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# SC rejects Rajasthan Speaker's plea to stay HC proceedings

Case pertains to validity of the anti-defection notices he issued to Pilot, 18 MLAs

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NEW DELHI

The Supreme Court on Thursday refused Rajasthan Assembly Speaker C.P. Joshi's plea to stop the State's High Court from deciding the validity of the anti-defection notices he issued to former Deputy Chief Minister Sachin Pilot and 18 dissident Congress MLAs.

But the High Court order on July 24 will be subject to the final decision on the Speaker's remonstrance in the top court that the HC crossed the 'Lakshman Rekha' and interfered with an ongoing disqualification proceedings even before he could take a final decision.

The Speaker had complained that the HC had no jurisdiction to ask him to defer the disqualification proceedings till July 24.

The top court scheduled a hearing on Monday (July 27).

During the hearing on Thursday, a three-judge Bench, led by Justice Arun Mishra, said the "larger question" here is whether a legislator's "voice of dissent" can be "shut down" with the threat of disqualification. Can expressing dissent amount to "voluntarily giving up the party membership" under Paragraph 2(1) (a) of the Tenth Schedule of

## Straight talk

A few of the observations made by Justice Arun Mishra in the Rajasthan case on Thursday

● We are not in Rajasthan and what happened there. Suppose X, Y, Z is there (in the government). There is loss of faith. May be within the constitution, the voice of dissent can be shut down in a democracy? This is not a simple matter.

These are people elected by the public

■ Question is about democracy. How it will survive?

■ This is a very serious issue and taking a prolonged hearing

the Constitution and invite anti-defection proceedings?

"Can the voice of dissent [of MLAs] be shut down like this in a democracy? This is not a simple matter. These are people elected by the public. The larger question is about democracy and how it will survive like this... This for us is not about the disqualification of some people," Justice Mishra addressed senior advocate Kapil Sibal, appearing for the Speaker.

"If these MLAs have to voice their dissent, let them do it in their party meetings. The disqualification petition before me says they did not attend party meetings, they attempted to destabilise their own government, they

are sitting incommunicado in a Haryana hotel and making demands for a floor test in the media..." Mr. Sibal responded to Justice Mishra.

He said the July 14 notice issued by the Speaker was an opportunity for the MLAs to explain their conduct. "I, as the Speaker, am giving them a chance to respond to the petition... As to why there are holed up in a hotel? If I am satisfied with their explanation, I will not disqualify them. But no judicial authority can interfere till I make my final decision in the disqualification proceedings. That is the law you declared in Kihoto Hollohan case in 1992," Mr. Sibal submitted.

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Justice B.R. Gavai, a judge on the Bench along with Justice Krishna Murari, said the HC had, on July 21, only "requested" the Speaker to defer the disqualification proceedings till July 24.

"The HC told me [Speaker] 'you cannot decide the matter' and 'you extend their time to file replies to disqualification notices'. Both directions are unconstitutional. The HC cannot direct the Speaker to extend time. The HC has no jurisdiction in this issue till the Speaker made his decision on the disqualification," Mr. Sibal, assisted by advocate Sunil Fernandes, replied.

Justice Gavai asked how the Speaker was an 'aggrieved person' here.

"I am not an aggrieved person, My Lord. But the MLAs have to reply to my notice. The HC cannot direct me to hold on," Mr. Sibal said.

Justice Mishra, at this point, suggested an adjournment, saying the issue was "very serious" and re-

quired a "prolonged hearing". Mr. Sibal said the court should then immediately stay the HC proceedings till the apex court decided the issue.

Senior advocates Harish Salve and Mukul Rohatgi, for the MLAs, intervened quickly. They objected to Mr. Sibal's plea for a stay.

Mr. Salve said the Speaker having once "taken a chance" and joined the HC proceedings cannot now seek a stay. The Speaker did not demur when the HC previously had twice deferred the disqualification proceedings.

"The Speaker is like a tribunal. But he is acting like an aggrieved person in the Supreme Court, peppering his submissions with political overtones. All this clearly shows his actual intention," Mr. Rohatgi argued.

"We cannot hear any *ma-la fide* of the Speaker. It is not right... The question here is about democracy," Justice Mishra told Mr. Rohatgi.