out that along with the Appellants herein, the aforesaid two members had also signed a representation which had been given to the Governor and if such an act would amount to voluntarily giving up the membership of a political party and the case fell within paragraph 2(1)(a), the disqualification becomes automatic and the membership of such persons becomes void. The question of those members retracting their steps and reaffirming their confidence in the Chief Minister and the Party President confirming the same on a subsequent date, is of no consequence. The learned Judge held that the same yardstick had not been applied for the Appellants and the two other members against whom the disqualification petition filed by the Chief Minister was dismissed.

30. Expressing his views with regard to the manner in which the Speaker had acted in the matter in hot haste, the learned Judge referred to paragraphs 180, 181 and 182 of the decision rendered by this Court in Kihoto Hollohan's case (supra), which was the minority view, but had suggested that the office of the Speaker which was attached with great dignity should not be made the target of bias since his tenure as Speaker is dependent on the will of the majority of the House. While holding that right to dissent is the essence of democracy, for the

success of democracy and democratic institutions honest dissent is to be respected by persons in authority. On the basis of his aforesaid conclusions, the learned Judge held that the order of the Speaker impugned in the writ petition was in violation of the constitutional mandate and also suffered from perversity and could not, therefore, be sustained. The impugned order of the Speaker was, therefore, set aside by the learned Judge.

31. On account of such difference of opinion between the Chief Justice and his companion Judge, the matter was referred to a third Judge to consider the following issue :-

"Whether the impugned order dated 10.10.2010 passed by the Speaker of the Karnataka State Legislative Assembly is in consonance with the provisions of paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India."

32. On the basis of the said reference, the matter was referred to the Hon'ble Mr. Justice V.G. Sabhahit, who by his judgment and order dated 29th October, 2010, concurred with the decision rendered by the Chief Justice upholding the order passed by the Speaker. As a result, the majority view in the writ petitions was that the Hon'ble Speaker was justified in holding that the Appellants herein had voluntarily resigned from their membership of the Bharatiya Janata Party by their conduct, which attracted the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution and were rightly disqualified from the membership of the House.

33. Mr. R.F. Nariman, learned Senior Advocate, appearing for the Appellants in SLP(C)Nos.33123- 33155 of 2010, Balchandra L. Jarkiholi & Ors. v. B.S. Yeddyurappa & Ors. (now appeals), questioned the order of the Speaker dated 10th October, 2010, disqualifying the Appellants from membership of the House, on grounds of mala fide and violation of Rules 6(5)(b) and 7(3) of the Disqualification Rules, 1986, as also the principles of natural justice. Contending that the order passed by the Speaker on 10th October, 2010, was vitiated by mala fides, Mr. Nariman submitted that the same had been passed with the oblique motive of preventing the Appellants from participating in the Trust Vote which was to be taken by the Chief Minister on 11th October, 2010. Learned counsel also

submitted that the letters dated 6th March, 2010, addressed by the Appellants individually along with Shri M.P. Renukacharya and Shri Narasimha Nayak to the Governor did not even suggest that they had intended to leave the Bharatiya Janata Party or to join another political party but that they were disillusioned with the functioning of the Government under Shri B.S. Yeddyurappa and had, therefore, decided to withdraw support to the Government headed by him. Furthermore, apart from mentioning that the Appellants had written to the Governor withdrawing their support to the Government, the Disqualification Application does not also contain any averment that the Appellants had met any person from any other political party. Although certain press statements had been mentioned in the petition, the same had not been annexed to the application. Mr. Nariman submitted that, in fact, no documentary evidence was at all annexed to the said application.

34. In addition to the above, Mr. Nariman also pointed out that the Disqualification Application had not been properly verified in terms of Rules 6(6) of the Disqualification Rules, 1986, and that the said application was, therefore, liable to be rejected on such ground also. Instead of rejecting the application or even returning the same for proper verification, the Speaker chose to ignore the shortcomings and issued Show-Cause notices to the Appellants in undue haste with the oblique motive of disqualifying them from the membership of the House prior to the Trust Vote to be taken on 11th October, 2010. Applications sans annexures were not even served on the Appellants, but merely pasted on the doors of the official residence of the Appellants which were locked since the Assembly was not in session. Mr. Nariman submitted that the Appellants were granted time till 5.00 p.m. on 10th October, 2010, to respond to the Show-Cause notices although Rule 7(3) provided for seven days' time or more to respond to such an application. Instead, in complete violation of the said Rules, the Appellants were given only three days' time to respond to the Show-Cause notices and even more serious objection was taken by Mr. Nariman that it was in the Show-Cause notices that for the first time, it was stated that the actions of the Appellants were in violation of paragraph 2(1)(a) of the Tenth Schedule of the Constitution, although no such specific averment had been made by the Respondent No.1 in his application. It was urged that on account of the short time

given by the Speaker to the Appellants to respond to the Show- Cause notices, they could only submit an interim reply of a general nature and it had been categorically mentioned that on receipt of all the documents on which reliance had been placed, a detailed response would be given to the Show-Cause notices. Mr. Nariman contended that certain documents were made available to the learned Advocate of the Appellants just before the hearing was to be conducted before the Speaker on 10th October, 2010, which contained facts which could be answered only by the Appellants personally. However, since the Appellants were not available in Karnataka at the relevant point of time, it was not possible for the learned Advocate appearing on their behalf to respond to the issues raised in the additional documents. It was submitted that the Speaker acted against all principles of natural justice and the propriety in taking on record the affidavit affirmed by the State President of the Bharatiya Janata Party Shri K.S. Eswarappa, with the sole intention of supplying the inadequacies in the Disqualification Application filed by Shri Yeddyurappa. In addition, the Speaker also took into consideration the statements of retraction made by Shri M.P. Renukacharya and Shri Narasimha Nayak and allowed the same, whereafter they proceeded to make allegations against the Appellants that they had intended to remove the BJP Government and to support any Government led by Shri H.D. Kumaraswamy. Mr. Nariman submitted that the Speaker had applied two different yardsticks as far as the Appellants and Shri M.P. Renukacharya and Shri Narasimha Nayak are concerned, despite the fact that they too had written identical letters to the Governor withdrawing support to the Government led by Shri Yeddyurappa. Mr. Nariman submitted that once Shri M.P. Renukacharya and Shri Narasimha Nayak had written to the Governor expressing their decision to withdraw support to the Government headed by Shri Yeddyurappa, the provisions of paragraph 2(1)(a) of the Tenth Schedule came into operation immediately and the Speaker was no longer competent to reverse the same.

35. Mr. Nariman submitted that the action taken by the Speaker on the Disqualification Application filed against Shri M.P. Renukacharya and Shri Narasimha Nayak made it obvious that such steps were taken by the Speaker to save the membership of the said two MLAs to enable them to participate in the Trust Vote. It was also submitted that to make matters worse, the Speaker took

personal notice about the statements allegedly made by the Appellants to the effect that they wanted to topple the BJP Government and to form a new Government with the others. It was submitted that while performing an adjudicatory function under the Tenth Schedule, while holding a highly dignified office, all personal knowledge which the Speaker may have acquired, should not have been taken into consideration in taking a decision in the matter. In this regard, Mr. Nariman referred to the decision of this Court in S. Partap Singh v. State of Punjab [(1964) 4 SCR 733], wherein it was held that if while exercising a power, an authority takes into account a factor which it was not entitled to, the exercise of the power would be bad. However, where the purpose sought to be achieved are mixed, some relevant and some not germane to the purpose, the difficulty is resolved by finding the dominant purpose which impelled the action and where the power itself is conditioned by a purpose, such exercise of power was required to be invalidated.

