

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION NO. _____ OF 2020

[WITH PRAYER FOR INTERIM RELIEF]

[Against the Impugned Interim Order dated 21.07.2020 passed by the Hon'ble High Court of Rajasthan at Jaipur in D. B. Civil Writ Petition No. 7451 / 2020]

IN THE MATTER OF:

**The Hon'ble Speaker,
Rajasthan Legislative Assembly**

...Petitioner

VERSUS

Prithviraj Meena & Ors.

...Respondents

WITH

IA No. _____ of 2020: Application for exemption from filing certified copy of the Impugned Order.

IA No. _____ of 2020: Application for Seeking Exemption from filing the official translation of Annexure – P 2

IA No. _____ of 2020: Application seeking listing due to extreme urgency and exemption from filing duly affirmed affidavit.

PAPER-BOOK

[For Index, please see inside]

ADVOCATE FOR THE PETITIONER: SUNIL FERNANDES

SYNOPSIS

1. The Petitioner, Speaker of Rajasthan Legislative Assembly, is constrained to move this instant Special Leave Petition, urgently against the *quia timet* order dated 21.07.2020, in D.B. Civil Writ Petition No.7451/2020 (“**Impugned interim Order**”) by which the Hon’ble High Court of Rajasthan, has intervened in pending Tenth Schedule proceedings at the initial notice stage itself and restrained the Speaker – Petitioner herein from even calling of replies and conducting the disqualification proceedings pending against the Respondents till 24.07.2020. The relevant portion of the direction in the impugned order in this regard reads as follows:

“In view of above directions, we therefore, further request the Hon’ble Speaker, who has been pleased to extend the period for filing reply by the writ petitioners till 5.30 p.m. as of today i.e. 21.07.2020, to extend the said period till the delivery of orders by this Court on 24/07/2020 and we direct accordingly

The matter shall be listed on 24.07.2020. The parties are directed to act accordingly”

2. The aforesaid impugned order is in the teeth of the dictum of the Constitution bench of this Hon’ble Court in **Kihoto Hollohan v. Zachillhu**, [(1992) Supp (2) SCC 651] and the mandate of the mandate of Para 6(2) of the Tenth Schedule read with Article 212 of the Constitution .

3. In *Kihoto*, a Constitution bench of this Hon'ble Court expressly held that Courts cannot interdict the speaker from proceeding ahead at the *quia timet* stage. In this regard, conclusion of the Hon'ble in para 110 of the judgment reads as under:

“110. ... judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a *quia timet* action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings.”

4. The proceedings under the Tenth Schedule before the Speaker are proceedings of the Legislature and as such cannot be interfered with as repeatedly held by this Hon'ble Court as envisaged under Article 212 read with para 6(2) of the Tenth Schedule.
5. In view of the aforesaid the impugned order is *ex-facie* illegal, perverse, and in derogation of the powers of the Speaker under the Constitution and hence deserve to be set aside.

FACTS IN BRIEF

6. Before adverting to the legal submission in this regard, the following brief facts may be noted:
 - 6.1. Nineteen (19) disqualification petitions were moved by the Indian National Congress [INC] on 14.07.2020 against the Respondents *inter alia* alleging that the Respondents by their actions had given up the membership of INC and seeking determination thereof. Notices were issued on 14.07.2020 as per the Rajasthan Legislative Assembly (Disqualification) Rules, 1989 which were made returnable on 17.07.2020.

- 6.2. Instead of appearing before the Speaker and furnishing their comments to the Speaker on the allegations made in the Disqualification petition, a direct challenge was made to the High Court in WP No. 7451/2020 by the Respondents in which the impugned order has been passed.
- 6.3. Originally a Writ Petition was filed only challenging the notice dated 14.07.2020 and asking a declaration from the High Court that the Respondents herein were members of INC. Such a Writ Petition was totally not maintainable as will be demonstrated hereafter.
- 6.4. Be that as it may, when the matter was called out 1.00 pm on 16.07.2020 the Ld. Sr. Counsel for the Respondents herein made oral submission that he is challenging constitutional validity of para 2(1)(a) of the Tenth Schedule.
- 6.5. In about one hour at around 5.00 pm thereafter the matter was again listed before the Ld. Single Judge and the Ld. Single Judge allowed the application for amendment incorporating a prayer for challenging the constitutional validity of the Tenth Schedule.
- 6.6. Thereafter, the amendment was carried out and surprisingly several grounds not allowed by the Application for amendment were clandestinely incorporated by the Respondents.
- 6.7. On the very same day i.e. 16.07.2020 at around 7.30 pm a Division Bench was constituted by the Hon'ble High Court. As the

arguments were to commence, the learned senior counsel appearing for the Petitioner volunteered to defer the hearing before the Speaker from morning of 17.07.2020 to the evening 5 pm 17.07.2020.

