IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Reserved on: 30.03.2022
Pronounced on: 11.04.2022

WPA(P) 213 of 2021

Ambika Roy

...Petitioner

-Vs-

The Hon'ble Speaker, West Bengal Legislative Assembly and Ors.

...Respondents

WITH

WPA No. 3629 of 2022

Suvendu Adhikari

...Petitioner

-Vs-

Hon'ble Speaker, West Bengal Legislative Assembly & Ors.

...Respondents

Present:-

Mr. C.S. Vaidyanathan, Senior Advocate
Mr. Billwadal Bhattacharyya,
Mr. Kabir Shankar Bose,
Mr. Srijib Chakraborty,
Mr. Amit Mishra,
Mr. Sarthak Raizada,
Mr. Sayak Chakraborti,
Mr. Akshay Nagranjan,
Ms. Kanika Singhal,
Mr. Surjendu Das,
Mr. Anish Kumar Mukherjee,
Mr. Rishav Kumar Thakur,
Mr. Surjaneel Das,
Mr. Saket Sharma,
Mr. Amrit Sinha,
Mr. Surojit Saha, Advocates
... for the Petitioners

Mr. Kishore Datta,
Md. T.M. Siddiqui,
Mr. D. Ghosh, Advocates
... for the Respondent Nos.1 and 3

Mr. Anindya Kumar Mitra,
Mr. Arif Ali,
Mr. Sayantak Das,
Mr. Prabhat Srivastav, Advocates
... for the Respondent No.2

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA, CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ, JUDGE

Prakash Shrivastava, CJ:

1. WPA(P) 213 of 2021 is at the instance of a Member of the West Bengal Legislative Assembly from Kalyani and an Advocate by profession, challenging the order dated 24.06.2021 passed by the Secretary and the Returning Officer, West Bengal Legislative Assembly in respect of nomination of the respondent No. 2 namely, Mr. Mukul Roy, as Member of Public Accounts Committee, i.e, PAC and also the order dated 09th of July, 2021 passed by the respondent No. 1 Hon'ble Speaker, West Bengal Legislative Assembly appointing/nominating the respondent No. 2 as Chairman/Chairperson of the Committee on Public Accounts (PAC).

2. WPA 3629 of 2022 is at the instance of another Member of the West Bengal Legislative Assembly from Nandigram and Leader of Opposition of 17th West Bengal Legislative Assembly, challenging the order dated 11.02.2022 passed by the Hon'ble Speaker, West Bengal Legislative Assembly dismissing the petition filed by the petitioner Suvendu Adhikari for disqualifying the respondent, Mr. Mukul Roy, as a Member of the West Bengal Legislative Assembly on the ground of defection.

3. Facts in nutshell are that the election to the West Bengal Legislative Assembly were held in 8 phases between 27.03.2021 to 29.04.2021 and in that election respondent No. 2, Mr. Mukul Roy, had contested and won the election from Krishnanagar Uttar Constituency as BJP candidate. The results of the election were declared by the Election Commission on 02.05.2021. The newly elected Members including the respondent No.2, Mr. Mukul Roy, took oath on the floor of the House in the presence of the pro tem Speaker on 06.05.2021. It is a case of the petitioner that the respondent No.2, Mr. Mukul Roy, had defected to All India Trinamool Congress (AITC) on 11.06.2021 in the presence of the incumbent Chief Minister of the State Ms. Mamata Banerjee at the AITC's party office and this event of defection from BJP to AITC was covered by various news and media channels. On 14.06.2021, the Chief Opposition Whip wrote a letter to respondent No.1, prior to the election process for election to the 4 Financial Committees including the Public Accounts Committee, intimating him the consent of the Leader of Opposition to nominate a particular Member as Chairman of Public Accounts Committee of West Bengal Legislative Assembly. On 17.06.2021, petitioner Suvendu Adhikari had presented the petition to the Hon'ble Speaker of West Bengal Legislative Assembly seeking disqualification of respondent No.2 on the ground of defection against the provisions of Tenth Schedule of the Constitution. On 24.06.2021, the respondent No.2, Mr. Mukul Roy, had filed his nomination for election to PAC without BJP's support without disclosing his party affiliation in the nomination papers. According to the petitioner this was done in violation of Rule 302 of Rules of Procedure and Code of Business of

the West Bengal Legislative Assembly (for short, "Rules of Procedure and Business") which contemplates that election of Members to the PAC shall be done on the basis of proportional representation of each party inside the Assembly. The petitioner Ambika Roy (in WPA (P) 213 of 2021) with one more BJP Member namely, Bishnu Prasad had filed objection petition before thee Secretary, West Bengal Legislative Assembly questioning the nomination of respondent No.2 to the PAC. The said objection was rejected vide order dated 24.06.2021 by the respondent No.3 on the technical ground that the objections were not to be considered at the stage of scrutiny thereafter on 24.06.2021, 20 MLAs including the respondent No.2 were elected as Members of the PAC. On 09.07.2021, respondent No.1, Hon'ble the Speaker, West Bengal Legislative Assembly in exercise of powers under Rule 255 of the Rules of Procedures and Business, nominated/appointed respondent No.2, Mr. Mukul Roy, as the Chairman/Chairperson of the PAC for the year 2021-22. Hence, WPA(P) 213 of 2021 was filed seeking a writ of quo warranto and praying for quashing the election and appointment/nomination of the respondent No.2, Mr. Mukul Roy, as Member and Chairman/Chairperson of the PAC and challenging the orders dated 24.06.2021 and 09.07.2021.