36. Mr. Nariman submitted that at every stage the Speaker had favoured Shri Yeddyurappa and even though Rule 7(2) of the 1986 Rules provided for the dismissal of the petition which did not comply with the requirements of Rule 6, as in the present case, the Speaker did not do so. Even the period of seven days' which was required to be granted to allow the Appellants to respond to the Show-Cause notices, only three days' time was given to the Appellants to submit their response which could be done only in a hurried manner for an interim purpose and despite the request made by the Appellants to the Speaker to postpone the date in order to give the Appellants a proper opportunity of responding to the allegations contained in the Show-Cause notices, such request was turned down thereby denying the Appellants a proper opportunity of representing their case, particularly when neither the Show-Cause notices nor the Disqualification Application filed by Shri Yeddyurappa along with all annexures had been supplied to the Appellants.

37. Referring to the decisions which had been mentioned by the Speaker in his order, Mr. Nariman pointed out that both in Mahachandra Prasad Singh's case and also in Ravi S. Naik's case (supra), this Court had held that the 1986 Rules were only directory in nature and that as a result the order dated 10th October, 2010, could be questioned not only on the ground of violation of the Rules, but in the

facts of the case itself. It was pointed out that in Mahachandra Prasad Singh's case it had never been disputed that the petitioner therein had been elected to the Legislative Council on an Indian National Congress ticket and had contested Parliamentary elections as an independent candidate. It was submitted that it was in such background that this Court had held that non-supply of a copy of the letter of the Leader of the Congress Legislative Party had not caused any prejudice to the petitioner. Mr. Nariman reiterated that the Appellants had all said in separate voices that they had not left the BJP and had only withdrawn support to the Government led by Shri Yeddyurappa and that they were ready to support any new Government formed by the BJP, without Shri Yeddyurappa as its leader.

38. Mr. Nariman also referred to the decision of this Court in Kihoto Hollohan's case (supra) and urged that the order of disqualification passed against the Appellants for merely expressing their disagreement with the manner of functioning of the Respondent No.1 as Chief Minister, had not only impinged upon the Appellants' right of free speech, as guaranteed under Article 19(1)(a) of the Constitution, but from a bare reading of the letter dated 6th October, 2010, written by the Appellants to the Governor, it could not be held that the same indicated their intention to voluntarily give up the membership of the BJP. Mr. Nariman submitted that the impugned orders and the order of the Speaker dated 10th October, 2010, were unsustainable since they had been engineered to prevent the Appellants from participating in the Vote of Confidence fixed on 11th October, 2010.

39. Mr. P.P. Rao, learned Senior Advocate, who appeared for the Appellants in the Civil Appeals arising out of Special Leave Petition (Civil) Nos.33533-33565 of 2010, submitted that in order to attract the disqualification clause under paragraph 2(1)(a) of the Tenth Schedule, Shri Yeddyurappa had first to establish that the Appellants had voluntarily given up their membership of the BJP. It was submitted that in the Disqualification Application filed by Shri Yeddyurappa, there is no averment to the said effect and what has been averred is that the Appellants had withdrawn their support to his government and had informed the Governor of Karnataka about their decision, despite there being no decision in the party in this regard, which made such action a clear violation of the Tenth Schedule to the

Constitution. Mr. Rao submitted that the Disqualification Application did not even refer to paragraph 2(1)(a) of the Tenth Schedule to the Constitution and that the same should, therefore, have been rejected by the Speaker in terms of Rule 6(2) of the 1986 Rules.

40. Reiterating Mr. Nariman's submissions, Mr. Rao submitted that withdrawal of support by the Appellants to the Government led by Shri Yeddyurappa did not amount to voluntarily relinquishing the membership of the BJP since the Government led by a particular leader and the political party are not synonymous. Mr. Rao also urged that asking the Governor to institute the constitutional process for replacing one Chief Minister by another, did not also amount to voluntary relinquishment of the membership of the party. According to Mr. Rao, withdrawal of support to the incumbent Chief Minister and intimation thereof to the Governor, could, at best, be said to be a pre-voting exercise in regard to the Vote of Confidence sought by the Chief Minister, but the question of disqualification will arise only if the Appellants voted in the House contrary to the directions of the whip issued by the BJP. However, even such a transgression could be condoned by the party within 15 days of such voting. Mr. Rao submitted that announcement of withdrawal of support to the Chief Minister before actual voting in violation of the whip would not bring the case within the ambit of paragraph 2(1)(a) of the Tenth Schedule to the Constitution and make him liable to disqualification.

41. Mr. Rao submitted that the minority view taken by N. Kumar, J. that "dissent" could not be regarded as defection was a correct view and did not amount to voluntarily relinquishing membership of the political party, since such act expresses a lack of confidence in the leader of the party, but not in the party itself. Quoting the minority view expressed by N. Kumar, J., Mr. Rao submitted that the object of paragraph 2(1)(a) was not to curb internal democracy or the right to dissent, since dissent is the very essence of democracy, but neither the Chief Justice nor V.G. Sabhahit, J. even adverted to such basic principle of Parliamentary democracy and erred in equating withdrawal of support to the Government led by Shri B.S. Yeddyurappa with withdrawing support to the BJP Government. According to Mr. Rao, the Appellants were only doing their duty as conscious citizens to expose the corruption and nepotism in the Government led

by Shri B.S. Yeddyurappa. Mr. Rao referred to and relied upon the decisions of this Court in (1) State of M.P. v. Ram Singh [(2000) 5 SCC 88] and (2) B.R. Kapur v. State of T.N. [(2001) 7 SCC 231], wherein, such sentiments had also been expressed. Mr. Rao contended that it is a well-settled principle of law that when a power is conferred by the Statute and the procedure for executing such power is prescribed, the power has to be exercised according to the procedure prescribed or not at all. In this regard, Mr. Rao referred to the celebrated decision of the Privy Council in Nazir Ahmad v. King Emperor [63 Indian Appeals 372] and State of U.P. v. Singhara Singh [(1964) 4 SCR 485]. Mr. Rao urged that the 1986 Rules had a statutory flavour and had to be treated as part of the Representation of the Peoples Act, 1951. Going one step further, Mr. Rao also urged that the Rules and Administrative Instructions lay down certain norms and guidelines and violation thereof would attract Article 14 of the Constitution and even if the said Rules were directory, they had to be substantially complied with.

42. Mr. Rao also contended that the order of disqualification passed by the Speaker was vitiated by mala fide on the part of the Chief Minister Shri Yeddyurappa, who filed the application for disqualification with the deliberate intention of preventing the Appellants from participating in the Trust Vote to be taken on 11th October, 2010. It was urged that such mala fide acts on the part of the Speaker would be evident from the fact that although the Disqualification Application did not conform to Rules 6(4), (6) and (7) of the 1986 Rules read with Order VI Rule 15(2)(4) of the Code of Civil Procedure, the same was entertained by the Speaker and a separate page of verification was subsequently inserted, which ought not to have been permitted by the Speaker. Mr. Rao reiterated the submissions made by Mr. Nariman that the Disqualification Application was liable to be dismissed under Rule 7(2) of the aforesaid Rules which says that "if the petition does not comply with the requirement of Rule 6, the Speaker shall dismiss the petition and intimate the petitioner". Despite the fact that the application was not properly verified, the same was not dismissed. Mr. Rao submitted that in blatant disregard of the above-mentioned Rules, the Speaker had entertained the defective petition filed by Shri Yeddyurappa in complete disregard of Rules 6 and 7 of the 1986 Rules. It was submitted that the said steps were taken by the Speaker in a partisan manner and against the highest traditions of the Office of the

Speaker with the obvious intention of bailing out the Chief Minister to whom he owed his Chair as Speaker, which he could lose if the Chief Minister failed to win the Vote of Confidence in the Assembly.