- 6.8. On 17.07.2020 at 1.00 pm, the Ld Division Bench of the Hon'ble High Court started hearing the Writ Petition and the counsels for the Respondents was heard till 4.30 pm. 18th and 19th the July were court holidays being Saturday and Sunday. As the Ld Senior counsel for Petitioner had started presenting his case before the Hon'ble Division Bench on 17.07.2020 itself and the hearing continued, the Ld Senior counsel appearing for the Petitioner volunteered to defer the hearing, which was slated for 5pm that day i.e. 17.07.2020, to 21.07.2020 in order to conclude the arguments before the Hon'ble High Court on 20.07.2020.
- 6.9. The matter was thereafter heard on 20.07.2020 and on 21.07.2020 and the impugned order has been passed on 21.07.2020 at about 3.30 pm giving a direction to the Speaker not to proceed with the disqualification Petition listed at 530 pm on 21.07.2020.

RE: THE IMPUGNED ORDER IS AN AFFRONT TO THE LAW LAID DOWN BY THIS HON'BLE COURT IN PARA 109 AND 110 OF *KIHOTO HOLLOHAN*.

7. It is submitted that the Writ Petition filed by the Respondents is a classic case of *quia timet* action. The original prayers made in the WP were as follows:

- “(B) *Issue a Writ of CERTIORARI OR Direction/Order in the nature of a Writ of Certiorari to quash and set aside the Show Cause Notice dated 14.07.2020 issued by the Hon’ble Speaker of the Rajasthan Legislative Assembly;*
- (C) *Issue a Writ of Mandamus or a Direction/Order in the nature of a Writ of Mandamus declaring/upholding the status of the Petitioners as Members of the Rajasthan Legislative Assembly – the House on account of them continuing to be members of the Indian National Congress as per the Explanation (a) to Para (2) of the Tenth Schedule of the Constitution of India.*
- (D) *Issue a Writ of Mandamus or Direction/order in the nature of a Writ of Mandamus declaring that alleged actions of the Petitioners as Members of the Rajasthan Legislative Assembly do not come within the purview of disqualification envisaged under Para (2) of the Tenth Schedule read with Article 191 of the Constitution of India;”*

8. It is respectfully submitted that perusal of the aforesaid prayers would show that the prayers partake the clear character of the *quia timet* action which is wholly impermissible. In this regard para 109 and 110 of the judgement reads as under:

“109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136, and 226 and 227 of the

Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

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

RE: THE NOTICE DATED 14.07.2020 IS A PROCEEDING IN THE HOUSE UNDER ARTICLE 212 AND IMMUNE FROM JUDICIAL INTERFERENCE AT THAT STAGE:

9. It is respectfully submitted that the notice dated 14.07.2020 was only limited to inviting comments from the Respondents and there was nothing adverse against the Respondents. It is submitted that such a notice is not the final determination or decision on disqualification but only a commencement of the proceedings. The proceedings including the notice dated 14.07.2020 are in the realm

of the legislative proceedings under Para 6(2) of the Tenth Schedule. Article 212 of the Constitution and Para 6(2) of the Tenth Schedule read as follows:

212. Courts not to inquire into proceedings of the Legislature.—(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Para 6(2) of the Tenth Schedule reads as follows:

6. Decision on questions as to disqualification on ground of defection.—(1)

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212.

10. If the final decision of the speaker is amenable to judicial review on limited ground, it is inconceivable that the notice dated 14.07.2020 calling for comments on the disqualification is subject to judicial review. Article 212 clearly bars the challenge. In this regard,

attention of this Hon'ble Court is invited to the judgment of the Seven Judge Bench decision of the Hon'ble Supreme Court in ***Pandit M.S.M. Sharma v. Sri Krishna Sinha, [(1959) Supp (1) SCR 806]***. Para 10 of the judgment read as follows:

*“10. It now remains to consider the other subsidiary questions raised on behalf of the petitioner. It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. **Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business.** Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the*

procedural law laid down for conducting its business, that cannot be a ground for interference by this Court under Article 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non-compliance with rules of procedure cannot be a ground for issuing a writ under Article 32 of the Constitution vide Janardan Reddy v. State of Hyderabad [(1951) SCR 344].