4. This Court in WPA(P) 213 of 2021 had passed the detailed order on 28.09.2021 taking note of the judgment in the matter of **Keisham Meghachandra Singh vs. Hon'ble Speaker Manipur Legislative Assembly and Others** reported in **(2020) SCC OnLine SC 55** and had directed the respondent No. 1 to place before the Court the order passed in the petition for disqualification of respondent No. 2 as MLA.

5. The above order dated 28.09.2021 was subject matter of challenge before the Hon'ble Supreme Court in SLP (C) No. 16746/2021 and SLP (C) No. 16773/2021. Meanwhile on 11.02.2022, the Speaker, West Bengal Legislative Assembly had dismissed the application which was filed for disqualification of Mr. Mukul Roy as Member of the West Bengal Legislative Assembly, hence WP (C) No. 117/2022 was filed before the Hon'ble Supreme Court under Article 32 of the Constitution of India challenging the order dated 11.02.2022. The Hon'ble Supreme Court by the common order dated 25.02.2022 passed in the two Special Leave Petitions and the writ petition had permitted the parties to approach the High Court by observing as under:

> "As the writ petition is intricately connected with the issue of continuance of Mr. Mukul Roy as Chairman, PAC, it is advisable the said writ petition is heard along with the writ petitions that are pending in the High Court.
>
> Needless to mention that the observations made by the High Court while passing the Order dated 28.09.2021 are prima facie and the parties are at liberty to raise all contentions that are available to them under the law. In view of the tenure of Mr. Mukul Roy as Chairman, PAC is only for a period of one year, we request the High Court to decide the pending writ petitions and the writ petition to be filed by the petitioner in Writ Petition(C) No.117/2022 before the High Court expeditiously, not later than a period of one month."
>
> The Special Leave Petitions stand disposed of. Pending application(s), if any, shall stand disposed of."

6. Hearing of this petition had commenced within the time permitted by the Hon'ble Supreme Court but could be concluded by learned Counsel for the parties only after the permissible time.

7. In compliance of the aforesaid order WPA No. 3629 of 2022 has been filed by the petitioner Suvendu Adhikari assailing the order of the Speaker, West Bengal Legislative Assembly dated 11.02.2022 and seeking a writ of mandamus to restrain respondent No.2, Mr. Mukul Roy, from continuing as Member of the West Bengal Legislative Assembly for having suffered disqualification under para 2(1)(a) of the Tenth Schedule of the Constitution.

8. Learned Counsel for the respondent Speaker, West Bengal Legislative Assembly has raised a preliminary objection that the petitioner in WPA No. 3629 of 2022 is agitating his personal cause, therefore, in terms of Rule 56 of the Rules relating to writ petition, it is to be heard by the Single Bench and that these Rules have been framed in terms of the judgment of the Hon'ble Supreme Court in the matter of **State of Uttaranchal vs. Balwant Singh Chaufal and Others** reported in **(2010) 3 SCC 402**. Hence, WPA No. 3629 of 2022 which is not in the nature of PIL should be sent to the learned Single Judge for hearing.

9. Learned Counsel for the petitioner has vehemently opposed the prayer by submitting that such an objection should not come from the Speaker as he has limited role in this petition and that the objection itself indicates a partisan attitude of the Speaker and that this petition is required to be heard by the Division Bench as the per the order of the Hon'ble Supreme Court.

10. Having heard the learned Counsel for the petitioners on the preliminary objection, we find that that the Hon'ble Supreme Court while passing the common order dated 25.02.2022 quoted above, has clearly noted that the issue raised in the petition is intricately connected with the issue of continuance of respondent No. 2, Mr. Mukul Roy, as Chairman, PAC, therefore, it has been found that the writ petition should be heard along with WPA(P) 213 of 2021 pending before the Division Bench of this Court. This Court finds it very strange that the Speaker is raising such a technical objection contrary to the view which has been expressed by the Hon'ble Supreme Court that too in a matter where he has very limited role to play.

11. In the matter of **Balwant Singh Chaufal and Others (supra)**, the Hon'ble Supreme Court in order to preserve purity and sanctity of PIL had issued certain directions in paragraph 181 and one of the directions was in relation to framing of the Rules by the High Court devising the procedure for dealing with the public interest litigation, hence rules governing the field have been framed. Rule 56 of the "Rules of High Court at Calcutta relating to Applications under Article 226 of the Constitution of India" defines the public interest litigation but this definition is inclusive and not exhaustive.