43. Mr. Rao repeated Mr. Nariman's submissions regarding the purported violation of Rule 7(3) of the 1986 Rules, but added that such breach not only amounted to violation of principles of natural justice but also in violation of Article 14 of the Constitution itself, as was held in Union of India v. Tulsiram Patel [(1985) 3 SCC 398]. Mr. Rao submitted that this was a clear case of abuse of constitutional powers conferred on the Speaker by paragraph 6 of the Tenth Schedule, with the sole motive of saving his own Chair and the Chair of the Chief Minister. The Show-Cause notice was not only unconstitutional and illegal, but motivated and mala fide and devoid of jurisdiction.

44. Referring to the judgment of the Chief Justice, which was in variance with the decision of N. Kumar, J., Mr. Rao urged that the Chief Justice had only noted and considered ground "K" to the Writ Petition, without considering grounds C, D, F, H and I, which dealt with the very maintainability of the Disqualification application on account of improper verification. Mr. Rao submitted that indecent haste with which the Disqualification Application was processed was clearly in violation of the mandate of Rule 7 of the 1986 Rules, which provided for at least 7 days' time to reply to a Show-Cause notice issued under Rule

45. Mr. Rao also submitted that despite pointed references made to the corruption and nepotism in the Government led by Shri Yeddyurappa, the same has not been denied by Shri B.S. Yeddyurappa and this Court should draw an adverse inference when such allegations of bias or mala fide had not been denied by Shri B.S. Yeddyurappa.

46. Mr. Rao also repeated and reiterated Mr. Nariman's submissions regarding non-service of Notices and copies of the application and the annexures thereto on the Appellants and the introduction of the affidavit filed by Shri K.S. Eshwarappa and the Statements of Shri M.P. Renukacharya and Shri Narasimha Nayak without serving copies thereof on the Appellants and giving them reasonable opportunity to deal with the same. It was submitted that by adopting the procedure as

mentioned above, the Speaker denied the Appellants a proper opportunity of contesting the Disqualification Application despite the fact that the additional affidavit and the submissions made by Shri M.P. Renukacharya and Shri Narasimha Nayak contained factual allegations against the Appellants which they could only answer. Mr. Rao submitted that the Speaker rushed through the formalities of an enquiry within four days from the issuance of the Show-Cause notices knowing that the Chief Minister had to face a Confidence Vote in the Assembly on 11th October, 2010.

47. On the scope of justiceability of an order passed by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution, Mr. Rao submitted that such a question had been gone into and settled by this Court firstly by the Constitution Bench in Kihoto Hollohan's case (supra) and thereafter in Dr. Mahachandra Prasad Singh's case (supra), wherein it had been held that Rules 6 and 7 of the Disqualification Rules were directory and not mandatory in nature and hence the finality clause in paragraph 6 did not completely excluded the jurisdiction of the Courts under Articles 136, 226 and 227 of the Constitution. It is pointed out that it had been indicated in Kihoto Hollohan's case (supra) that the very deeming provision implies that the proceedings for disqualification are not before the House but only before the Speaker as a substantially distinct authority and that the decision under paragraph 6(1) of the Tenth Schedule is not the decision of the House nor is it subject to approval of the House and that the said decision operates independently of the House. It was accordingly held that there was no immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising powers under paragraph 6(1) of the Tenth Schedule. Mr. Rao pointed out that paragraph 100 of the decision in Kihoto Hollohan's case (supra) declares the Speaker or the Chairman acting under paragraph 6 of the Tenth Schedule to be a Tribunal. Mr. Rao submitted that the view taken in Ravi S. Naik's case (supra) that the Disqualification Rules being procedural in nature, any violation of the same would amount to irregularity in procedure which was immune from judicial scrutiny in view of Rule 6(2) of the 1986 Rules, was an inaccurate statement of law in view of the decision of the Constitution Bench in Kihoto Hollohan's case (supra). Mr. Rao also pointed out that the decision in Ravi S. Naik's case (supra) had been considered by a Bench

of 3 Judges of this Court in Mayawati v. Markandeya Chand [(1998) 7 SCC 517], wherein K.T. Thomas J. had observed that the decision in Kihoto Hollohan's case had not been considered in Ravi S. Naik's case in its proper perspective. M. Srinivasan, J. did not agree with the views expressed by K.T. Thomas, J. and quoted approvingly from the decision in Ravi S. Naik's case (supra). However, Chief Justice M.M. Punchhi took the view that the matter was required to be referred to a Constitution Bench, as the decision in Kihoto Hollohan's case (supra) is silent on the question as to whether cognizance taken by the Speaker of the occurrence of a split is administrative in nature, unconnected with the decision making process or is it an adjunct thereto. Mr. Rao submitted that the decision in Dr. Mahachandra Prasad Singh's case (supra) suffered from the same vice and was, therefore, per incuriam.

48. Mr. Rao also contended that the view subsequently taken by the Constitution Bench in Rajendra Singh Rana v. Swami Prasad Maurya [(2007) 4 SCC 270] that the failure on the part of the Speaker to decide an application seeking disqualification cannot be said to be merely in the realm of procedure, goes against the very constitutional scheme contemplated under the Tenth Schedule, read in the context of Articles 102 and 191 of the Constitution. It was also observed that it also went against the Rules framed in that behalf and the procedure that was expected to be followed by the Speaker. It was further observed that the lapse on the part of the Speaker amounted to jurisdictional error. Mr. Rao urged that the pronouncement in the aforesaid case was final on this aspect of the matter and was required to be reiterated in the present case.

49. The submissions made on behalf of the Appellants were strongly opposed by Mr. Soli J. Sorabjee, learned Senior Advocate appearing for the Respondent No.1, Shri B.S. Yeddyurappa, Chief Minister of Karnataka. He identified six issues which, according to him, had arisen in the Appeals for consideration. The same are reproduced hereinbelow:-

(i) The extent and scope of Judicial Review available against the order of the Speaker passed in exercise of

powers under the Tenth Schedule to the Constitution.

(ii) Whether the Karnataka Disqualification Rules framed in

exercise of powers under paragraph 8

of the Tenth Schedule are directory and procedural in nature and whether

judicial review is available against

an alleged breach of the said Rules?

(iii) Whether the Speaker's order impugned herein is mala fide?

(iv) Whether Speaker's order can be said to be vitiated on account of non-compliance with the principles of

natural justice?

(v) The scope of paragraph 2(1)(a) of the Tenth schedule; and

(vi) Whether the Speaker's inference from the conduct of the MLA's in the present case that they have given up

the membership of the political

party to which they belong, can be said to be `perverse'?

50. It was submitted that the scope of judicial review of the order of the Speaker of the Legislative Assembly was extremely limited in view of the finality attached to the Speaker's order under paragraph 6(1) of the Tenth Schedule. Mr. Sorabjee submitted that in Kihoto Hollohan's case this Court had held that the immunity granted under sub-paragraph (2) of paragraph 6 was in respect of the procedural aspect of the disqualification proceedings, but that the decision itself was not totally immune from judicial scrutiny. However, having regard to the finality attached to the decision of the Speaker, as indicated in sub- paragraph (1), judicial review of the said order would be confined 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 these proceedings did not suffer from any of the infirmities mentioned

in paragraph 6(1) of the Tenth Schedule to the Constitution and that on account of the decision in Kihoto Hollohan's case (supra), the decision of the Speaker could not be assailed even on the ground of violation of any of the Rules framed by the Speaker.