11. The scheme of Tenth Schedule, para 6(1), and para 6(2) envisions a limited interference by the Courts in matters concerning the disqualification of Members even where final orders of disqualification are passed. Even after the final reasoned Order of the Speaker is passed, the Hon'ble Apex Court and the High Courts both have held that there are limited grounds for interfering. [*Kihoto Hollohan v Zachillhu* (1992) Supp 2 SCC 651, paras at para 110 (placitum d,e), *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council* 2004 (8)SCC 747 para 8, 8.1 and *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly*, (2020) 2 SCC 595 para 121] namely, if principles of natural justice have been violated, or if the Order is malafide, patently perverse or alleged irregularity, none of which applies in the present case as the disqualification petition is at a preliminary stage.

RE: MERE CHALLENGE TO THE CONSTITUTIONAL VALIDITY OF PARA 2(1)(A) CANNOT *IPSO FACTO* RESULT IN PARA 2(1)(A) BEING EFFACED FROM THE CONSTITUTION:

12. It is respectfully submitted that the impugned order passed by the Hon'ble High Court is in effect a stay on the powers of the Speaker under the Tenth Schedule to adjudicate on a disqualification petition. It is submitted that merely because the Respondents seek to challenge the constitutional Validity of Para 2(1)(a), the same cannot be a ground for constricting the power of the Speaker to even call for reply in the disqualification proceedings of which he is the master till the final decision is rendered. Moreover, it is to be pointed out that the Speaker is the *persona designata* under the Constitution, who has exclusive, non-transferable, and non-delegable powers and authority to adjudicate on the issues of disqualification. [*Speaker, Haryana Vidhan Sabha v Kuldip Singh (2015) 12 SCC 381, para 16, 18-20, 22*].
13. Under Para 6(2) of the Tenth Schedule of the Constitution, the proceedings before the Speaker are proceedings in the House, thereby attracting the bar from interference by the Courts under Article 212 of the Constitution. [Para 10, *Pandit MSM Sharma v. Dr. Krishna Sinha*, (1961) 1 SCR 96,].
14. In these circumstances it is respectfully submitted that the impugned order which is in (a) direct contravention Para 6(2) of the Tenth Schedule; and (b) direct contravention to the law laid down by this Hon'ble Court in para 109 and 110 of the *Kihoto (supra)* is liable to be immediately stayed so that the dignity of Constitutional authorities envisaged by the Constitution is protected.

15. This Hon'ble Court as the *sentinel on the qui vive* has a duty to ensure that the all the authorities under the Constitution exercise their jurisdiction within the boundaries and respective '*Lakshman Rekha*' envisaged by the Constitution itself. *Judiciary* was never expected under the Tenth Schedule to interfere in the manner it has done in the instant case resulting in this constitutional impasse warranting the instant Special Leave Petition which is being filed with an urgent request to take up the matter at the earliest convenience of this Hon'ble Court.

Hence, the present Special Leave Petition.

LIST OF DATES

DATE	PARTICULARS
14.07.2020	The Chief Whip of the INC files Disqualification Petitions against 19 MLAs including Shri Sachin Pilot before the Hon'ble Speaker of the Rajasthan Assembly on 14.07.2020. For the kind perusal of this Hon'ble Court, one such disqualification petition is annexed hereto. A True copy of the Disqualification Petition dated 14.07.2020 filed by the Chief Whip, Dr. Mahesh Joshi against Shri Hemaram Choudhary MLA, before the Hon'ble Speaker, Rajasthan legislative Assembly is annexed hereto and marked as <u>ANNEXURE P-1</u> [Pg Nos. 28 to 34]

- 14.07.2020 As required under the *Rajasthan Legislative Assembly Member (Disqualification on the grounds of changing Party) Rules, 1989* ('1989 Rules'), the Hon'ble Speaker issued notices on the 14th of July, 2020, directing all the 19 Respondents to submit their written comments to the Disqualification Petitions filed against each one of them in 3 days i.e upto 17.07.2020. A true translated copy of the Speaker's Notice dated 14.07.2020 is annexed hereto and marked as **ANNEXURE P-2** [Pg. Nos. 35 to 36]
- 16.07.2020 Instead of complying with the Speaker's notice and filing their comments to the Disqualification Petitions, all 19 MLAs filed a Writ Petition before the Hon'ble High Court of Rajasthan, challenging the Speaker's Notice dated 14.07.2020 itself. A true copy of the original Writ Petition dated 16.07.2020 titled *Prithvi Raj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors.*, S.B. Civil Writ Petition No. 7451/2020 before the Hon'ble High Court of Rajasthan at Jaipur, is annexed hereto and marked as **ANNEXURE P-3** [Pg. Nos. 37 to 56]
- 16.07.2020 When the matter was taken up on the same day by the Ld. Single Judge, the Ld. Senior Counsel appearing on

AT 1 PM
behalf of the Petitioners submitted to the Hon'ble Court that he wishes to file an Application to amend the Writ Petition so as to challenge constitutional validity Tenth Schedule and requested that the amendment be allowed the matter to be heard by a Division Bench.