12. Considering the circumstances of the case and order of the Hon'ble Supreme Court, the preliminary objection of the Counsel for the respondent Speaker, West Bengal Legislative Assembly cannot be accepted and is hereby overruled.

13. Learned counsels for the parties are heard on merit.

14. Submission of the Counsel for the petitioner is that the respondent No.2, Mr. Mukul Roy, had contested the election of

Legislative Assembly as member of BJP but thereafter he had joined the opposite party despite being elected after contesting election on BJP's symbol as a BJP candidate. In support of this submission he has referred to the material relating to the newspaper report, press conference which was allegedly telecasted live in facebook page of AITC, screenshots of the announcement made in the twitter handle of AITC etc. and pleadings of the parties. He has submitted that though the certificate in terms of Section 65-B of the Indian Evidence Act, 1872 (for short, 'the Evidence Act') was duly submitted which is on page 212 of the paper book of the writ petition but it has been completely ignored by the Speaker and the material which was produced by the petitioner in support of the plea of defection of the respondent No.2 has wrongly been rejected. He has also submitted that no cross-examination of any persons was done by the Speaker in respect of any part of the certificate under Section 65-B and that the certificate was not even looked into and even if the certificate was found to be defective, the Speaker could have called the petitioner to cure the same. He submits that present is a case which falls within the limited scope of judicial review and that the order of the Speaker is perverse. He also submits that the material on record clearly indicates that the respondent No.2, Mr. Mukul Roy, had voluntarily given up the Membership of BJP and had left the party. He has also submitted that it is a fit case where this Court itself should decide the issue relating to disqualification of the respondent No.2 as the conduct of the Speaker before this Court in raising technical objection and making an attempt to protect the respondent No.2, Mr. Mukul Roy, shows that he is not acting in an independent manner. In WPA(P) 213

of 2021 he has reiterated and adopted the same arguments which were advanced at the stage of passing of the order dated 28.09.2021.

15. Learned Counsel for the petitioner has further submitted that the Speaker is a quasi judicial authority, therefore, it is not understood why he is defending the respondent No. 2, Mr. Mukul Roy, before the Court so seriously and that the video recording has not been denied by the respondent No. 2 and further submitted that the evidence under Section 65-B as per the Evidence Act is in the nature of secondary evidence and has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Anvar P. V. vs. P. K. Basheer and Others** reported in **(2014) 10 SCC 473**. He has further submitted that the order of the Speaker suffers from perversity and has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Sumitomo Heavy Industries Limited vs. Oil and Natural Gas Corporation Limited** reported in **(2010) 11 SCC 296** and in the matter of **S. R. Tewari vs. Union of India and Another** reported in **(2013) 6 SCC 602** and has submitted that in ground 3 of the writ petition, specific ground of perversity has been taken and that once the respondent No. 2 is disqualified he could not be elected as Member/Chairman of PAC. In support of his submission relating to scope of interference he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Kihoto Hollohan vs. Zachillhu and Others** reported in **1992 Supp (2) SCC 651**, **Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha and Others** reported in **(2007) 3 SCC 184** and **Shrimanth Balasaheb Patil vs. Speaker, Karnataka Legislative Assembly and Others** reported in **(2020) 2 SCC 595**. In support of his submission relating to voluntarily giving up Membership he has placed reliance

upon the judgment of the Hon'ble Supreme Court in the matter of **Ravi S. Naik vs. Union of India and Others** reported in **1994 Supp (2) SCC 641**, in the matter of **G. Viswanathan vs. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras and Another** reported in **(1996) 2 SCC 353**, and **Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council and Others** reported in **(2004) 8 SCC 747**. In support of his submission that if there was any defect in the certificate under Section 65-B, the Speaker should have called the petitioner to rectify, he has placed reliance upon the judgment in the matter of **Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Others** reported in **(2020) 7 SCC 1** and in the matter of **Anvar P. V. (supra)**. In support of his submission that this Court should have decide the issue of disqualification he has placed reliance upon the judgment in the matter of **Rajendra Singh Rana and Others vs. Swami Prasad Maurya and Others** reported in **(2007) 4 SCC 270** and in support of his submission relating to the limited scope of arguments before this Court by the Speaker in a challenge to his order, being a quasi judicial authority, he has placed reliance upon the judgment in the matter of **Mohamed Oomer, Mohamed Noorullah vs. S. M. Noorudin** reported in **AIR 1952 Bom 165** and in the matter of **Syed Yakoob vs. K. S. Radhakrishnan and Others** reported in **AIR 1964 SC 477**.

16. Learned Counsel for the respondent No. 1 Speaker, West Bengal Legislative Assembly has submitted that the scope of interference in the order passed by the Speaker under Schedule Ten of the Constitution is very limited and that such a decision can be interfered with only on very limited grounds. In support of his

submission he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Kihoto Hollohan (supra)**, **Raja Ram Pal (supra)**, **Rajendra Singh Rana and Others (supra)**, **Jagjit Singh vs. State of Haryana and Others** reported in **(2006) 11 SCC 1**, **Shrimanth Balasaheb Patil (supra)**. He has further submitted that burden of proof is always on the person who alleges it and in support of his submission he has placed reliance upon the judgment in the matter of **Jagjit Singh (supra)**. He has also questioned the evidentiary value of newspaper reports and has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Kshetrimayum Biren Singh vs. Hon'ble Speaker, Manipur Legislative Assembly and Others** reported in **(2022) 2 SCC 759**. Initially he had advanced arguments that no such certificate which is on page 212 of the petition in terms of Section 65-B was filed before the Speaker but later on, on instructions he has submitted that it was filed and duly considered.