51. Relying heavily on the decision of this Court in Ravi S. Naik's case (supra), Mr. Sorabjee pointed out that this Court had held that the 1986 Rules had been framed to regulate the procedure to be followed by the Speaker for exercising his powers under paragraph 6(1) of the Tenth Schedule. The same are, therefore, procedural in nature and any violation thereof would be a procedural irregularity which is immune from judicial scrutiny in view of the provisions of paragraph (2) as was construed by this Court in Kihoto Hollohan's case (supra). Mr. Sorabjee submitted that the 1986 Rules framed by the Speaker being subordinate legislation, the same could not be equated with the provisions of the Constitution and could not, therefore, be regarded as constitutional mandates and violation of the 1986 Rules did not afford a ground for judicial review of the order of the Speaker.

52. Mr. Sorabjee also placed strong reliance on the decision of this Court in Dr. Mahachandra Prasad Singh's case (supra), wherein the same view was reiterated. It was observed that the Rules being in the domain of procedure, they were intended to facilitate the holding of an inquiry and not to frustrate or obstruct the same by introducing innumerable technicalities. Mr. Sorabjee submitted that the Rules being directory, any alleged breach thereof cannot also be a ground for striking down the Speaker's order or make the same susceptible to judicial review as per the parameters laid down in Kihoto Hollohan's case (supra). It was also submitted that the power of the Speaker flowed from the Tenth Schedule and was not dependent on the framing of Rules and even in the absence of Rules, the Speaker always has the authority to resolve any dispute raised before him, without any fetter on his powers by the Rules.

53. As to the period of three days given to the Appellants to reply to the Show-Cause notices, instead of seven days mentioned in Rule 7(3) of the 1986 Rules, Mr. Sorabjee submitted that it was quite clear that the use of the expression "within

7 days" clearly indicated that the full period of 7 days was not required to be given by the Speaker for showing cause by the Member concerned. Mr. Sorabjee submitted that since the period of 7 days was the maximum period prescribed, it did not circumscribe the Speaker's authority to require such response to the Show-Cause notice within a lesser period and, in any event, the said issue was a non-starter since the Rules had been held by this Court to be directory and not mandatory. In any event, in Ravi S. Naik's case (supra), it had been observed that while applying the principles of natural justice, it had to be kept in mind that "they were not cast in a rigid mould nor can they be put in a legal strait jacket." Mr. Sorabjee submitted that the same view had been reiterated in Jagjit Singh's case (supra) and the contention that the Speaker ought not to have relied upon his personal knowledge was specifically rejected in the said case.

54. Mr. Sorabjee urged that this Court in Kihoto Hollohan's case (supra) had drawn a distinction between the procedure followed by the Speaker and the decision rendered by him and had held that the procedure followed would be immune from judicial review, being administrative in nature, though the decision could be challenged on grounds of jurisdictional errors. It was urged that in any event the decision in Ravi S. Naik's case (supra) which had been subsequently approved in Dr. Mahachandra Prasad Singh's case (supra) is binding upon this Bench, having been rendered by a Bench of three Judges.

55. As far as the charge of mala fides against the Speaker is concerned, Mr. Sorabjee submitted that such a charge was not maintainable since the Speaker had been made a Respondent in the proceedings not in his personal capacity but in his capacity as Speaker. It was contended that as had been held by this Court in Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad [(2005) 11 SCC 314], allegation of mala fide has to be pleaded with full particulars in support of the charge. Making bald allegations that the Chief Minister had influenced the Speaker to get the Appellants removed from the membership of the House before the Trust Vote scheduled to be held on 11th October, 2010, without any material in support of such allegations, could not and did not amount to mala fides on the part of the Speaker. Mr. Sorabjee submitted that as was also observed in the case of E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3], the allegations of mala fide are

often more easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility.

56. Mr. Sorabjee submitted that coupled with the allegation of mala fides was the allegation that the Speaker had conducted the entire exercise of disqualifying the Appellants from the membership of the House in great haste so that they would not be able to participate in the Trust Vote. Mr. Sorabjee submitted that proceedings under the Tenth Schedule have to be decided as early as possible in order to avoid the participation of a disqualified Member in the House. It was contended that in view of the decision of the Constitution Bench in Rajendra Singh Rana's case, the Speaker was under an obligation to decide the issue of eligibility of the Member to cast his vote before the Confidence Vote was taken. Mr. Sorabjee submitted that as had been held in Rajendra Singh Rana's case, disqualification occurs on the date of the act of the Member and not on the date of the Speaker's order. Applying the said analogy to the facts of this case, it had to be presumed that the disqualification had already occurred when the concerned Member had presented his letter to the Governor and as a result since the Vote of Confidence was fixed for the next day, the Speaker had no option but to decide the question of disqualification before the Vote of Confidence was taken. Mr. Sorabjee submitted that even N. Kumar, J. while dissenting from the order of the Chief Justice, concurred with him on the issue regarding absence of mala fides on the part of the Speaker.

57. Mr. Sorabjee urged that although various charges had been made against the Appellants, they had neither denied the same before the Speaker nor in the Writ Petition nor in the proceedings before the High Court, which gave rise to a presumption that there was a ring of truth in such allegations. Mr. Sorabjee urged that the case of the Appellants that they had not been provided a proper opportunity of dealing with and replying to the Show-Cause notices, was completely incorrect, since they had sent detailed replies to the Speaker in response to the Show-Cause notices.

58. Mr. Sorabjee submitted that after detailed replies had been filed by the Appellants, a full- fledged hearing had been given to them and hence the

Appellants did not suffer any prejudice on account of the procedure adopted by the Speaker in disposing of Shri Yeddyurappa's Disqualification application.

59. On the question as to whether the Appellants incurred disqualification under paragraph 2(1)(a) of the Tenth Schedule on account of their conduct, Mr. Sorabjee submitted that it was settled law that for a Member to incur disqualification under paragraph 2(1)(a) of the Tenth Schedule, he was not required to formally resign from the party, but an inference to that effect could be drawn from his conduct which may be incompatible with his political allegiance to the Party. Relying again on paragraph 11 of the decision in Ravi S. Naik's case (supra), Mr. Sorabjee submitted that a person could voluntarily give up his membership of a political party, even without tendering his resignation from the membership of that party and in the absence of a formal resignation from the membership, an inference can be drawn from the conduct of the Member that he had voluntarily given up his membership of the political party to which he belonged. Mr. Sorabjee submitted that the view expressed in Ravi S. Naik's case (supra) had been reiterated in Jagjit Singh's case (surpa) and had also been approved by the Constitution Bench in Rajendra Singh Rana's case (supra).

60. Once again referring to the letters written by the Appellants withdrawing support from the Government of their own political party and asserting that a situation had arisen in which the governance of the State could not be carried on in accordance with the provisions of the Constitution, Mr. Sorabjee submitted that the language of the letters submitted by the Appellants contemplated a situation where the governance of the State could not be carried out in accordance with the provisions of the Constitution. It was submitted that the reproduction of the words of Article 356 of the Constitution, which enables imposition of President's Rule and dissolution of the Assembly, coupled with the request to the Governor to intervene and initiate the constitutional process, could only mean that the Appellants had voluntarily resigned from the Bharatiya Janata Party and wanted President's Rule to be imposed in the State.

61. Mr. Sorabjee submitted that there is no constitutional provision which permits the Members of a House from withdrawing support to the Chief Minister alone. It is

the entire Council of Ministers that is collectively responsible to the House. In other words, a Vote of Confidence is expressed in the entire Council of Ministers and not in the Chief Minister alone. According to Mr. Sorabjee, the arguments advanced on behalf of the Appellants, that expression of honest political dissent must not be seen as defection, had been rejected in Kihoto Hollohan's case (supra) where this Hon'ble Court observed that a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its Members to vote as they please independent of the political party's declared policies, would not only embarrass its public image and popularity but also undermine public confidence in it. Mr. Sorabjee submitted that it necessarily follows that as long as a Member professes to belong to a political party, he must abide by and be bound by the decision of the majority within the party. He is free to express dissent within the party platform, but disparate stands in public or public display of revolt against the party, undeniably undermines the very foundation of the party. The very object of the Tenth Schedule was to bring about political stability and prevent members from conspiring with the opposite party.