The Ld. Single Judge permitted the said request and directed listing of the matter on the filing of the amendment application.

A true copy of the 1st order dated 16.07.2020 passed by the Ld. Single Judge in Prithvi Raj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., S.B. Civil Writ Petition No. 7451/2020, is annexed hereto and marked as **ANNEXURE P-4 [Pg. Nos. 57 to 58]**

16.07.2020
The Petitioners filed an amendment application.

16.07.2020
AT 5pm
The matter was once again taken up in the evening by the Ld. Single Judge. The Ld. Judge recorded the Petitioner's submission that they "*want to incorporate only one ground to challenge the constitutional validity of the provision of Schedule 10 of the Constitution of India*" and proceeded to allow the same, further referring the matter to be heard by a Division Bench.

A true copy of the 2nd order dated 16.07.2020 passed by the Ld. Single Judge in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., S.B. Civil Writ Petition No. 7451/2020, is annexed hereto and marked as **ANNEXURE P-5 [Pg. No. 59]**

Thereafter, the amendment was carried out and surprisingly several grounds not allowed by the Application for amendment were clandestinely incorporated by the Respondents

Copy of the Amended Writ Petition vide No. D.B. Civil Writ Petition No. 7451/2020 filed by the Respondents before the Hon'ble High Court is annexed hereto and marked as **ANNEXURE P-6 [Pg. Nos. 60 to 81]**

16.07.2020
around 7.30pm On the very same day i.e. 16.07.2020 at around 7.30 pm a Division Bench was constituted by the Hon'ble High Court. As the arguments were to commence, the learned senior counsel appearing for the Petitioner volunteered to defer the hearing before the Speaker from morning of 17.07.2020 to the evening 5 pm 17.07.2020.

17.07.2020 On 17.07.2020 at 1.00 pm the Division Bench of the Hon'ble High Court started hearing the Writ Petition and the counsels for the Respondents was heard till 4.30 pm.

18th and 19th July were court holidays being Saturday and Sunday. As the Ld Senior counsel for Petitioner had started presenting his case before the Hon'ble Division Bench on 17.07.2020 itself and the hearing continued, the Ld Senior counsel appearing for the Petitioner volunteered to defer the hearing, which was slated for 5pm that day i.e 17.07.2020, to 21.07.2020 in order to conclude the arguments before the Hon'ble High Court on 20.07.2020.

A true copy of the order dated 17.07.2020 passed by the Hon'ble Division Bench of the High Court in *Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors.*, D.B. Civil Writ Petition No. 7451/2020 is annexed hereto and marked as **ANNEXURE P-7 [Pg. Nos. 82 to 84]**

20.07.2020 Arguments were advanced on both sides and concluded but some intervention applications could not be heard along with a counsels appearing for a few other parties. The Hon'ble Court decided to take up the matter again on 21.07.2020.

21.07.2020 Arguments were concluded and judgment reserved.
Copies of written submissions were exchanged between the parties and submitted to the Hon'ble Court as well.

A true copy of the written submission dated nil filed on behalf of the Chief Whip is annexed hereto as **ANNEXURE P-8 [Pg. Nos. 85 to 99]**. True Copy of the

Written Submission filed on behalf of the Hon'ble Speaker is annexed hereto as ANNEXURE P-9 [Pg. Nos. 100 to 104]

21.07.2020 The Hon'ble High Court vide Impugned interim order dated 21.07.2020 passed at about 330pm has proceeded to interdict the Speaker from proceeding under the Tenth Schedule of Constitution of India. The Petitioner/Speaker has been even restrained from calling replies and conducting hearing of the disqualification proceedings pending against the Respondents which is totally barred and impermissible as per the dictum of the Constitution bench of this Hon'ble Court in **Kihoto Hollohan v. Zachillhu, [(1992) Supp (2) SCC 651]**.

