

ಪತ್ರಿಕಾ ತುಣುಕುಗಳು
PAPER CLIPPINGS

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Legislators cannot be disqualified after they resign, speaker tells SC

TOI 26/9/17

Pics: TOI

Kageri Urges Court To Frame Guidelines For Such Crises

TIMES NEWS NETWORK

New Delhi/Bengaluru: Claiming that the recent political crisis in Karnataka, where MLAs were disqualified after they tendered their resignations, may be replicated in other states, the present speaker pleaded the Supreme Court on Wednesday to list guidelines to deal with such situations.

POLITICAL NOTES

Without directly criticising the decision of his predecessor KR Ramesh Kumar of disqualifying 17 MLAs, speaker Vishweshwar Hegde Kageri told a bench of Justices NV Ramana, Sanjiv Khanna and Krishna Murari that he was not taking any sides in the present controversy, but a balance has to be maintained between an



STARTING A STORM: File picture of the rebels arriving at Vidhana Soudha to submit their resignations to the speaker

elected representative's loyalty towards the electorate and his party.

Solicitor General Tushar Mehta, appearing for the speaker, said the issue needed to be settled once and for all as such situations may happen anywhere in future. The bench, however, said it would

not be possible for it to frame guidelines as the speaker is a constitutional post and passing such direction would amount to judicial overreach.

In a brief submission, Mehta contended that right of a legislator to resign is equally important as right of a speaker to disqualify a lawmaker. He

'MAKE EC PARTY TO THE CASE'

The 17 disqualified MLAs on Wednesday urged the Supreme Court to make the Election Commission a party to their case while seeking annulment of former speaker KR Ramesh Kumar's order disqualifying them. The move comes after the EC told the SC that disqualified MLAs cannot be deprived of the right to contest next month's bypolls.

Senior advocate Mukul Rohatgi, who is representing several of the 17 disqualified MLAs, requested a bench of Justices NV Ramana, Sanjiv Khanna and Krishna Murari to either stay the speaker's order or defer byelections until the court rules on the matter. He argued that the MLAs' petitions against disqualification will otherwise become infructuous.

said the apex court has recognised the right of a legislator to resign from the House and he could not be forced to toe the party line if his conscience does not allow him to do so.

"Once you are in party discipline, you have to follow it. But if your conscience does not allow, you can leave the party, give up membership of the House and go back to the electorate. Giving up membership of a political party is disqualification, but not giving up the membership of the House," Mehta said. He said he

cannot be critical to whatever happened in the case but can assist the court in deciding the controversy.

Senior advocate Mukul Rohatgi, appearing for the disqualified MLAs, told the bench Ramesh Kumar's decision was illegal and unconstitutional. He said the disqualification order had virtually "caged" them as they cannot contest elections despite being unfraid of facing the electorate. "If a person has courage to resign, he must be allowed to face election," he said.

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ಇಲಾಖೆ / ವಿಷಯ : DEPARTMENT / SUBJECT: Court Matter

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Supreme Court rejects Kageri's plea on framing guidelines for Speakers

How can we do that? Speaker is a constitutional authority ... We cannot encroach: Court

NEW DELHI KRISHNADAS RAJAGOPAL

The right of an MLA to resign voluntarily for reasons of conscience is a recognised right. A legislator who chooses to first resign his seat in the Assembly and then joins another party after leaving the House cannot be disqualified under the anti-defection law, Solicitor-General Tushar Mehta, appearing for Karnataka Speaker Vishweshwar Hegde Kageri told the Supreme Court on Wednesday.

“How can we lay down guidelines for the Speaker? He is a constitutional authority ... We cannot encroach,” Mr. Justice Ramana shot back at the top law officer.

Mr. Mehta persisted in his line of argument that “changing political parties as an MLA was defection, but resigning from the House and subsequently shifting to another party to face election does not amount to defection under Schedule 10 of the Constitution”. But Justice Sanjeev Khanna, on the Bench, orally observed that Mr. Mehta submitted before a three-judge Bench, led by Justice N.V. Ramana.

In an oblique reference to the disqualification of 17

“What is written on paper may be different from what is the reality. An MLA may be intentionally resigning from the Assembly to join another party. Or, there are cases where disqualification motion may already be pending against the MLA who opts to resign ... What do you make of that?” Mr. Justice Khanna asked Mr. Mehta.

The Solicitor-General replied that for an MLA, his constituency is sovereign. A party whip cannot stop him from doing good for his elector.



torate. In such cases, the legislator may opt to resign than continue his participation in an ineffectual government.

Senior advocate C.A. Sundaram, for disqualified Congress MLA D. Sudhakar, submitted that the authority of the Speaker when faced with the resignation of an MLA is limited. The Speaker is voluntarily see if the resignation is voluntary or genuine.

“The Speaker is to check whether someone is holding a gun to the head of the resigning MLA or whether the resignation letter is a forgery,” Mr. Sundaram submitted.

“A Speaker is not the party boss. He is the master of the House and not the president of the party,” Mr. Sundaram submitted.

Senior advocate Mukul Rohatgi, for some other disqualified legislators, highlighted the procedural flaws in the events leading to the disqualification, including the lack of notice period.

(EC) has already orally conveyed to the Supreme Court that an Assembly Speaker cannot deprive disqualified Karnataka legislators from contesting the bypolls due on October 21. The last date for nominations is September 30.

Mr. Rohatgi said the court should stay the notification issued on Saturday last as regards byelections to 15 Karnataka Assembly constituencies or, in the alternative, give them permission to contest the polls in October.

Senior advocate Rakesh Dwivedi, for the EC, said there is “much to say” in the manner in which the MLAs were disqualified from the House by the former Karnataka Assembly Speaker on anti-defection law.