62. Having dealt with the disqualification of the Appellants by the Speaker, Mr. Sorabjee next took up the question of the rejection of the disqualification application in relation to Shri M.P. Renukacharya and Shri Narasimha Nayak, who were among the 13 MLAs who had submitted individual but identical letters to the Governor withdrawing support to the Bharatiya Janata Party Government led by Shri B.S. Yeddyurappa, on the ground that they had lost confidence in him in view of the corruption and nepotism prevalent in the administration under him. It was pointed out that the Speaker had made a distinction between the said two MLAs and the other eleven on the ground that while the other two MLAs had retracted their letter to the Governor, they had also indicated that they had full faith in the Government led by Shri Yeddyurappa, whereas the Appellants had simply indicated that they were willing to support any other Government formed by the Bharatiya Janata Party, but with a different Chief Minister. Mr. Sorabjee submitted that while the two MLAs had retracted their letters to the Governor upon reiterating their faith in the Government led by Shri Yeddyurappa, the Appellants were bent

upon bringing down the Bharatiya Janata Party Government with the ulterior motive of forming a new Government with the Members of the opposition. It was submitted that the concept of collective responsibility is essentially a political concept. The Cabinet which takes a collective decision relating to policy stands or falls together and any individual member of the Government cannot show a face which is different from that of the Cabinet, as anything contrary would contribute to serious weakening of the Government itself.

63. Mr. Sorabjee submitted that even if the Speaker's decision was wrong, it could not be said to be a perverse order, since there was no deviation from the accepted rules and norms which had prejudiced the Appellants. It was also urged that while the Chief Justice and V.G. Sabhahit, J. had taken one view, N. Kumar, J. had taken a different view, which only reinforced the proposition that in this case two views are possible since the majority decision was that the view of the Speaker could not be regarded as perverse, the Appeals were liable to be dismissed.

64. In addition to the submissions made by Mr. Sorabjee, which he adopted, Shri Satyapal Jain, appearing for Shri Yeddyurappa in the several Civil Appeals, submitted that two other issues were also required to be taken into consideration, namely, (1) whether the Appellants had been prejudiced by the action of the Speaker; and (2) whether the action of withdrawing support from the Chief Minister amounted to voluntarily giving up the membership of the Bharatiya Janata Party which disqualified them under paragraph 2(i)(a) of the Tenth Schedule.

65. Mr. Jain submitted that the crucial facts had not been denied by the Appellants and hence it could not be said that any prejudice had been caused to them. Mr. Jain submitted that it was for the Appellants to deny the allegations made regarding their moving in a group from Karnataka to Goa and to other places where they had issued press releases stating that they were together and had withdrawn support to the Government. Mr. Jain also submitted that the Appellants had not denied the allegation that they had negotiated with another party of the State led by Shri H.D. Kumaraswamy, exploring the possibility of forming an alternate Government.

66. Mr. Jain submitted that apart from denying the allegations made against them, the Appellants could not establish that they had in any way been prejudiced by the order passed by the Speaker and such fact had been duly noted by the Chief Justice in his judgment.

67. On the question of construction of paragraph 2(1)(a) of the Tenth Schedule to the Constitution, Mr. Jain reiterated the submissions made by Mr. Sorabjee relying on the decision of this Court in Ravi S. Naik's case (supra) which was upheld in Rajendra Singh Rana's case (supra).

68. Mr. Jain submitted that even the question of not having received the copy of the notice sent by the Speaker was a clear afterthought, since detailed replies had been submitted by them and if the Appellants had to differ with the functioning of Shri Yeddyurappa, they should have taken up the matter within the party without writing to the Governor withdrawing their support to the Bharatiya Janata Party Government led by Shri Yeddyurappa. Mr. Jain submitted that it was quite obvious from the letters written by the Appellants to the Governor that they were bent upon effecting the fall of the Bharatiya Janata Party Government, led by Shri Yeddyurappa, in breach of party discipline, and, as a result, the order passed by the Speaker was fully justified and did not warrant any interference in these proceedings.

69. The main questions which emerge from the submissions made on behalf of the respective parties and the facts of the case may be summarised as follows :

(a) Did the Appellants voluntarily give up their membership of the Bharatiya

Janata Party?

(b) Since only three days' time was given to the Appellants to reply to the Show-Cause notices, as against the period of 7 days or more, prescribed in Rule 7(3) of the Disqualification Rules, were the said notices vitiated?

(c) Did the Speaker act in hot haste in disposing of the Disqualification Application filed by Shri B.S. Yeddyurappa introducing a whiff of bias as to the procedure adopted?

(d) What is the scope of judicial review of an order passed by the Speaker under Paragraph 2(1)(a) of the Tenth Schedule to the Constitution, having regard to the provisions of Article 212 thereof?

70. The facts of the case reveal that the Appellants along with Shri M.P. Renukacharya and Shri Narasimha Nayak, wrote identical letters to the Governor on 6th October, 2010, indicating that as MLAs of the Bharatiya Janata Party they had become disillusioned with the functioning of the Government headed by Shri B.S. Yeddyurappa. According to them, there was widespread corruption, nepotism, favouritism, abuse of power and misuse of Government machinery in the functioning of the Government headed by Chief Minister, Shri Yeddyurappa, and that a situation had arisen when the governance of the State could not be carried on in accordance with the provisions of the Constitution (Emphasis added). Accordingly, they were withdrawing their support from the Government headed by Shri Yeddyurappa with a request to the Governor to intervene and to institute the constitutional process as the constitutional head of the State (Emphasis added).

71. The Speaker took the view that the said letter and the conduct of the Appellants in moving from Karnataka to Goa and other places and issuing statements both to the print and electronic media regarding withdrawal of support to the BJP Government led by Shri Yeddyurappa and the further fact that the Appellants are said to have negotiated with Shri H.D. Kumaraswamy, the leader of the State Janata Dal, and its members, regarding the formation of an alternative Government was sufficient to attract the provisions of Paragraph 2(1)(a) of the Tenth Schedule to the Constitution. It was held by the Speaker that in the absence of any denial to the allegations made by Shri K.S. Eswarappa, the State President of the BJP, the same had to be accepted as having been proved against the Appellants.

72. In this regard, the Speaker referred to the views expressed by the Constitution Bench in Kihoto Hollohan's case (supra), wherein, one of the issues which had been raised and decided was that the act of voluntarily giving up membership of a political party may be either express or implied. Even greater emphasis was laid on the decision in Ravi S. Naik's case (supra), wherein, it was observed that there

was no provision in the Tenth Schedule which indicated that till a petition, signed and verified in the manner laid down in the Civil Procedure Code for verification of pleadings, was made to the Chairman or Speaker of the House, he did not get jurisdiction to give a decision as to whether a Member of the House had become subject to disqualification under Paragraph 2(1)(a) of the Tenth Schedule or not.

73. The aforesaid view taken by the Speaker has to be tested in relation to the action of the concerned Members of the House and it has to be seen whether on account of such action a presumption could have been drawn that they had voluntarily given up their membership of the BJP, thereby attracting the provisions of Paragraph 2(1)(a) of the Tenth Schedule.