22.07.2020 Hence, the present Special Leave Petition.



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No.7451/2020

Prithviraj Meena S/o Ram Karan Meena

----Petitioner

Versus

The Hon'ble Speaker

----Respondent



For Petitioner(s) : Mr. Harish Salve, Senior Advocate through VC assisted by Mr. Divyesh Maheshwari
Mr. Mukul Rohatgi, Senior Advocate assisted by Mr. S. Hariharan, Ms.Jakriti Jadeja through VC
Mr. Lokesh Sharma through VC
Mr. Rajesh Goswami and
Mr. Yashvardhan Nandwana through VC

For Respondent Nos.1 & 2 : Dr. Abhishek Singhvi, Senior Advocate assisted by Mr. Aavishkar Singhvi through VC
Mr. Amit Bhandari through VC and
Mr. Harendar Neel
Mr. M.S. Singhvi, Advocate General assisted by Mr. Darsh Pareek and
Mr. Siddhant Jain

For respondent No.3 : Mr. Prateek Kasliwal with
Ms. Supriya Saxena

For respondent No.4 : Mr. Devadatt Kamat, Senior Advocate
Mr. A.K. Bhandari, Senior Advocate
Mr. N.K. Maloo, Senior Advocate assisted by Mr. Siddharth Bapna,
Mr. Sarvesh Jain,
Mr. Anuj Bhandari,
Mr. Vaibhav Bhargava,
Mr. Abhimanyu Yaduvanshi

For respondents No.5 : Mr. Vimal Choudhary &
Mr. Yogesh Kumar Tailor

For respondents No.6 : Mr. P.C. Bhandari, Mr. Abhinav Bhandari & Mr. T.N. Sharma

For respondent No.7 : Mr. P.S. Sirohi



**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRAKASH GUPTA**

Order

21/07/2020

D.B. Civil Misc.Application No.1/2020:-

Counsel for the petitioners seeks to withdraw D.B. Civil Misc. Application No.1/2020.

The prayer is accepted.

The application is accordingly dismissed as withdrawn.

D.B. Civil Misc.Application Nos.4/2020, 5/2020 & 6/2020:-

Heard learned counsels for the parties on the applications seeking intervention.

Heard also Mr. Mukul Rohatgi, learned senior counsel for the petitioner, Mr. Devadatt Kamat, learned Senior Counsel for respondent No.4 as well as Mr. M.S. Singhvi, learned Advocate General on intervenor applications.

Having heard learned counsel for the intervenors and learned counsel for the parties, we record the fact that learned counsel appearing for the writ petitioners do not have any objection to the intervention applications to be entertained. However, the learned Advocate General appearing for the Speaker raised contention against such intervention applications on the ground that the present writ petition is not a public interest litigation and the intervenors are neither proper nor necessary parties. Hence, the intervention applications ought not to be entertained.

Learned counsels appearing for the three intervenors inter-alia contended that the challenge made in the writ application is to the constitutional validity of para 2(1)(a) of Tenth



Schedule to the Constitution of India. Consequently, the prayer made by the writ petitioners will have a wide public impact and, therefore, they are essentially concerned with the public interest at large.

Considering the submissions advanced by all the parties, the intervention applications are allowed. The applicants are impleaded as respondent Nos.5, 6 and 7 respectively. They shall file amended cause title, which will be taken on record. The parties are directed to serve copies of writ application as well as reply affidavit, if any, filed before this Court on the counsels who have been impleaded as respondents No.5, 6 and 7, as directed hereinabove.



D.B. Civil Writ Petition No.7451/2020:-

This Court further takes note of the fact that the written submissions have been filed on behalf of the petitioners, respondents No.1, 2 and 3 as well as respondent No.4 after the lunch break. The same are taken on record.

Having heard learned counsels for the respective parties and taking on record the submissions advanced on behalf of the respective parties as noted hereinabove, we direct that matter shall be listed on 24/07/2020 for passing of necessary orders.

In view of above directions, we therefore, further request the Hon'ble Speaker, who has been pleased to extend the period for filing reply by the writ petitioners till 5.30 p.m. as of today i.e. 21.07.2020, to extend the said period till the delivery of orders by this Court on 24/07/2020 and we direct accordingly.



The matter shall be listed on 24.07.2020. The parties are directed to act accordingly.

(PRAKASH GUPTA),J

(INDRAJIT MAHANTY),CJ

Anil Goyal-PS/Harshit Pareek/JKP/1



RAJASTHAN HIGH COURT



सत्यमेव जयते

**IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (C) NO. OF 2020

[WITH PRAYER FOR INTERIM RELIEF]

[Arising out of the Impugned interim order dated 21.07.2020 passed by the Hon'ble High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. Vs. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., in D.B. Civil Writ Petition No. 7451/2020]

IN THE MATTER OF:

POSITION OF PARTIES

BETWEEN:	IN THE HIGH COURT	IN THIS HON'BLE COURT
THE HON'BLE SPEAKER, RAJASTHAN LEGISLATIVE ASSEMBLY, JAIPUR, RAJASTHAN	Respondent No. 1	Petitioner