17. Learned Counsel for the respondent No. 1, Speaker, has further submitted that the Speaker can come to Court to defend his order and in support of his submission he has placed reliance upon the judgment of the Patna High Court in the matter of **Bihar Legislative Assembly vs. Gyanendra Kumar Singh and Ors.** reported in **2015 SCC OnLine Pat 3323** and Jharkhand High Court in the matter of **Babulal Marandi vs. Speaker, Jharkhand Vidhan Sabha and Another** reported in **2020 SCC OnLine Jhar 1017**. He has also submitted that the order passed by the Speaker does not suffer from any perversity and has relied upon the judgment in the matter of **Shrimanth Balasaheb Patil (supra)** and in the matter of **Arjun Panditrao Khotkar (supra)**.

18. Learned Counsel appearing for the respondent No. 2, Mr. Mukul Roy, has also submitted that there is limited scope of interference in writ jurisdiction against the order of the Speaker and that the certificate under Section 65-B of the Evidence Act has duly been considered by the Speaker and has not been found to be in accordance with law. In support of his submission he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Anvar P. V. (supra)**. He has further submitted that no material exists to show that the respondent No. 2 has defected. He has also referred to the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab vs. V. K. Khanna and Others** reported in **(2001) 2 SCC 330** and in the matter of **B.C. Chaturvedi vs. Union of India and Others** reported in **(1995) 6 SCC 749** in support of the nature of proof required to establish malafide. He has also submitted that no legally admissible evidence was produced by the petitioner before the Speaker and the BJP also did not inform the Speaker that the respondent No. 2 will not sit in BJP gallery and that mere attendance of the respondent No. 2 in TMC meeting is not enough for holding that the said respondent has voluntarily given up the Membership of BJP. In support of his submission he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **D. Sudhakar (2) and Another vs. D. N. Jeevaraju and Others** reported in **(2012) 2 SCC 708**.

19. We have heard the learned Counsel for the parties and perused the records.

20. The Tenth Schedule has been added in the Constitution of India by the Constitution (52nd Amendment) Act, 1985. Tenth

Schedule provides for disqualification on ground of defection and sub-para 1 which is relevant for the present controversy reads as under:

> **"2. Disqualification on ground of defection.**—(1) Subject to the provisions of [paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House—
>
> (a) if he has voluntarily given up his membership of such political party; or
>
> (b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.
>
> *Explanation.*—For the purposes of this sub-paragraph,—
>
> (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;"

21. In terms of sub-para 2(1)(a) of the Tenth Schedule, a Member of a House on voluntarily giving up his membership of the political party to which he belongs, becomes disqualified for being a Member of the House. Explanation (a) makes it clear that if a member was set up as a candidate for election by a political party then he is deemed to be a member belonging to that political party.

22. For attracting the provisions of para 2(1)(a), it is not necessary for a member to have resigned from his political party. The Hon'ble Supreme Court in the matter of **Ravi S. Naik (supra)** in a case where two MLAs elected to the Goa Legislative Assembly under

the ticket of MGP were disqualified by the Speaker on the ground of defection, has held that the words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even without tendering his resignation from the membership of the party. Even in the absence of a formal resignation from membership, from the conduct of the member an inference can be drawn that he has voluntarily given up his membership of the political party to which he belongs.

23. In the matter of **G. Viswanathan (supra)** considering the meaning of "voluntarily give up" the Hon'ble Supreme Court has held that the act of voluntarily giving up the membership of the political party may be either expressed or implied. If a person belonging to a political party that had set him up as a candidate gets elected to the House and thereafter joins another political party either because of his expulsion or any other reason, he voluntarily gives up his membership of the political party and incurs the disqualification.

24. In the case of **Dr. Mahachandra Prasad Singh (supra)** in a case where the candidate was elected to Legislative Council on the ticket of Indian National Congress but he had contested the Parliamentary election as an independent candidate, the Hon'ble Supreme Court has found the conclusion of the Chairman of the Legislative Council that he had given up his membership from Indian National Congress to be perfectly correct.

25. In the present case, if the allegations made in the petition for disqualification are established, then the Speaker may reach to the

conclusion that respondent No. 2 had voluntarily given up the membership of the BJP and can decide the issue of disqualification.

26. In terms of para 6 of Tenth Schedule, Speaker of the House is competent to take a decision on the question of disqualification of a Member of a House and his decision is final and the proceedings are deemed to be the proceedings in the Parliament/Legislature under Article 122/212 of the Constitution. Paragraph 7 of Tenth Schedule relates to bar of jurisdiction of Courts and reads as under:

> **"7. Bar of jurisdiction of courts**.—Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule."