74. In the instant case, the Appellants had in writing informed the Governor on 6th October, 2010, that having become disillusioned with the functioning of the Government headed by Shri B.S. Yeddyurappa, they had chosen to withdraw support to the Government headed by Shri B.S. Yeddyurappa and had requested the Speaker to intervene and institute the constitutional process as constitutional head of the State. The said stand was re-emphasized in their replies to the Show-Cause notices submitted by the Appellants on 9th October, 2010, wherein they had, inter alia, denied that their conduct had attracted the vice of "defection" within the scope of Paragraph 2(1)(a) of the Tenth Schedule. In their said replies they had categorically indicated that nowhere in the letter of 6th October, 2010, had they indicated that they would not continue as Members of the Legislature Party of the BJP. On the other hand, they had reiterated that they would continue to support the BJP and any Government formed by the BJP headed by any leader, other than Shri B.S. Yeddyurappa, as Chief Minister of the State. They also reiterated that they would continue to support any Government headed by a clean and efficient person who could provide good governance to the people of Karnataka according to the Constitution of India and that it was only to save the party and Government and to ensure that the State was rid of a corrupt Chief Minister, that the letter had been submitted to the Governor on 6th October, 2010.

75. At this point let us consider the contents of the letter dated 6th October, 2010, written by the Appellants to the Governor, which has been reproduced

hereinbefore. The letter clearly indicates that the author thereof who had been elected as a MLA on a Bharatiya Janata Party ticket, having become disillusioned with the functioning of the Government headed by Shri B.S. Yeddyurappa on account of widespread corruption, nepotism, favouritism, abuse of power and misuse of Government machinery, was convinced that a situation had arisen in which the governance of the State could not be carried on in accordance with the provisions of the Constitution and that Shri Yeddyurappa had forfeited the confidence of the people. The letter further indicates that it was in the interest of the State and the people of Karnataka that the author was expressing his lack of confidence in the Government headed by Shri Yeddyurappa and that he was, accordingly, withdrawing his support to the Government headed by Shri Yeddyurappa with a request to the Governor to intervene and institute the constitutional process as constitutional head of the State.

76. Although, Mr. Sorabjee was at pains to point out that the language used in the letter was similar to the language used in Article 356 of the Constitution, which, according to him, was an invitation to the Governor to take action in accordance with the said Article, the same is not as explicit as Mr. Sorabjee would have us believe. The "constitutional process", as hinted at in the said letter did not necessarily mean the constitutional process of proclamation of President's rule, but could also mean the process of removal of the Chief Minister through constitutional means. On account thereof, the Bharatiya Janata Party was not necessarily deprived of a further opportunity of forming a Government after a change in the leadership of the legislature party. In fact, the same is evident from the reply given by the Appellants on 9th October, 2010, in reply to the Show-Cause notices issued to them, in which they had re-emphasized their position that they not only continued to be members of the Bharatiya Janata Party, but would also support any Government formed by the Bharatiya Janata Party headed by any leader, other than Shri B.S. Yeddyurappa, as the Chief Minister of the State. The conclusion arrived at by the Speaker does not find support from the contents of the said letter of 6th October, 2010, so as to empower the Speaker to take such a drastic step as to remove the Appellants from the membership of the House.

77. The question which now arises is whether the Speaker was justified in concluding that by leaving Karnataka and going to Goa or to any other part of the country or by allegedly making statements regarding the withdrawal of support to the Government led by Shri Yeddyurappa and the formation of a new Government, the Appellants had voluntarily given up their membership of the B.J.P. and were contemplating the formation of a Government excluding the Bharatiya Janata Party. The Speaker has proceeded on the basis that the allegations must be deemed to have been proved, even in the absence of any corroborative evidence, simply because the same had not been denied by the Appellants. The Speaker apparently did not take into consideration the rule of evidence that a person making an allegation has to prove the same with supporting evidence and the mere fact that the allegation was not denied, did not amount to the same having been proved on account of the silence of the person against whom such allegations are made. Except for the affidavit filed by Shri K.S. Eswarappa, State President of the B.J.P., and the statements of two of the thirteen MLAs, who had been joined in the Disqualification Application, there is nothing on record in support of the allegations which had been made therein. Significantly, the said affidavits 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 enable them to meet the allegations made therein. In our view, not only did the Speaker's action amount to denial of the principles of natural justice to the Appellants, but it also reveals a partisan trait in the Speaker's approach in disposing of the Disqualification Application filed by Shri B.S. Yeddyurappa. If the Speaker wished to rely on the statements of a third party which were adverse to the Appellants' interests, it was obligatory on his part to have given the Appellants an opportunity of questioning the deponent as to the veracity of the statements made in the affidavit. This conduct on the part of the Speaker is also indicative of the "hot haste" with which the Speaker disposed of the Disqualification Petition as complained of by the Appellants. The question does, therefore, arise as to why the Speaker did not send copies of the affidavit affirmed and filed by Shri Eswarappa as also the affidavits of the two MLAs, who had originally withdrawn support to the Government led by Shri Yeddyurappa, but were later allowed to retract their statements, to the Appellants. Given an

opportunity to deal with the said affidavits, the Appellants could have raised the question as to why the said two MLAs, Shri M.P. Renukacharya and Shri Narasimha Nayak, were treated differently on account of their having withdrawn the letters which they had addressed to the Governor, while, on the other hand, disqualifying the Appellants who had written identical letters to the Governor, upon holding that they had ceased to be members of the Bharatiya Janata Party, notwithstanding the Show- Cause notices issued to them. The explanation given as to why notices to show cause had been issued to the Appellants under Rule 7 of the Disqualification Rules, giving the Appellants only three days' time to respond to the same, despite the stipulated time of seven days or more indicated in Rule 7(3) itself, is not very convincing. There was no compulsion on the Speaker to decide the Disqualification Application filed by Shri Yeddyurappa in such a great hurry within the time specified by the Governor to the Speaker to conduct a Vote of Confidence in the Government headed by Shri 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 slated for 12th October, 2010. The element of hot haste is also evident in the action of the Speaker in this regard as well.

78. In arriving at the conclusion that by such short notice, no prejudice has been caused to the Appellants, since they had filed their detailed replies to the Show-Cause notices, the Speaker had relied on the two decisions of this Court, referred to hereinbefore in Dr. Mahachandra Prasad Singh's case and Ravi S. Naik's case, wherein it had been held that the 1986 Rules were directory and not mandatory in nature, and, as a result, the order dated 10th October, 2010, could not be set aside only on the ground of departure therefrom. Even if less than seven days' time is given to reply to the Show-Cause notice, the legislator must not be prejudiced or precluded from giving an effective reply to such notice.

79. One of the questions which was raised and answered in Dr. Mahachandra Prasad Singh's case was the nature and effect of non-compliance with the provisions of Rules 6 and 7 of the Disqualification Rules, 1994. It was held therein by a Bench of Three Judges of this Court that the said provisions were directory and not mandatory and the omission to file an affidavit neither rendered the

petition invalid nor did it affect the assumption of jurisdiction by the Chairman to initiate proceedings to determine the question of disqualification of a Member of the House. In the facts of the said case it was held that the 1994 Rules being subordinate legislation, they were directory and not mandatory as they could not curtail the content and scope of the substantive provision under which they were made. However, the facts of this case differ significantly from the facts in Mahachandra's case (supra).

80. In Mahachandra's case, a member of the Indian National Congress, who had been elected as a Member of the Legislative Council on the ticket of the Indian National Congress, contested a Parliamentary election as an independent candidate, which facts were part of official records and not merely hearsay, as in the present case. In the aforesaid circumstances, the Chairman held that by contesting as an Independent Candidate, the said Member had given up his membership of the Indian National Congress. It is in that context that it was held that since the Member had not disputed the allegations, but had, in fact, admitted the same in his writ petition, he had not suffered any prejudice in not being provided with a copy of the letter from the leader of the Indian National Congress on which reliance had been placed by the Chairman. The distinguishing feature of the facts of Mahachandra Prasad Singh's case and this case is that the facts in the former case were admitted and were part of the official records, while in this case the allegations are highly disputed and are in the realms of allegation which were yet to be proved with corroborating evidence, though according to the Speaker, such allegations were not disputed.