Versus

1. PRITHVIRAJ MEENA	Petitioner No. 1	Contesting Respondent No.1
2. VED PRAKASH SOLANKI	Petitioner No. 2	Contesting Respondent No.2

3. SURESH MODI	Petitioner No.3	Contesting Respondent No.3
4. VISHWENDRA SINGH	Petitioner No. 4	Contesting Respondent No. 4
5. DEEPENDRA SINGH	Petitioner No. 5	Contesting Respondent No. 5
6. SACHIN PILOT	Petitioner No. 6	Contesting Respondent No. 6
7. BHAWARLAL SHARMA	Petitioner No. 7	Contesting Respondent No. 7
8. GAJRAJ KHATANA	Petitioner No. 8	Contesting Respondent No. 8
9. INDRAJ	Petitioner No. 9	Contesting Respondent No. 9

10.GAJENDRA SINGH SHAKTAWAT	Petitioner No. 10	Contesting Respondent No. 10
11.HEMA RAM CHOUDHARY	Petitioner No. 11	Contesting Respondent No. 11
12.RAM NIWAS GAWRIYA	Petitioner No. 12	Contesting Respondent No. 12
13.AMAR SINGH	Petitioner No. 13	Contesting Respondent No. 13
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14.BRIJENDRA SINGH OLA,	Petitioner No. 14	Contesting Respondent No. 14
15.MURARI LAL MEEN	Petitioner No. 15	Contesting Respondent No. 15

16.MUKESH KUMAR BHAKAR	Petitioner No. 16	Contesting Respondent No. 16
17.RAKESH PAREKH	Petitioner No. 17	Contesting Respondent No. 17
18.HARISH MEENA	Petitioner No. 18	Contesting Respondent No. 18
19.RAMESH CHAND MEENA	Petitioner No. 19	Contesting Respondent No. 19
20.SHRI. MAHESH JOSHI	Respondent No. 4	Pro forma Respondent No. 20
21.THE SECRETARY RAJASTHAN LEGISLATIVE ASSEMBLY, JAIPUR, RAJASTHAN	Respondent No. 2	Pro forma Respondent No. 21

To

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

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

MOST RESPECTFULLY SHOWETH: -

1. The Petitioner is constrained to invoke the jurisdiction of this Hon'ble Court under Article 136 of the Constitution, being aggrieved by the Impugned interim order dated 21.07.2020 passed by the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur in *Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors.*, D.B. Civil Writ Petition No. 7451/2020 ("**Impugned Interim Order**"). The Hon'ble High Court has *vide* the said interim order sought to interdict the Tenth Schedule proceedings pending before the Speaker/Petitioner herein, against the Contesting Respondents and directed the Petitioner to extend the period for filing reply by the Contesting Respondents till 24.07.2020.

- 1A That the Respondent No. 3- Mr. C.P Joshi, Hon'ble Speaker and Respondent No. 1 – the Hon'ble Speaker, before the Hon'ble High Court is the same party, i.e., the Petitioner herein. That Respondent No. 4-Shri. Mahesh Joshi Chief Whip Indian National Congress Legislature Party was not made a party before the Hon'ble High Court by the Respondents, while filing of the writ petition, however the said Respondent No. 4 was impleaded during the course of the proceedings before the High Court.

2. QUESTIONS OF LAW

It is submitted that the present SLP raises the following substantial questions of law for the consideration of this Hon'ble Court:

- I. Whether the Court can interfere in pending disqualification proceedings before the Speaker in view of the clear bar under Article 212 read para 6(2) of the Tenth Schedule of the Constitution?
- II. Whether the impugned order could have been passed in the face of the law laid down by a Constitution Bench of this Hon'ble Court in *Kihoto Hollohan v. Zachillhu*, [(1992) Supp 2 SCC 651], which has been followed consistently till as recently as in *Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly*, [2020 SCC OnLine SC 55]?
- III. Whether the notice dated 14.07.2020 is a proceeding in the House under Article 212 and para 6(2) of the Tenth Schedule?
- IV. Whether mere challenge to the constitutional validity of Para 2(1)(a) *ipso facto* result in para 2(1)(a) being effaced from the Constitution?
- V. Whether the Hon'ble High Court could have done indirectly something that could not have done directly and settled by this Hon'ble Court?

- VI. Whether requiring the Petitioner to adjourn proceedings under the Tenth Schedule, on any ground, amounts to granting a *quia timet* relief in effect?
- VII. Whether the pendency of a non maintainable, premature Writ Petition could be turned into the sword of Damocles hanging over the Tenth Schedule proceedings?

