



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಬಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ-III Part-III	ಬೆಂಗಳೂರು, ಭಾನುವಾರ, ಜುಲೈ ೨೮, ೨೦೧೯ (ಶ್ರಾವಣ ೬, ಶಕ ವರ್ಷ ೧೯೪೦) Bengaluru, Sunday, July 28, 2019 (Shrawana 6, Shaka Varsha 1940)	ನಂ. ೬೫೦ No. 650
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KARNATAKA LEGISLATIVE ASSEMBLY

FIFTEENTH ASSEMBLY

BULLETIN PART - II

(General Information relating to Parliamentary and other matters)

Sunday, the 28th July, 2019

No. 65

BEFORE THE HON'BLE SPEAKER,
KARNATAKA LEGISLATIVE ASSEMBLY, BENGALURU

DISQUALIFICATION PETITION NO: 03/2019

Connected with

DISQUALIFICATION PETITION NO: 04/2019

BETWEEN:

1) Shri. Siddaramaiah, - 1st Petitioner
Member of Legislative Assembly,
Badami Constituency and
Congress Legislature Party Leader.

2) Shri. Dinesh Gundurao, - 2nd Petitioner
Member of Legislative Assembly,
Gandhinagar Constituency and
President, Karnataka Pradesh
Congress Committee.

AND

RESPONDENTS IN DISQUALIFICATION PETITION No.3:

1) Shri. Pratapgouda Patil, - 1st Respondent
Member of Legislative Assembly,
Maski Constituency.

2) Shri. B.C.Patil, - 2nd Respondent
Member of Legislative Assembly,
Hirekerur Constituency.

- 3) Arbail Shivaram Hebbar,** - 3rd Respondent
Member of Legislative Assembly,
Yellapur Constituency
- 4) Shri. S.T.Somashekar,** - 4th Respondent
Member of Legislative Assembly,
Yeshwantpur Constituency.
- 5) Shri. B.A.Basavaraja,** - 5th Respondent
Member of Legislative Assembly,
K.R.Pura Constituency.
- 6) Shri. Anand Singh,** - 6th Respondent
Member of Legislative Assembly,
Vijayanagar (Bellary) Constituency.
- 7) Shri. R.Roshan Baig,** - 7th Respondent
Member of Legislative Assembly,
Shivajinagar Constituency.
- 8) Shri. Munirathna,** - 8th Respondent
Member of Legislative Assembly,
Rajarajeshwarinagar Constituency.

RESPONDENTS IN DISQUALIFICATION PETITION No.4:

- 1) Dr.K.Sudhakar,** - 9th Respondent
Member of Legislative Assembly,
Chikkaballapur Constituency.
- 2) Shri. M.T.B.Nagaraju,** - 10th Respondent
Member of Legislative Assembly,
Hosakote Constituency.

ORDER

Sri Siddaramiah, Member of the Karnataka Legislative Assembly, elected from No.23-Badami Assembly Constituency and the Leader of the Congress Legislature Party and Sri Dinesh Gundu Rao, Member of the Karnataka Legislative Assembly, elected from No.164-Gandhinagar Assembly Constituency and the President of the Karnataka Pradesh Congress Committee have filed these Petitions for Disqualification of the Respondents in Disqualification Petition Nos. 03 and 04, as per the provisions of Article 191(2) of the Constitution of India read with Para 2(1)(a) and 2(1)(b) of the Tenth Schedule of the Constitution of India.

As all the Petitions are in same nature and for same relief, the petitioners have filed a Memo dated 22.07.2019 for clubbing the above petitions and hear the petitions together. In view of the Memo dated 22.07.2019, filed by the advocates appearing for the Petitioners in all the Petitions, this Authority ordered for clubbing of the above two matters as the facts and circumstances and the relief sought for therein are identical.