27. Article 212 of the Constitution provides that the validity of any proceedings in the Legislature of the Constitution will not be called in question on the grounds of any alleged irregularity of procedure.

28. In view of paragraph 7 of the Tenth Schedule and Article 212 of the Constitution, an argument has been advanced before this Court in respect of the limited scope of interference, hence the issue of the extent of jurisdiction which this Court can exercise in such matters needs consideration.

29. In the matter of **Kihoto Hollohan (supra)**, Constitution Bench of the Hon'ble Supreme Court while examining the question of constitutional validity of the Tenth Schedule of the Constitution has also examined the issue of scope of judicial intervention in the order passed under Tenth Schedule and has held that:

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

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

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

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

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

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory interference being

> cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence."

30. Thus, in the above judgment it was clearly laid down that the decision of the Speaker under paragraph 6(1) is open to judicial review on the grounds of violation of constitutional mandates, malafides, non-compliance with the Rules of Natural Justice and perversity. It was also held that the Speaker/Chairman while discharging the function under Tenth Schedule acts as tribunal and their decisions in that capacity are amenable to judicial review.

31. In the matter of **Jagjit Singh (supra)** the three Judge Bench of the Hon'ble Supreme Court relying upon the earlier case of **Kihoto Hollohan (supra)** has held that the order of the Speaker exercising powers to disqualify the Member can be challenged on the ground of ultravires or malafides or having been made in colourable exercise of powers based on extraneous and irrelevant consideration and that the order would be a nullity if Rules of Nature Justice are violated.

32. In the matter of **Raja Ram Pal (supra)** subsequent Constitution Bench of the Hon'ble Supreme Court has culled out the principle relating to scope of interference in such an order of the Speaker by holding as under:

> "**431.** We may summarise the principles that can be culled out from the above discussion. They are:
>
> (a) xxx
>
> (b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere

coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;

(c) xxx

(d) xxx

(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) xxx

(i) xxx

(j) xxx

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the

parliamentary proceedings in Article 105(3) of the Constitution;

(l) xxx

(m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

(o) xxx

(p) xxx

(q) xxx

(r) xxx

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(t) xxx

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

33. Another Constitution Bench in the matter of **Rajendra Singh Rana and Others (supra)** has considered this issue and has

held that the judicial review cannot be a broad one and in the light of finality attached to the decision of the Speaker in para 6(1) of the Tenth Schedule that judicial review is available on grounds like gross violation of natural justice, perversity, bias and such like defects.

34. In the matter of **Shrimanth Balasaheb Patil (supra)** the Hon'ble Supreme Court has held that the Speaker while adjudicating a disqualification petition acts as a quasi judicial authority and the validity of the order thus passed can be questioned before the Supreme Court or the High Court. It has been noted that the object and purpose of Tenth Schedule is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. In paragraph 190.6 the Hon'ble Supreme Court has taken note of the 4 grounds of judicial review i.e. malafides, perversity, violation of constitutional mandate and order passed in violation of natural justice. Taking note of the depleting neutrality of the Speaker it has been held that:

> **"190.9.** There is a growing trend of the Speaker acting against the constitutional duty of being neutral. Further, horse trading and corrupt practices associated with defection and change of loyalty for lure of office or wrong reasons have not abated. Thereby the citizens are denied stable governments. In these circumstances, there is need to consider strengthening certain aspects, so that such undemocratic practices are discouraged and checked."

35. Thus it is clear that the decision of the Speaker under para 6(1) of Tenth Schedule is open to judicial review though it can be questioned only on the limited grounds of malifides, perversity, violation of the constitutional mandate or violation of the natural

justice. Hence, the impugned order is required to be scrutinized keeping in mind the limited grounds of judicial review available to assail such an order.

36. Learned counsel for the respondent has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **B.C. Chaturvedi (supra)** which lays down general principle related to scope of judicial review when a decision in the departmental inquiry is questioned but having regard to the law which is settled by the Hon'ble Supreme Court keeping in view the bar contained in paragraph 7 of the Tenth Schedule, we are of the opinion that it would not be proper to apply general principle of service law while scrutinizing the decision of the Speaker passed under paragraph 6 of the Tenth Schedule.

37. The order impugned in the present case has been challenged on the ground of being perverse. The Hon'ble Supreme Court in the matter of **S. R. Tewari (supra)** taking note of the earlier judgments on the point has enumerated the circumstances when a decision can be held to be perverse by holding that:

> "**30.** The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as

> perverse and the findings would not be interfered with. (Vide *Rajinder Kumar Kindra* v. *Delhi Admn.*, *Kuldeep Singh* v. *Commr. of Police*, *Gamini Bala Koteswara Rao* v. *State of A.P.* and *Babu* v. *State of Kerala*.)"

38. In the matter of **Sumitomo Heavy Industries Limited (supra)** considering the issue of perverse findings in a award, the Hon'ble Supreme Court has held that it is a finding which is not only against the weight of evidence but altogether against the evidence and that a perverse finding is one which is based on no evidence or one that no reasonable person would have arrived at.