81. As far as the decision in Ravi S. Naik's case (supra) is concerned, the facts of the said case are somewhat different from the facts of this case. What is commonly known and referred to as Ravi S. Naik's case is, in fact, a decision in respect of the two Civil Appeals, namely, Civil Appeal No.2904 of 1993 filed by Ravi S. Naik and Civil Appeal No.3309 of 1993 filed by Shri Sanjay Bandekar and Shri Ratnakar Chopdekar. There is a certain degree of similarity between the facts of the latter appeal and this case. At the relevant time, the Congress (I) initially formed the Government with the support of one independent member. Subsequently, seven members of the Congress (I) left the party and formed the

Goan People's Party and formed a coalition government with the Maharashtrawadi Gomantak Party under the banner of Progressive Democratic Front (PDF). The said government was also short-lived and ultimately President's Rule was imposed in the State and the Legislative Assembly was suspended on 14th December, 1990. Prior to proclamation of President's Rule, Shri Ramakant Khalap, who was the leader of the Progressive Democratic Front, staked his claim to form a Government, but no further action was taken on such claim since the Assembly was suspended on 14th December, 1990. However, Shri Ramakant Khalap filed a petition before the Speaker under Article 191(2) read with paragraphs 2(1)(a) and 2(1)(b) of the Tenth Schedule to the Constitution for disqualification of two Members, who had joined the Congress Democratic Front inspite of being Members of the Maharashtrawadi Gomantak Party. By his order dated 13th December, 1990, the Speaker disqualified the said two Members from the House on the ground of defection.

82. On 25th January, 1991, President's Rule was revoked and Shri Ravi S. Naik was sworn in as Chief Minister of Goa. On the same day, one Dr. Kashinath G. Jhalmi, belonging to the Maharashtrawadi Gomantak Party, filed a petition before the Speaker for Shri Naik's disqualification on the ground of defection. Simultaneously with the above, the Speaker, Shri Sirsat, was removed from the Office and was replaced by the Deputy Speaker who began to function as Speaker in his place. Shri Bandekar and Shri Chopdekar filed an application before the Deputy Speaker for review of the order dated 13th December, 1990, by which they had been disqualified from the membership of the House. The same was allowed by the Deputy Speaker by his order dated 7th March, 1991, and the earlier order dated 13th December, 1990, was set aside. Similarly, Shri Ravi Naik also filed an application for review of the order dated 15th February, 1991, which was allowed by the Deputy Speaker by his order of 8th March, 1991. The said two orders passed by the Deputy Speaker were challenged by way of Writ Petitions which were allowed and the orders passed by the Deputy Speaker on 7th and 8th March, 1991, were held to be void. Consequently, the Writ Petitions filed by Shri Bandekar and Shri Chopdekar and by Shri Ravi S. Naik stood revived with a direction for disposal of the same on merits. The Writ Petitions were ultimately dismissed against which two appeals were filed.

83. It was in the appeal filed by Shri Bandekar and Shri Chopdekar that the issue of voluntary resignation from membership of the Maharashtrawadi Gomantak Party fell for consideration of the High Court, while in Ravi S. Naik's case the question was whether a valid split of the aforesaid party had been effected with Shri Naik forming a new party with seven other Members of the said party. The said question was answered in Shri Ravi Naik's favour and his appeal was allowed and the order of his disqualification from the House was set aside. The other appeal filed by Shri Bandekar and Shri Chopdekar was dismissed and their disqualification by the Speaker was upheld. In other words, the High Court approved the proposition that it was not necessary for a Member of the House to formally tender his resignation from the party but that the same should be inferred from his conduct. It was held that a person may voluntarily give up his/her membership of a political party, even though he/she had not tendered his/her resignation from the membership of that party. However, the Division Bench of the High Court approved the said proposition in the facts and circumstances of that case, where, after the Government was initially formed, there was an exodus from the principal party resulting in the formation of a new party which stood protected under paragraph 4 of the Tenth Schedule to the Constitution. Of course, it will also have to be noted that Shri Bandekar and Shri Chopdekar had not only accompanied Dr. Barbosa to the Governor and had informed the Governor that it did not support the Maharashtrawadi Gomantak Party any further, but they had also made it known to the public that they had voluntarily resigned from the membership of the said party. It is in these facts that a presumption was drawn from the conduct of the Members that they had voluntarily resigned from the membership of the Maharashtrawadi Gomantak Party. In the said case also, after Show- Cause notices were issued, both persons filed their replies stating that they had not given up the membership of the Maharashtrawadi Gomantak Party voluntarily or would otherwise continue to be a Member of the said party and no document had been produced by the complainant nor has anything disclosed to show that they had resigned from the membership of the party. It was also denied that they had informed the Governor that they did not support the Maharashtrawadi Gomantak Party or that they had informed anybody that they had voluntarily resigned from the membership of said party. The Speaker,

however, rejected the explanation given by Shri Bandekar and Shri Chopdekar and recorded that he was satisfied that by their conduct, actions and speech, they had voluntarily given up the membership of the Maharashtrawadi Gomantak Party.

84. This brings us to the next question regarding the manner in which the Disqualification Application filed by Shri B.S. Yeddyurappa was proceeded with and disposed of by the Speaker. On 6th October, 2010, on receipt of identical letters from the 13 BJP MLAs and the 5 independent MLAs withdrawing support to the BJP 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 by 13 BJP MLAs and 5 independent MLAs and requesting him to prove his majority in the Assembly on or before 12th October, 2010 by 5.00 p.m. The Speaker was also requested accordingly. On the very same day, Shri Yeddyurappa, as the leader of the Bharatiya Janata Legislative Party in the Legislative Assembly, filed an application before the Speaker under Rule 6 of the Disqualification Rules, 1986, being Disqualification Application No.1 of 2010, for a declaration that all the thirteen MLAs elected on BJP tickets along with two other MLAs had incurred disqualification in view of the Tenth Schedule to the Constitution. Immediately thereafter, on 7th October, 2010, the Speaker issued Show-Cause notices to the aforesaid MLAs informing them of the Disqualification Application filed by Shri B.S. Yeddyurappa and informing them that by submitting letters to the Governor withdrawing support to the Government led by Shri Yeddyurappa, they had violated paragraph 2(1)(a) of the Tenth Schedule to the Constitution and were, therefore, disqualified from continuing as Members of the House. The Appellants were given time till 5.00 p.m. on 10th October, 2010, to submit their objection, if any, to the said application. Even if as held by this Court in Mahachandra Prasad Singh's case (supra), Rules 6 and 7 of the Disqualification Rules are taken as directory and not mandatory, the Appellants were still required to be given a proper opportunity of meeting the allegations mentioned in the Show-Cause notices. The fact that the Appellants had not been served with notices directly, but that the same were pasted on the outer doors of their quarters in the MLA complex and that too without copies of the various documents relied upon by Shri Yeddyurappa, giving them three days' time to reply to the said notices justifies the Appellants' contention that they had not

been given sufficient time to give an effective reply to the Show-Cause notices. Furthermore, the Appellants were 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 the Appellants stood disqualified under paragraph 2(1)(a) of the Tenth Schedule to the Constitution.