The 1st respondent in Disqualification Petition No.03, **Sri Pratapgouda Patil** is an elected member of Karnataka Legislative Assembly from No.59-Maski Assembly Constituency; the 2nd respondent Sri B.C.Patil is an elected member of Karnataka Legislative Assembly from No.86-Hirekerur Assembly Constituency; the 3rd respondent Sri Arbail Shivaram Hebbar is an elected member of Karnataka Legislative Assembly from No.81-Yellapur Assembly Constituency; the 4th respondent Sri S.T. Somashekar is an elected member of Karnataka Legislative Assembly from

No.153-Yeshwanthpur Assembly Constituency; the 5th respondent Sri B.A.Basavaraja is an elected member of Karnataka Legislative Assembly from No.151-K.R.Pura Assembly Constituency; the 6th respondent Sri Anand Singh is an elected member of Karnataka Legislative Assembly from No.90-Vijayanagar (Bellary) Assembly Constituency; the 7th respondent Sri R.Roshan Baig is an elected member of Karnataka Legislative Assembly from No.162-Shivajinagar Assembly Constituency; the 8th respondent Sri Munirathna is an elected member of Karnataka Legislative Assembly from No.154-Rajarajeshwarinagar Assembly Constituency.

The 9th respondent (First respondent in Disqualification Petition No.04) **Dr.K.Sudhakar** is an elected member of Karnataka Legislative Assembly from No.141-Chikkaballapur Assembly Constituency; the 10th Respondent (Second respondent in Disqualification Petition No.04) **Sri M.T.B.Nagaraju** is an elected member of Karnataka Legislative Assembly from No.178-Hosakote Assembly Constituency.

The respondents are elected to the Karnataka Legislative Assembly in the General Elections held in May 2018, on the party ticket of Indian National Congress. The same was published in an Extraordinary Gazette of Karnataka vide Notification dated 16.05.2018, issued by the Election Commission of India. The said Notification clearly establishes that the respondents have been elected as Members of the Karnataka Legislative Assembly on the party ticket of the Indian National Congress.

The Disqualification Petition No.03/2019 was filed on 10.07.2019 and Disqualification Petition No.04/2019 was filed on 11.07.2019.

Thereafter, letter dated 18.07.2019 was submitted by the first petitioner to this authority seeking immediate action against the respondents as per Tenth Schedule of the Constitution of India and seeking to expedite the process of their petitions for disqualification in view of the prevailing circumstances.

The Secretary of Karnataka Legislative Assembly has verified the Petition and reported that the present Petitions are in terms of Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 and this Authority having satisfied that the said Petitions are in accordance with the aforesaid Rules, this authority ordered for issuance of Emergent Notices along with Petition copies and annexures returnable within 3 days and to post the matter for hearing on 23.07.2019.

This Authority has perused the petition averments in Disqualification Petition No. 3/2019 found at Paragraphs 19(i) to (vi) to the Petition and also the documents produced at Annexures A to F. Further this Authority has also perused the petition averments in Disqualification Petition No. 4/2019 found at Paragraphs 18(i) to (iii) to the Petition and also the documents produced at Annexures A to H.

On perusal of the petition averments and the documents produced and the submissions made by the Petitioners / Respondents and their Counsel, this Authority has come to the following conclusion with reasons assigned below:

That a coalition government consisting of the members of both the Janata Dal(S) Party and the Indian National Congress Party headed by Sri H.D.Kumaraswamy, is in power in Karnataka since May 2018.

The respondents without any reasons with a sole intention to topple the coalition government headed by Sri H.D.Kumarawamy have submitted their resignations along with JD(S) MLAs to the office of the Secretary, Karnataka Legislative Assembly Secretariat and some to the office of this authority on various dates.

The respondents have met the Hon'ble Governor and handed over the copies of their resignation letters to the Hon'ble Governor requesting the intervention of the Governor's Office to advise the Speaker to take an early decision on the matter.

On 06.07.2019 and on subsequent dates, the respondents have tendered their resignations to the office of the Secretary, Karnataka Legislative Assembly Secretariat / to the office of this Authority.

The Petitioner No.1 by virtue of his office as Leader of Congress Legislature Party has issued a Whip to all the respondents to attend the assembly sessions which began on 12.07.2019. The respondents have not attended the assembly sessions; which is evident from the attendance register that they were absent on 12.07.2019, 15.07.2019, 18.07.2019, 19.07.2019, 22.07.2019 and 23.07.2019.

The Hon'ble Chief Minister of Karnataka has moved a motion seeking the vote of confidence on the floor of the Karnataka Legislative Assembly.

The petitioners have also submitted that the respondents have deliberately abstained themselves from the Congress Legislature Party meeting held on 09.07.2019, and from the Sessions from 12.07.2019 to 23.07.2019, inspite of the Whip issued by the Petitioners. The respondents have abstained from the meetings of the party as well as the sittings of the Assembly Sessions.

The respondents have met the Hon'ble Governor and handed over the copies of their resignation letters to the Hon'ble Governor requesting the intervention of the Governor's Office to advise the Speaker to take an early decision on the matter.