39. Hence, the order which is found to have been passed on findings arrived at by ignoring or excluding relevant material and relying upon irrelevant and inadmissible material is a perverse order. If the findings are based upon no evidence or unreliable evidence then they are termed as perverse findings.

40. Mala fides is another ground on which the order of the Speaker passed under paragraph 6(1) of Tenth Schedule can be challenged. The Hon'ble Supreme Court in the matter of **V. K. Khanna and Others (supra)** has held that the expression "mala fide" has a definite significance in the legal phraseology and the same cannot possibly emanate out fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bona fide or actions not otherwise bona fide, however, by themselves would not amount to be mala fide unless the same is accompanied with some other factors which would depict a bad motive or intent on the part of the doer of the act.

41. In the present case the impugned order of the Speaker dated 11th of February, 2022, passed under para 6 of the Tenth Schedule, rejecting the petition to disqualify the respondent No. 2 on the ground of defection, needs to be examined on the touchstone of the principles noted above.

42. The petitioner Suvendu Adhikari had approached the Speaker for disqualifying the respondent No. 2, Mr. Mukul Roy, under paragraph 2 (1)(a) of the Tenth Schedule on the ground that having won the election of MLA from the BJP symbol as a BJP candidate he had joined the TMC on 11.06.2021. Before the Speaker, in support of this plea, the petitioner had placed reliance upon the newspaper reports, tweets, alleged press conference which was telecast live in the facebook page of AITC, video recording of the said press conference and screenshots of the announcement made in the twitter handle of AITC on 11th of June, 2021 along with the transcripts thereof. In support of the evidence relating to electronic record, petitioner had filed the certificate under Section 65-B of the Evidence Act before the Speaker, which is on page 212 of the writ petition paperbook but the Speaker has failed to take into account the said certificate and has rejected the electronic evidence which was filed by the petitioner in support of the plea by holding as under:

> "73. In the instant case, the conditions as required under section 65B of the Indian Evidence Act, 1872 as regards to the items as described in Paragraph No 71 have not been fulfilled. Mere print out of the Tweets made by ANI fail to satisfy the conditions as required under section 65B (2) and therefore, they cannot be treated as evidence under the said Act. Thus, the evidence relied on by the Petitioner in the

main petition falls through for the lack of credibility which have been described in detail earlier.

74. Now comes the question of the credibility of the evidence relied on by the Petitioner in the rejoinder. As described earlier, all the four items relied on by the Petitioner in the rejoinder have failed to fulfill the required conditions under Section 65(B) of The Indian Evidence Act, 1872. Mere assertions in the affidavit does not fulfill the conditions as laid down in section 65(B)(4).Of the said four items, three items namely item no. (b), (c) and (d) as described in Paragraph No 71 concern a third party, i.e., All India Trinamool Congress Party. On examination, I find that all three items are linked either to the Facebook page of All India Trinamool Congress or to the Twitter handle of All India Trinamool Congress. It is quite obvious that the same are managed and controlled by All India Trinamool Congress and the onus of anything appearing in the said social media accounts lies with All India Trinamool Congress and not the Opposite Party Shri Mukul Roy, MLA. The Ld. Lawyer of the Opposite Party during his submissions had stressed again and again that the Opposite Party was totally in the dark of anything appearing in the said social media accounts concerning him. In this regard, I find before in the argument advanced by the Ld. Lawyer of the Opposite Party."

43. It has further been held that:

"79. As regards electronic evidence adduced by the Opposite Party, the same is not accompanied by any certificate in terms of section 65B of The Indian Evidence Act, 1872 and as such, the same cannot be admitted in evidence.

Another fact remains to be discussed here. If the contentions of the Petitioner is to be believed and relied upon based on electronic records, then the same is to be believed and relied upon regarding the speech of the

> Opposite party Shri Mukul Roy, MLA in August, 2021.Both the contentions of the Petitioner and the Opposite party have been challenged. Neither the Petitioner nor the Opposite party has taken pains to adduce evidence and as such, it is impossible for me to arrive at a decision as regards the veracity of such evidence.
>
> 80. As we all know, the law requires proof. The matter cannot be considered just on possibility or bare inference. There is no room, therefore, for a reasonable judicial inference. Not only has the defection to be proved, it has to be proved by conformity to the existing law. The Petitioner while submitting the rejoinder has not produced any certificate in respect of the electronic items which he submitted along with his main petition and no attempt has been made to prove the same. Another fact which needs to be taken into account is that the Petitioner has relied upon only two newspaper reports that of Business Standard and Deccan Herald ignoring any local vernacular. This fact also assumes importance since many local vernaculars are published from Kolkata. In the fact of such doubtful and inadmissible evidence represented by CD, tweets, video and newspaper reports, the same cannot be accepted and the whole matter falls to the ground."