85. Likewise, the Appellants were also not supplied with the copies of the affidavits filed by Shri M.P. Renukacharya and Shri Narasimha Nayak, whereby they retracted the statements which they had made in their letters submitted to the Governor on 6th October, 2010. 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 the Appellants that the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution were attracted immediately upon their intention to withdraw their support to the Government led by Shri Yeddyurappa. The Speaker ignored the claim of the Appellants to be given reasonable time to respond to the Show- Cause notices and also to the documents which were handed over to the learned Advocates of the Appellants at the time of hearing of the Disqualification Application. Incidentally, a further incidence of partisan behaviour on the part of the Speaker will be evident from the fact that not only were the Appellants not given an adequate opportunity to deal with the contents of the affidavits affirmed by Shri K.S. Eswarappa, Shri M.P. Renukacharya and Shri Narasimha Nayak, but the time given to submit the Show-Cause on 10th October, 2010, was preponed from 5.00 p.m. to 3.00 p.m. making it even more difficul for the Appellants to respond to the Show-Cause notices in a meaningful manner. The explanation given by the Speaker that the Appellants had filed detailed replies to the Show-Cause notices does not stand up to the test of fairness when one takes into consideration the fact that various allegations had been made in the three affidavits filed by Shri K.S. Eswarappa, Shri M.P. Renukacharya and Shri Narasimha Nayak, which could only be answered by the Appellants themselves and not by their learned Advocates.

86. The procedure adopted by the Speaker seems to indicate 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 other independent 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 a detailed order 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 had voluntarily given up their membership of the Bharatiya Janata Party by their acts and conduct which attracted the provisions of paragraph 2(1)(a) of the Tenth Schedule to the Constitution, whereunder they stood disqualified. 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.

87. Unless it was to ensure that the Trust Vote did not go against the Chief Minister, there was no conceivable reason for the Speaker to have taken up the Disqualification Application in such a great hurry. Although, in Mahachandra Prasad Singh's case (supra) and in Ravi S. Naik's case (supra), this Court had held that the Disqualification Rules were only directory and not mandatory and that violation thereof amounted to only procedural irregularities and not violation of a constitutional mandate, it was also observed in Ravi S. Naik's case (supra) that such an irregularity should not be such so as to prejudice any authority who is affected aversely by such breach. In the instant case, it was a matter of survival as far as the Appellants were concerned. In such circumstances, they deserved a better opportunity of meeting the allegations made against them, particularly when except for the newspaper cuttings said to have been filed by Shri Yeddyurappa along with the Disqualification Application, there was no other evidence at all available against the Appellants.

88. We are quite alive to the decision in Jagjit Singh's case (supra), where it was held that failure to provide documents relied upon by the Speaker to the concerned Member, whose membership of the House was in question, and denying him the right of cross-examination, did not amount to denial of natural justice and did not vitiate the proceedings. However, a rider was added to the said observation to the effect that the Speaker's decision in such a situation would have to be examined on a case-to-case basis. In Jagjit Singh's case (supra), video recordings of TV interviews, participation in the meeting of the Congress

Legislative Party in the premises of the Assembly, the signatures on the register maintained by the Congress Legislative Party, were produced before the Speaker, who decided the matter on the basis thereof. That is not so in the present case. As mentioned hereinbefore, the Disqualification Application filed by Shri Yeddyurappa contained only bald allegations, which were not corroborated by any direct evidence. The application did not even mention the provision under which the same had been made. By allowing Shri K.S. Eswarappa, who was not even a party to the proceedings, and Shri M.P. Renukacharya and Shri Narasimha Nayak to file their respective affidavits, the short-comings in the Disqualification Application were allowed to be made up. The Speaker, however, relied on the same to ultimately declare that the Appellants stood disqualified from the membership of the House, without even serving copies of the same on the Appellants, but on their learned Advocates, just before the hearing was to be conducted. If one were to take a realistic view of the matter, it was next to impossible to deal with the allegations at such short notice. In the circumstances, we cannot but hold that the conduct of the proceedings by the Speaker and the decision given by the Speaker on the basis thereof did not meet even the parameters laid down in Jagjit Singh's case (supra).

89. We cannot also lose sight of the fact that although the same allegations, as were made against the Appellants by Shri Yeddyurappa, were also made against Shri M.P. Renukacharya and Shri Narasimha Nayak, their retraction was accepted by the Speaker, despite the view expressed by him that upon submitting the letter withdrawing support to the BJP Government led by Shri Yeddyurappa, all the MLAs stood immediately disqualified under paragraph 2(1)(a) of the Tenth Schedule to the Constitution, and they were, accordingly, permitted to participate in the Confidence Vote for reasons which are not required to be spelt out.

90. On the question of justiceability of the Speaker's order on account of the expression of finality in paragraph 6 of the Tenth Schedule to the Constitution, it has now been well-settled that such finality did not include the powers of the superior Courts under Articles 32, 226 and 136 of the Constitution to judicially review the order of the Speaker. Under paragraph 2(1)(a) of the Tenth Schedule, the Speaker functions in a quasi-judicial capacity, which makes an order passed

by him in such capacity, subject to judicial review. The scope of paragraph 2(1)(a) of the Tenth Schedule to the Constitution, therefore, enables the Speaker in a quasi-judicial capacity to declare that a Member of the House stands disqualified for the reasons mentioned in paragraph 2(1)(a) of the Tenth Schedule to the Constitution.

91. Having considered all the different aspects of the matter and having examined the various questions which have been raised, we are constrained to hold that the proceedings conducted by the Speaker on the Disqualification Application filed by Shri B.S. Yeddyurappa do not meet the twin tests of natural justice and fair play. The Speaker, in our view, proceeded in the matter as if he was required to meet the deadline set by the Governor, irrespective of whether, in the process, he was ignoring the constitutional norms set out in the Tenth Schedule to the Constitution and the Disqualification Rules, 1986, and in contravention of the basic principles that go hand-in-hand with the concept of a fair hearing.

92. As we have earlier indicated, even if the Disqualification Rules were only directory in nature, even then sufficient opportunity should have been given to the Appellants to meet the allegations levelled against them. The fact that the Show-Cause notices were issued within the time fixed by the Governor for holding the Trust Vote, may explain service of the Show-Cause notices by affixation at the official residence of the Appellants, though without the documents submitted by Shri Yeddyurappa along with his application, but it is hard to explain as to how the affidavits, affirmed by Shri K.S. Eswarappa, Shri M.P. Renukacharya and Shri Narasimha Nayak, were served on the learned Advocates appearing for the Appellants only on the date of hearing and that too just before the hearing was to commence. Extraneous considerations are writ large on the face of the order of the Speaker and the same has to be set aside.

93. Incidentally, in paragraph 5 of the Tenth Schedule, which was introduced into the Constitution by the Fifty-second Amendment Act, 1985, to deal with the immorality of defection and Floor crossing during the tenure of a legislator, it has been indicated that notwithstanding anything contained in the said Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker

of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of the State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under the Schedule if he by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election, and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party. The object behind the said paragraph is to ensure that the Speaker, while holding office, acts absolutely impartially, without any leaning towards any party, including the party from which he was elected to the House.

94. The Appeals are, therefore, allowed. The order of the Speaker dated 10th October, 2010, disqualifying the Appellants from the membership of the House under paragraph 2(1)(a) of the Tenth Schedule to the Constitution is set aside along

with the majority judgment delivered in Writ Petition (Civil) No.32660-32670 of 2010, and the portions of the judgment delivered by Justice N. Kumar concurring with the views expressed by the Hon'ble Chief Justice, upholding the decision of the Speaker on the Disqualification Application No.1 of 2010 filed by Shri B.S. Yeddyurappa. Consequently, the Disqualification Application filed by Shri B.S. Yeddyurappa is dismissed.

95. There will be no order as to costs.