Some of the respondents approached the Hon'ble Supreme Court of India in Writ Petition (C) No.872/2019, wherein this authority is impleaded as a respondent. In the said petition, the petitioners therein have made two specific prayers seeking a direction to this authority viz.,

- (i) to accept the resignations of the petitioners as tendered;
- (ii) restrain this authority from further proceeding in the matter of disqualification.

The Hon'ble Supreme Court in its order has mentioned that it is permitting the petitioners in the said Writ Petition and who are the respondents in this Petition before this authority, to appear before the Speaker at 6.00 p.m., and it had requested this authority to grant an audience to the respondents at the said time and further mentioned that during the meeting the respondents can convey their decision to resign and the Speaker shall take a decision forthwith and to send the compliance report to the Supreme Court.

Some of the respondents in the case before this authority, who are petitioners before the Hon'ble Supreme Court did appear before this Authority on 11.07.2019 at 6.20 p.m. in the office at Vidhana Soudha. On an enquiry they confirmed that they had not sent their resignation in the prescribed format and not with any prior intimation to the authority. The respondents also affirmed that they had not sought time with the authority to submit their resignations and also agreed that out of those who met this authority on the advice of the Supreme Court, eight resignation letters were not in the prescribed format as required under Rule 202 of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly.

The respondents were asked to verify such of the resignation letters which were not in the prescribed format and were also provided the Rule book to ascertain the fact whether the resignations submitted by them were in order. On their agreeing that those letters were not in order, this authority advised them to resubmit their resignation letters in the proper format, if they

intended to submit their resignations. It was done in the presence of this very authority who received the resignation letters. None of the respondents have appeared before this authority.

This authority has got the entire proceedings videographed for the purpose of ensuring fairness to the respondents as the matter is seized before the Hon'ble Supreme Court.

The Hon'ble Supreme Court of India in its order dated 17.07.2019 made it clear that the Speaker of the House has to decide on the request for resignations by the 15 Members of the House within such time frame as the Speaker may consider appropriate. The Hon'ble Supreme Court of India took a view that in the present case the discretion of the Hon'ble Speaker while deciding the above issue should not be fettered by any direction or observations of the Court and the Hon'ble Speaker should be left free to decide the issue in accordance with Article 190 r/w Rule 202 of the Rules of Procedure and Conduct of Business in Karnataka Legislative Assembly.

Thereafter, letter dated 18.07.2019 was submitted by the first petitioner to this authority seeking immediate action against the respondents as per Tenth Schedule of the Constitution of India and seeking to expedite the process of their petitions for disqualification in view of the prevailing circumstances.

This authority ordered for issuance of Emergent Notices along with the copies of the petitions and annexures, returnable within 3 days and to post the matter for hearing on 23.07.2019.

Thereafter, the petitioners have filed additional facts with an affidavit stating that some of the respondents not only tendered their resignations to this Authority but also went in a group and met the Governor on 06.07.2019 and appraised the Governor that they have tendered their resignation to the membership of the Legislative Assembly and requested the Governor to communicate this Authority to accept their resignations.

The respondents in Disqualification Petition Nos. 1 and 3 together are camping in a five star hotel in Mumbai and they have addressed the media jointly several times and categorically expressed that they are not going to attend the sittings of the Assembly Sessions.

It is the submissions of the petitioners that the respondents have not obeyed the Whip and are absent from the proceedings of the House. The House is scheduled to take up the motion of Vote of Confidence for voting on 23.07.2019.

The petitioners further submit that to avert the likely damage to their interest by the willful absence of the respondents in connivance with the Bharatiya Janata Party to destabilize the coalition Government, should be stalled. In spite of it, the respondents failed to attend the sittings of the Assembly Sessions and to vote as per the Whip issued by their Legislature Party in favour of the Vote of Confidence.

In spite of the emergent notices issued by this authority along with the petition copy and annexures, the respondents failed to appear in person before this authority on 23.07.2019. But they have authorised Sri B.R.Srivatsa, Kum. Swamini G Mohanambal and Kum.Anjana.C.H. to appear, plead, represent and file necessary application on behalf of the respondents, who have filed Memos on 23.07.2019, to this extent. Further, the respondents in the e-mail addressed to this authority on 22.07.2019, have requested for four weeks time to appear.