44. A bare perusal of the aforesaid makes it clear that the Speaker while passing the impugned order has completely ignored the certificate under Section 65-B of the Evidence Act submitted by the petitioner in support of the electronic record. The certificate under Section 65-B of the Evidence Act submitted by the petitioner was a vital document in support of the evidence in the form of electronic record which has been completely ignored by the Speaker. In fact paragraph 79 of the order shows that Hon'ble Speaker has refused to admit electronic evidence by stating that it was not accompanied by

certificate in terms of Section 65-B. The Speaker is required to consider the certificate produced by the petitioner under Section 65-B of the Evidence Act and thereafter it is open to him to accept or reject the certificate after assigning due reasons and take further steps. If such a certificate is accepted then the electronic evidence produced by the petitioner becomes admissible unless there is any other legally acceptable objection about its admissibility. There is possibility of reaching to a different conclusion than the one which has been arrived at by the Speaker in the impugned order, after holding the electronic evidence admissible and after examining the same.

45. Section 65-B of the Evidence Act relates to admissibility of electronic record and certificate required by this Section needs to be produced in support of the electronic evidence. Admissibility of such a secondary evidence of electronic records depends upon satisfaction of condition prescribed under Section 65-B. The Hon'ble Supreme Court in the matter of **Anvar P. V. (supra)** has held that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof of protection of the original. Hence, the admissibility of an electronic record depends upon the satisfaction of 4 conditions prescribed under Section 65-B of the Act.

46. In the matter of **Arjun Panditrao Khotkar (supra)**, it is held that:

> "**51.** On an application of the aforesaid maxims to the present case, it is clear that though Section 65-B(4) is

mandatory, yet, on the facts of this case, the respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.

52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V., this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC."

47. Thus, if the Tribunal or the Court concerned finds a certificate given under Section 65-B of the Evidence Act to be defective, then it can summon the person/persons referred to Section 65-B of the Act. Hence, it was necessary for the Speaker to duly take

into account the certificate given by the petitioner under Section 65-B of the Act before rejecting the electronic evidence as inadmissible which he has failed to do in the present case.

48. Hence, the impugned order of the Speaker is clearly a perverse order and perversity being one of the grounds of judicial review available against such an order, this Court finds that the order impugned cannot be sustained.

49. At the end, we take note of the serious issue which has been raised before this Court by the Counsel for the petitioner in respect of the conduct of the Speaker by referring to paragraph 9 and 19 of the affidavit in opposition of the respondent No. 1 dated 17th of March, 2022 by submitting that before this Court the respondent No. 1, Speaker, is espousing the cause of the respondent No. 2, therefore, he cannot be said to be acting independently. In paragraph 9 and 19 of the affidavit in opposition dated 17th of March, 2022 respondent No. 1 has made following averments:

> "9. With regard to the allegations and/or contentions made in paragraph 7 it is denied that the respondent No. 2 all of a sudden voluntarily gave up the membership of BJP and defected to AITC on 11th June, 2021, as alleged or at all. It is denied that the respondent No. 2 has expressed his public support and endorsement for the AITC or its Chairperson on various public and social media platforms, as alleged or at all. It is also denied that the respondent No. 2 has become liable for disqualification under the provisions of the Tenth Schedule to the Constitution of India. It is an admitted position of the writ petitioner in the paragraph under reference that the respondent No. 2 has not resigned from the BJP or as MLA of Krishnanagar Uttar Constituency and that the said petitioner failed to

demonstrate by any conclusive evidence that the respondent No. 2 had voluntarily given up his membership of BJP.

19. The allegations and/or contentions made in paragraphs 35 to 48 of the said petition are specifically denied. It is denied that the petitioner filed a certificate in terms of section 65B(4) of the Indian Evidence Act, 1872, as alleged or at all. It is denied that as a 'content viewer' the certificate provided by the petitioner fully complied with the provision of section 65B of the Act of 1872, as alleged or at all. It is stated that the petitioner failed to provide any conclusive or clinching evidence in support of his contention in his petition for defection inspite of adequate opportunity being afforded to him to prove such contention, and therefore the purported contention in the writ petition that in view of the settled legal position a person who has no control over the computer containing the electronic record cannot be compelled to provide a certificate under section 65B(4) of the Act is vehemently denied and disputed. It is denied that the order impugned is vitiated for non-application of mind as alleged or at all. It is denied that the relevant tweets, face book posts and video footage in connection with the instant case are admissible pieces of evidence under the Evidence Act, as alleged or at all. It is denied that the conduct of respondent No. 2 makes it clear that he has voluntarily given up his membership of the BJP and joined the AITC, as alleged or at all. It is denied that the continuation of respondent No. 2 as an MLA is an affront to the basic principles of democracy and its essential values, as alleged or at all. It is denied that the impugned order is based on irrelevant consideration or liable to be set aside or is ex-facie bad on facts as well as in law, as alleged or at all. It is denied that the action of the answering respondent in passing the impugned order is bad, illegal, perverse and cannot be countenanced both in law as well as in facts, as alleged or at all. It is denied that the action of the answering

respondent suffer from the vices of illegality, irrationality and / or procedural impropriety warranting interdiction by this Hon'ble Court, as alleged or at all. It is denied that the act and/or action of the answering respondent in passing the order is defective of highhandedness and mechanical action or that it amounts to sheer miscarriage of justice, as alleged or at all. It is denied that the impugned order smacks of arbitrariness, malafide, maliciousness or that the same is unsustainable in law, as alleged or at all.