3. **DECLARATION IN TERMS OF RULE 3(2)**

The Petitioner submits that no other petition seeking leave to appeal has been filed by him against the Impugned interim order dated 21.07.2020 passed by the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., D.B. Civil Writ Petition No. 7451/2020.

4. **DECLARATION IN TERMS OF RULE 5:**

The Annexures P-1 to P- 9 produced along with the Special Leave Petition are true copies of the pleading/documents which form a part of the records of the case in the Courts below.

5. **GROUND:**

Leave to appeal is sought for on the following amongst other grounds, which may be read in addition and without prejudice to each other:

- A. FOR THAT, the Hon'ble High Court erred in passing the impugned interim order interdicting the Speaker from proceeding under the Tenth Schedule of Constitution of India till 24.07.2020.
- B. FOR THAT, the Hon'ble High Court erred in restraining the Speaker from calling replies and conducting hearing of the disqualification proceedings pending against the Respondents which is totally barred and impermissible as per the dictum of the Constitution bench of this Hon'ble Court in **Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651**, the relevant portion of which reads as under:

“109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

“110. ... judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings.”

- C. FOR THAT, the Hon'ble High Court erred in passing the impugned order in effect staying the notice dated 14.07.2020 which is impermissible and directly contravenes a *qua timet* prohibition in Tenth Schedule proceedings.
- D. FOR THAT, the impugned order is a direct intrusion into the exclusive domain of the Speaker and the impugned order is against the mandate of Article 212 of the Constitution r/w Para 6(2) of the Tenth Schedule.
- E. FOR THAT, the Hon'ble High Court failed to appreciate that the impugned order destroys the delicate balance envisaged by the Constitution between the legislature and the judiciary.
- F. FOR THAT, the impugned order is ex-facie is illegal, perverse and affront to the powers of the legislature and the speaker envisaged under the Constitution.
- G. FOR THAT, the Hon'ble High Court failed to appreciate that the notice dated 14.07.2020 is a proceeding in the house and Article 212 and immune from judicial interference at that stage.
- H. FOR THAT, the Hon'ble High Court ought to have considered that the notice dated 14.07.2020 was only limited to inviting comments from the Respondents and there was nothing adverse against the Respondent at that stage.

- I. FOR THAT, a notice is much prior to any final determination or decision on disqualification. The proceedings including the notice dated 14.07.2020 are in the realm of the legislative proceedings under Para 6(2) of the Tenth Schedule.
- J. FOR THAT, the Hon'ble High Court ought to have appreciated that only the final decision of the speaker is amenable to judicial review on limited grounds.
- K. FOR THAT it is inconceivable that the notice dated calling for comment on the disqualification is subject to judicial review.
- L. FOR THAT Article 212 clearly bars the challenge. In this regard, attention of this Hon'ble Court is invited to the judgment of the Seven Judge Bench decision of the Hon'ble Supreme Court in ***Pandit M.S.M. Sharma v. Sri Krishna Sinha, [(1959) Supp (1) SCR 806.*** Para 10 of the judgment read as follows:

“10. It now remains to consider the other subsidiary questions raised on behalf of the petitioner. It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot

be called in question on the allegation that the procedure laid down by the law had not been strictly followed. **Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business.**

- M. FOR THAT, the scheme of Tenth Schedule, para 6(1), para 6(2) and para 7 envisions a limited interference by the Courts in matters concerning the disqualification of Members even where final orders of disqualification are passed.
- N. FOR THAT, even after the final reasoned Order of the Speaker is passed, the Hon'ble Apex Court and the High Courts both have held that there are limited grounds for interfering. [*Kihoto Hollohan v Zachillhu* (1992) Supp 2 SCC 651, paras at para 110 (placitum d,e), *Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council* 2004 (8)SCC 747 para 8, 8.1 and *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly*, (2020) 2 SCC 595 para 121] namely, if principles of natural justice have been violated, or if the Order is malafide, patently perverse or alleged irregularity, none of which applies in the present case as the disqualification petition is at a preliminary stage.

- O. FOR THAT, the Hon'ble High Court ought to have appreciated that mere challenge to the constitutional validity of para 2(1)(a) cannot *ipso facto* result in para 2(1)(a) is effaced from the Constitution.
- P. FOR THAT, the impugned order passed by the Hon'ble High Court is in effect a stay on the powers of the Speaker under the Tenth Schedule to adjudicate on a disqualification petition..
- Q. FOR THAT, merely because the Respondents seek to challenge the constitutional Validity of Para 2(1)(a) the same cannot be a ground for constricting the power of the Speaker to even call for reply in the disqualification proceedings of which he is the master till the final decision is rendered..
- R. FOR THAT, the Speaker is the *persona designata* under the Constitution, who has exclusive, non-transferable, and non-delegable powers and authority to adjudicate on the issues of disqualification. [*Speaker, Haryana Vidhan Sabha v Kuldip Singh* (2015) 12 SCC 381, para 16, 18-20, 22].
- S. FOR THAT, the Hon'ble High Court failed to appreciate under Para 6(2) of the Tenth Schedule of the Constitution the proceedings before the Speaker are proceedings in the House, thereby attracting the bar from interference by the Courts under Article 212 of the Constitution. [Para 10, *Pandit MSM Sharma v. Dr. Krishna Sinha*, (1961) 1 SCR 96,].