In a given situation like this, it is evident as to why Advocates appearing for the respondents would be seeking an adjournment. Any attempts by anybody to subvert the process of law, a mischievous and ulterior motive to defeat the intentions of law and evil design to subvert the constitutional scheme is highly intolerable and as such I have refused to grant the time as sought for.

Hence, the respondents are heard through their Senior Counsel Sri Ashok Harnahalli. Sri Ashok Harnahalli argued that 7 days time is mandatory in accordance with Rule 7 of the Disqualification Rules. But, the Hon'ble Supreme Court in the cases of Ravi S Nayak Vs Union of India and Mahachandra Prasad Singh Vs The Chairman, Bihar Legislative Council has held that the time mentioned in the Rules **is only directory in nature and is not mandatory.** Therefore, time sought for is refused.

The enquiry proceedings started at 11.00 am and was concluded at 01.20 pm. Both the petitioners appeared before this authority along with their Counsel on 23.07.2019 and submitted their comments and certain decisions of the Hon'ble Supreme Court, Hon'ble Chairman of the Rajya Sabha and Hon'ble Speaker of the Tamilnadu Assembly.

While tracing the events of politics that have happened in the Country prior to 4th General Election and particularly after the 4th General Elections between 1967 and 1971 and the concern of the Loksabha and the commitment of the Government of India in its presidential address to the Joint Session of Parliament during 1985 to bring in an effective Anti Defection Law, to act as a deterrent to the ugly game of defection which is bound to shake the foundations of democracy in this country is constantly bothering the people.

The respondents first submitted their resignation letters to this authority on 06.07.2019 at 03.00 pm. This Authority was in office from 10.30 am to 1.00 pm on 06.07.2019. The respondents are already on record for having admitted that they had not sought for time to meet this Authority to submit resignation letters. It is interesting to note that the respondents had not even communicated to this office telephonically. However, on approaching the office of this authority, they were advised to submit the letters and obtain the acknowledgement for having submitted the same. They are also on record that eight of the letters submitted by the respondents were not in order. They had submitted the copies of the same letters that were given to this Authority to the Hon'ble Governor requesting the Hon'ble Governor to prevail on this authority to decide on the resignation letters expeditiously. These letters were submitted to Hon'ble Governor on the same day i.e. 06.07.2019. This authority came to know of these things as these letters were forwarded by the office of the Hon'ble Governor to this authority. It looks strange interestingly and a calculated move to misguide everyone concerned in this matter. The sworn statement before the Supreme Court is totally false. Further, they did not even verify the correctness of the resignation letters that are to be considered by this authority before approaching the Hon'ble Governor for seeking his intervention. It is highly objectionable that on the resubmission of their resignation letters in the proper format and on being advised to appear before this authority to satisfy as per Article 190(3)(b), the respondents failed to do so.

The acts of some of the respondents in not trying to meet this authority in person and not submitting their resignation letters in the prescribed format, but approaching the office of the Governor to prevail on this authority to dispose of the resignation letters expeditiously and the same letters being forwarded by the office of Hon'ble Governor to this Authority, is a new approach for pressurizing this authority for their ulterior motives. The respondents after submitting the resignation letters in the prescribed format ignoring the direction of this authority to appear before this authority to convince about the genuineness and the voluntary nature of the resignations, have compelled this authority to arrive at an inference that the proviso left open to the Speaker under Article 190(3)(b) that such resignations to be accepted by the Speaker only if he is satisfied that the resignations submitted are genuine and voluntary in nature is not visible in this matter.

The respondents who are the petitioners before the Supreme Court who met this authority on 11.07.2019, on the directions of the Hon'ble Supreme Court and admitted that they all came by a

special flight from Mumbai. It is evident beyond doubt that they chose to fly back to Mumbai by the same chartered special flight along with other legislators who have also tendered their resignations. It is intriguing to ascertain as to how these resignations are to be construed as voluntary and genuine under the present political circumstances prevailing in the State. The respondents have not attended the sittings of the assembly sessions as complained by the petitioners despite a whip being served on them. Their prayer before the Hon'ble Supreme Court to restrain this authority from proceeding with the disqualification issue and urging that their resignations be accepted, leaves no doubt about the evil designs of the respondents to overcome the intended object of the law with an ulterior motive.

The facts and circumstances of this case further made this authority to go through the history of anti-defection law. By way of 52nd Amendment Bill of 1985, the provisions of the X Schedule was introduced in the Parliament and nearly about 300 Members of Lok Sabha participated in the debate on the said Bill and admittedly it was welcomed by one and all with an intention to prevent the malady of defections in the country.