It is also stated that in the proceeding, the petitioner failed to negate the queries as to whether any request for any change of seat of the respondent No. 2 from BJP Block to any other side in the chamber of the House was submitted from the BJP or whether any whip was served on the respondent No. 2 on any ground by the BJP. Even in the instant writ petition the writ petitioner has maintained a deceptive silence with regard to the same.

Further to avoid prolixity in reply to the paragraphs under reference I repeat and reiterate the contentions made in the preceding paragraphs hereinabove."

50. Before this Court, technical objection about maintainability of this petition was also raised by the respondent No. 1 which gave an opportunity to the petitioner to question his independence.

51. The Counsel for the petitioner has in this regard placed reliance upon the judgment of the Bombay High Court reported in the case of **Mohamed Oomer, Mohamed Noorullah (supra)** wherein an appeal arising out of the order made by the registrar of trade marks the Division Bench of the Bombay High Court found that it was entirely wrong on the part of the registrar to have appeared merely for

the purpose of elucidating his own judgment and pointed out the errors in the judgment of the Court below.

52. Counsel for the petitioner has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Syed Yakoob (supra)** wherein it has been held that:

> "**19.** Mr Rangahadham Chetty who appears for Respondents 2 and 3 has asked for his costs. We do not think this request can be accepted. It may be that in such proceedings, the Authority and the Appellate Tribunal are proper and necessary parties, but unless allegations are made against them which need a reply from them, it is not usual for the authorities to be represented by lawyers in Court. In ordinary cases, their position is like that of courts or other Tribunals against whose decisions writ proceedings are filed; they are not interested in the merits of the dispute in any sense, and so, their representation by lawyers in such proceedings is wholly unnecessary and even inappropriate. That is why we direct that Respondents 2 and 3 should bear their own costs."

53. The respondent No. 1, Hon'ble Speaker, had limited role to place the relevant material before this Court in support of the reasoning on the basis of which conclusions in the order impugned were arrived at. We need not examine the issue in detail but we express hope and trust that the respondent No. 1 will impartially and independently decide the petition filed by the petitioner in respect of disqualification of the respondent No. 2.

54. In view of the fact that the respondent No. 1, Speaker, has failed to take into account and consider the certificate submitted by the petitioner under Section 65-B of the Evidence Act and has consequently held the electronic evidence as inadmissible which has

rendered the order of the respondent No. 1 perverse, therefore, now the certificate filed before the Speaker under Section 65-B needs to be considered in accordance with law and the electronic evidence needs to be re-appreciated. We are of the opinion that instead of considering the certificate under Section 65-B of the Evidence Act for the first time by this Court in exercise of writ jurisdiction, the better course of action would be that the said certificate is considered by the respondent No. 1 and thereafter, electronic evidence be appreciated by him in accordance with law. Hence, the plea of the petitioner for deciding the issue by this Court based upon the judgment of the Supreme Court in the matter of **Rajendra Singh Rana and Others (supra)** cannot be accepted. In that case, the Hon'ble Supreme Court in the peculiar facts of that case had accepted the submission to decide the issue but by clearly observing in paragraph 44 that normally Court might not proceed to take a decision for the first time when the authority concerned had not taken a decision in the eye of law and the Court would normally remit the matter to the authority for taking a proper decision in accordance with law. Hence, we deem it proper to restore the matter back before the respondent No. 1 Speaker, West Bengal Legislative Assembly for fresh decision instead of deciding the same ourselves in the exercise of the writ jurisdiction.

55. Since, this Court has remitted the matter back to the Speaker, therefore, other issues raised by the parties need not be gone into.

56. Hence, WPA 3629 of 2022 is allowed. The impugned order dated 11.02.2022 passed by the respondent No. 1 is set aside. The

matter is remitted back to the respondent No.1 for fresh decision in accordance with law keeping in view the observations made above.

57. In the case of **Keisham Meghachandra Singh (supra)** an outer limit for taking such a decision has been set up by holding that:

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

58. Since, the terms of the respondent No. 2, Mr. Mukul Roy, as Member/Chairman, PAC is going to expire in a short while, therefore, keeping in view the exceptional circumstances of the case we expect that respondent No. 1 will decide the application for disqualification filed by the petitioner as expeditiously as possible preferably within a period of four weeks from today.

59. So far as WPA(P) 213 of 2021 is concerned, keeping in view the observations made above and in the order dated 28th of September, 2021, we deem it proper to keep this petition pending for its decision after the issue of disqualification of the respondent No.2 is decided by the Speaker. The parties are at liberty to mention WPA(P) 213 of 2021 as soon as the issue of disqualification of the respondent No. 2 is decided by the respondent No. 1.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
11.04.2022

PA(SS)

(A.F.R./N.A.F.R)