- T. FOR THAT, the impugned order which is in (a) direct contravention Para 6(2) of the Tenth Schedule; and (b) direct contravention to the law laid down by this Hon'ble Court in *para* 109 and 110 of the *Kihoto (supra)* is liable to be immediately stayed so that the dignity of Constitutional authorities envisaged by the Constitution is protected.
- U. FOR THAT, this Hon'ble Court as the *sentinel on the qui vive* has a duty to ensure that the all the authority under the Constitution exercise their jurisdiction within the boundaries and respective '*Lakshman Rekha*' envisaged by the Constitution itself.
- V. FOR THAT, *judiciary* was never given a role by the Constitution under the Tenth Schedule to interfere in the manner it has done in the instant case resulting in this impasse.
- W. FOR THAT, the Hon'ble High Court failed to appreciate that the writ petition is clearly not maintainable in view of prayers (c) and (d), which seek declaration of facts as to the validity of the membership of the Respondent MLAs. This attempt at overreaching the clear and categorical power vested in the Speaker under Para 6(1), to decide any question as to disqualification of a member from the House in itself deprives the Writ Petition of any semblance of legitimacy in itself, which ought to be dismissed as not maintainable.

- X. FOR THAT, the impugned order is otherwise bad in law, a direct affront to the powers of the legislature and the speaker envisaged under the Constitution and deserves to be set aside.
- Y. The Petitioner craves leave of this Hon'ble Court to raise/make any such additional grounds and submissions at the time of hearing.

6. **GROUND FOR INTERIM PRAYER:**

The Petitioner seeks interim relief on the following grounds:

- A. FOR THAT the Petitioner has been able to demonstrate a *prima facie* case in his favor in as much the law is very well settled right from the decision of the Constitution Bench in *Kihoto Hollohan v. Zachillhu*, [(1992) Supp 2 SCC 651], followed consistently till as recently as in *Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly*, [2020 SCC OnLine 55], on the proposition that judicial review of the proceedings under the tenth schedule is available only at the stage after the pronouncement of the order by the Speaker.
- B. FOR THAT the balance of convenience is also in favor of the Petitioner in as much as he is the persona designate under the Tenth Schedule to adjudicate the proceedings thereunder.
- C. FOR THAT in the event the interim relief is not granted the Constitutional balance which has so delicately been balance so far would be struck off balance.

7. **MAIN PRAYER:**

In the facts and circumstances mentioned hereinabove it is most humbly prayed that this Hon'ble Court may be pleased to:

- a) Grant special leave to appeal against the Impugned interim order dated 21.07.2020 passed by the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., D.B. Civil Writ Petition No. 7451/2020; and
- b) pass any other order(s) as this Hon'ble Court may deem fit and proper in the interests of justice.

8. **PRAYER FOR INTERIM RELIEF:**

In view of the facts and circumstances it is most respectfully prayed that, this Hon'ble Court may be pleased to:

- a) Pass an ad-interim ex-parte order staying impugned interim order dated 21.07.2020 passed by the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., D.B. Civil Writ Petition No. 7451/2020; and
- b) Pass an ad-interim ex-parte order staying further proceedings in interim order dated 21.07.2020 passed by the Hon'ble Division Bench of the High Court of Rajasthan at Jaipur in Prithviraj Meena & Ors. V. Hon'ble Speaker, Rajasthan Legislative Assembly & Ors., D.B. Civil Writ Petition No. 7451/2020.; and

c) Pass any other order(s) as it may deem fit in the interests of justice.

**AND FOR THIS ACT OF KINDNESS YOUR HUMBLE
PETITIONER AS IN DUTY BOUND SHALL EVER PRAY**

**SETTLED BY:-
KAPIL SIBAL, Sr Adv.
VIVEK TANKHA, Sr Adv.**

DRAWN AND FILED BY:

NEW DELHI
DRAWN ON:21.07.2020
FILED ON: 22.07.2020

(SUNIL FERNANDES)
Advocate for the Petitioner