There were only 400 defections upto 1967. As the phenomena of defections became acute and apparent after the Fourth General Elections in 1967, there were nearly 500 defections within one year. Out of the said 500 defections, more than 118 defectors became Ministers or Ministers of State. In order to preserve the high traditions of democracy and for setting certain norms of political behavior a Committee on Defection was constituted by the Parliament under the chairmanship of Late, Shri Y.B.Chavan, to give a report on how to prevent "Aaya Ram and Gaya Ram" culture. There were two reports one presented by Sri Y.B.Chavan and another presented by Sri Dinesh Goswami with regard to Reforms of Electoral Process and to strengthen the law to prevent the defections and to have a meaningful democracy in the country. The Statement of Objects and Reasons stated in the Bill that the evil of political defections have been a matter of national concern and if it is not combated, it is likely to undermine the very foundation of our democracy and the principles which sustain it. With this object the Bill was moved. Many parliamentary stalwarts participated in the debate.

An outstanding parliamentarian known for his integrity and patriotic commitment, Prof. Madhu Dandavate has gone on record expressing his views as follows:

"At eleven O' clock this morning we all stood in silence to offer our tribute to one of the greatest martyrs of our country, i.e., the Father of our Nation. But that was only a ceremonial tribute, but the real tribute will come when the Anti-Defection Bill will be passed in this House, and an era of clean politics will begin".

Smt. Vyjayanthimala Bali while speaking about the Bill stated that between breakfast, lunch and dinner they have changed three parties in a day. It has become such a mockery. If not arrested it will be a serious threat to the fabric of parliamentary democracy.

The Parliament has passed the said Bill thinking that atleast after the said Bill the defections of the chosen representatives for personal gains virtually disregards the mandate of the people will come to a grinding halt.

But, unfortunately it has been our experience after this Law has come into existence, there has been a bigger attention towards the Letter of the Law than to honour the spirit of the Law.

The advocates appearing for the petitioners have also filed written submissions along with the judgments of the Supreme Court and the Orders passed by Hon'ble Chairman, Rajya Sabha and

the Hon'ble Speaker of Tamil Nadu Legislative Assembly. The same were considered by this authority while passing this Order.

On similar occasions, the Hon'ble Vice President of India in his capacity as the Chairman of Rajya Sabha while disposing of a similar petition on defection under the tenth schedule of the Constitution received with respect to Sri Sharad Yadav, Member of Rajya Sabha, elected from JD (U), has made it extensively clear that the conduct of a member of a political party matters when it crosses a reasonable point as in the instant case. Hon'ble Chairman found that Sri Sharad Yadav, a Member of JD (U), which was a part of Mahaghatabandhan along with R.J.D. had tried to defy the decision of the party to withdraw from "Mahaghatabandhan".

The main contention of the Petitioner in that Petition was that the Respondent instead of adhering to the unanimous decision taken on the 26th of July, 2017 by the JD(U) and its President, Shri Nitish Kumar to withdraw from the *Mahagathbandhan* and the coalition Government formed in Bihar in 2015, started anti-party activities by publicly denouncing the party's decision. He campaigned with RJD leaders and workers between the 10th and the 12th of August, 2017 in different districts of Bihar and attended the public rally called by the rival political party, i.e., RJD, in Patna on the 27th of August, 2017 despite written directive from Shri K.C. Tyagi, Secretary-General of the party advising him not to attend the rally and also conveying to him that his participation in the rally would be construed not only against the principles of high morality but also as voluntarily giving up the membership of the JD(U). The Petitioner had annexed newspaper clippings, media reports and videos as proof of the allegations.

It is clearly stated in the order of disqualification that the decision of a political party is on a collective basis and as such any individual member of the party belonging to that party were to have any differences or disagreement with a decision should sort it out within the party. It is further observed that in the instant case Sri Sharad Yadhavji conducted himself in a manner contrary to the decision of the party and was seen publicly participating in a rally of RJD which was no longer in the Mahaghatabandhan. It is observed that individual members of the party aggrieved with the decision of the party are bound by the collective decision of the party and shall not cross the borders of the party which amounts to anti-party activities. The word "chosen" used by the Hon'ble Chariman of Rajya Sabha for describing this is ban or dissent in relation to the complaint before me is similar to that of Sharad Yadav's case.

In the said order, the Chairman of Rajya Sabha relied on the observations of the Committee of Privileges of the 8th Lok Sabha and Hon'ble Supreme Court's Judgment in the case of Ravi S Nayak Vs Union of India case in 1994 and observations in similar anti defection cases. It is crystal clear that by his conduct, actions and speeches and the correspondence of the respondent, he has voluntarily given up the membership of the political party.

Paragraph 2(1)(a) of the Tenth Schedule states that 'a member of House belonging to a political party shall be disqualified for being a member of the House, if he has voluntarily given up his membership of such political party'. The term 'voluntarily given up his membership' has been amply clarified by the Supreme Court in its judgment, dated the 9th of February, 1994 in Ravi Naik Vs. Union of India, wherein the Court had interalia observed as follows:-

"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 though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from the membership an inference can be drawn from the

conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.”

In the same case, the Supreme Court had upheld the decision of the Speaker of the Goa Legislative Assembly disqualifying two MLAs, who were elected on the ticket of the Maharashtrawadi Gomantak Party (MGP), on the conduct alone of their accompanying the Leader of the Congress (I) Legislature Party in Goa, when he met the Governor to show that he had the support of twenty MLAs.

Further, the Supreme Court in the case of G.Vishwanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras and another in its order dated 24th of January 1996, had also inter alia observed as follows:-

“The act of voluntarily giving up the membership of the political party may be either express or implied.”

Similarly, Sri P.Dhanpal, Hon'ble Speaker of Tamil Nadu by his order dated 18.09.2017, had disqualified 18 members of Tamil Nadu Legislative Assembly on the complaint made by Sri S Rajendran, Chief Government Whip, on the conduct of the members approaching the Governor of Tamil Nadu withdrawing their support to the Government headed by Sri Palaniswamy and the Hon'ble Speaker has found that by their conduct they have voluntarily given up the membership of AIADMK. Hon'ble Speaker in his Order has ordered as follows:-

“The respondents have categorically admitted to the fact of submission of a letter to the Hon'ble Governor of Tamil Nadu. All that they would plead is that they are protected under Article 19(1)(a) of the Constitution of India, Freedom of Speech and Expression, in submitting a petition to the Hon'ble Governor of Tamil Nadu communicating lack of confidence in the present Chief Minister would not amount to giving up of voluntarily membership of a political party. The Hon'ble Supreme court in a decision reported in 1994 Sup (2) SCC 641 in the case between Ravi S Naik Vs Union of India and others considered the meaning and scope of the expression “voluntarily giving up his membership”. It has been categorically held therein that the expression “voluntarily given up his membership” has a wider connotation. That even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member.

Accordingly, the 18 MLAs were disqualified relying on the judgment of the Hon'ble Supreme Court in the cases of Ravi S Nayak Vs Union of India and Mahachandra Prasad Singh Vs The Chairman, Bihar Legislative Council. Both the orders have reached their finality.

In this case, this Authority perused all the materials available on record including the newspaper clippings, CDs which are produced as Annexures and the judgments produced by the petitioners and came to a conclusion that the respondents have not only violated the whip issued by their party but also voluntarily given up the membership of their party.

The petition filed before the Supreme Court by the Respondents was on 10.07.2019. There are two prayers in the said Petition:

- a) To issue a Writ of Mandamus or any other appropriate writ, order or direction under Article 32 of the Constitution of India, directing the Respondent No.2/Hon'ble Speaker to accept the resignations of the Petitioners as tendered;

- b) To issue a Writ of Mandamus or any other appropriate writ, order or direction under Article 32 of the Constitution of India, restraining the Respondent No.2/Hon'ble Speaker from proceeding with the applications for disqualification.

The petitioners in this case have submitted their complaint against the respondents, contending the respondents have submitted resignations to this authority and further approaching the Governor urging upon him to advise the Speaker to dispose of the resignations expeditiously. As a matter of fact this complaint of petitioners is received by the office of this Authority at 04.00 pm on 10.07.2019. It is surprising as to how the respondents could imagine that there will be a petition against them for disqualification, as already they are on record for making a prayer before the Supreme Court to restrain this authority from proceeding on the complaint of disqualification. In the absence of any petition against them and even before a notice was served to them they have sought relief from restraining the Speaker from proceeding with the disqualification petition.

As a matter of fact, notices were served to them as per the records of this authority on 18.07.2019, a week later. It is for anybody's knowledge that the petitioners' intentions are noble and genuine that they were trying to mislead the highest forum of judiciary in the country by making false submissions. They were well aware of the events which amount to voluntarily giving up of the party.

As the two prayers are before the Hon'ble Supreme Court, where this Authority is impleaded as one of the respondents, this authority feels fair, proper and reasonable to pass one single order in two phases. First assigning the reasons in the matter of disposal of resignation and in the second phase to speak about the disqualification.

The cumulative effect both in the case of resignation and disqualification of a member results in a person being ceased to be a member of the House. But the qualitative difference between the two is in the case of resignation it is a respectable "word" used and a resignation generally is presumed to be born out of conviction and for inevitable reasons, like the Member is being chosen to Upper House or Parliament. But, in the case of disqualification, it is a provision provided for under the tenth schedule to admonish such of the members who are found guilty of violating the tenth schedule of the Constitution. As such concurrently when the matter of resignation and disqualification both are pending adjudication before this authority, it would be improper to touch upon the issue of the resignation alone at the first instance. The imperative effect of accepting resignation leads to a situation where the disqualification complaint becomes infructuous. In the event of a Member, against whom substantial evidence for being disqualified is being placed on record, it would be improper to accept the resignation as it would lead to defeat the tenth schedule as well as Article 164 of the Constitution. Besides giving encouragement and providing incentives to adopt the escaping routes to nullify the effect of tenth schedule. This authority based on the conduct of the respondents right from the stage before and after submission of their resignation letters, approaching the Supreme Court of India and swearing to statements that are totally false, refusing to appear before this authority when the notices are issued, leaving their constituencies and the State Capital when the assembly is in sessions, moving to a far off place like Mumbai by a special chartered flight, staying a Star Hotel, addressing media jointly and appearing before this authority in groups and getting back in groups etc., when the complaints are pending and eventually disregarding the notices of this authority to appear before the same to convince that the resignations tendered are genuine and voluntary shows that the resignations are neither voluntary nor genuine. It is pertinent to note that earlier to the 33rd amendment of the Constitution in the year 1975, the position of the Speaker had been restricted to a state of merely accepting without any option. Probably, the subsequent events in the country must have led to a situation resulting in the 33rd amendment to the Constitution to insert proviso to Article 190(3)(b). The

happenings in the instant case convinced me that it is only such circumstances that must have led to the 33rd amendment of the Constitution of India. This Authority therefore comes to a conclusion without any hesitation or reservation that the conduct of the respondents is neither voluntary nor genuine and hence do not deserve to be considered for being accepted. Hence, the resignations are rejected.

This Authority now proceeds to pass orders in Disqualification Petition keeping in view the prevailing political situation in the State, the conduct of the respondents and the recent complaint as of 23.07.2019 by the petitioner urging for immediate action on their complaint as the respondents are alleged to have been responsible for destabilising the duly elected coalition government headed by Sri H.D.Kumaraswamy by their wilful defiance of the whip issued by the petitioner.

The statements of the respondents to the media at various occasions including at Raj Bhavan, Bangalore; at Renaissance Hotel, Mumbai and their mode of travelling together, stay in a star hotel at Mumbai together and their approach to Hon'ble Supreme Court jointly, abstaining from the Assembly Sessions, defying the Whips issued to them by their Legislature Party Leader, makes it very clear that they have intentionally violated the Whip issued by the party and also voluntarily given up the membership of the Party. As for the material available on record, it is beyond doubt that the respondents have been hobnobbing with the leaders of the Bharatiya Janata Party and are decided to join the BJP for their personal benefits. In spite of the emergent notice the respondents intentionally remained absent to subvert the provisions of the tenth schedule of the Constitution of India and other laws and to make the democracy as mockery. Since the matter is serious and the petitioners appraise this authority in regard to the effect of so called indirect way of defections, this authority issued emergent notices to the respondents to comply the principles of natural justice. The respondents intentionally disobeyed the notices and remained absent. Hence, this authority came to a conclusion that the respondents have clearly violated the provisions of the tenth schedule of the Constitution and are liable to be punished as per the provisions of the Constitution to uphold the dignity of the democracy and of the mandate of the people.

A letter addressed to me by the first petitioner dated 23.07.2019, urging for immediate action against the respondents in the light of their defying the Whip issued to them, thus resulting in fall of coalition government. It compels me to expedite the process as that is the main intent of this Law of the law makers at the time of its formulation, and hence the Letters of Whips are also considered.

Having considered the judicial pronouncement by no less than a person than the Vice-President of India who is the ex-officio Chairman of the Rajya sabha, the citations of the Supreme Court of India and the Order of the Speaker of the Tamil Nadu Legislative Assembly, which clearly applies to the facts and circumstances in this case, and it is established beyond doubt that the respondents have voluntarily given up the Membership of the Indian National Congress and also abstained from the sittings of the Assembly Sessions in spite of the issuance of the Whip by the petitioner.

The Anti-Defection Law or Tenth Schedule should not become a monstrous Law at the hands of the political parties to be used as an instrument to curtail the dissent voice in the political parties. If not, there is a serious threat for the growth and existence of internal democracy within the political parties, as this constitutes the fulcrum of the foundations of democracy in a parliamentary democracy system.

Hence, I pass the following Order:

ORDER

I, therefore, hold that the 1st Respondent **Sri Pratapgouda Patil**, Member of Legislative Assembly, No.59-Maski Assembly Constituency; the 2nd Respondent **Sri B.C.Patil**, Member of Legislative Assembly, No.86-Hirekerur Assembly Constituency; the 3rd Respondent **Sri Arbail Shivaram Hebbar**, Member of Legislative Assembly, No.81-Yellapur Assembly Constituency; the 4th Respondent **Sri S.T. Somashekar**, Member of Legislative Assembly, No.153-Yeshwanthpur Assembly Constituency; the 5th Respondent **Sri B.A.Basavaraja**, Member of Legislative Assembly, No.151-K.R.Pura Assembly Constituency; the 6th Respondent **Sri Anand Singh**, Member of Legislative Assembly, No.90-Vijayanagar (Bellary) Assembly Constituency; the 7th Respondent **Sri R.Roshan Baig**, Member of Legislative Assembly, No.162-Shivajinagar Assembly Constituency; the 8th Respondent **Sri Munirathna**, Member of Legislative Assembly, No.154-Rajarajeshwarinagar Assembly Constituency, the 9th Respondent **Dr.K.Sudhakar**, Member of Legislative Assembly, No.141-Chikkaballapur Assembly Constituency; and the 10th Respondent **Sri M.T.B.Nagaraju**, Member of Legislative Assembly, No.178-Hosakote Assembly Constituency; have incurred disqualification for being a Member of the Karnataka Legislative Assembly in terms of paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India read with Article 191(2) of the Constitution of India.

Thus, all of the above respondents cease to be the Members of the Karnataka Legislative Assembly with immediate effect from this date i.e. 28.07.2019, till the expiry of the term of this Assembly i.e. 15th Legislative Assembly of Karnataka.

Place: Bangalore

Date: 28.07.2019.

K.R. RAMESH KUMAR
Speaker

Karnataka Legislative Assembly

To:

1. **Shri Pratapgouda Patil**, Member of Legislative Assembly, Maski Constituency .
2. **Shri B.C.Patil**, Member of Legislative Assembly, Hirekerur Constituency.
3. **Shri Arabail Shivaram Hebbar**, Member of Legislative Assembly, Yellapur Constituency.
4. **Shri S.T.Somashekar**, Member of Legislative Assembly, Yeshwanthpur Constituency.
5. **Shri B.A.Basavaraja**, Member of Legislative Assembly, K.R.Pura Constituency.
6. **Shri Anand Singh**, Member of Legislative Assembly, Vijayanagar Constituency.
7. **Shri R.Roshan Baig**, Member of Legislative Assembly, Shivajinagar Constituency.
8. **Shri Munirathna**, Member of Legislative Assembly, Rajarajeshwarinagar Constituency.
9. **Dr.K.Sudhakar**, Member of Legislative Assembly, Chikkaballapur Constituency.
10. **Shri M.T.B.Nagaraju**, Member of Legislative Assembly, Hoskote Constituency.
11. **Shri Siddaramaiah**, Member of Legislative Assembly, Badami Constituency and Congress Legislature Party Leader.
12. **Shri Dinesh Gundurao**, Member of Legislative Assembly, Gandhinagar Constituency and President, Karnataka Pradesh Congress Committee.
13. All the Hon'ble Members of Karnataka Legislative Assembly.

Date: 28.07.2019

M.K. VISHALAKSHI
Secretary (I/c)

Karnataka Legislative Assembly