

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 33677/2015

(Arising out of impugned final judgment and order dated 28/09/2015 in WP No. 7217/2015 passed by the High Court Of Judicature At Hyderabad For The State of Telangana and the State of Andhra Pradesh)

S.A. SAMPATH KUMAR

Petitioner(s)

VERSUS

KALE YADAIHAH AND ORS.

Respondent(s)

(With appln. For exemption from filing c/c of the impugned judgment, permission to file additional documents and interim relief and office report)

Date : 08/11/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Ravi Shankar Jandhiyala,Adv.  
Mr. Venkateswara Rao Anumolu,Adv.  
Mr. Prabhakar Parnam,Adv.

For Respondent(s) Mr. Mukul Rohatgi,AG  
Mr. K.Ramakrishna Reddi,Adv.General  
Mr. S.Udaya Kumar Sagar,Adv.

Mr. Jayant Bhushan,Sr.Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The present petition raises a question of great constitutional importance, namely, whether a speaker of a legislative assembly, acting under powers granted to him under the Tenth Schedule of Constitution of India (as a quasi judicial authority) can be ordered by a High Court, exercising its writ jurisdiction under Article 226 of the

Constitution of India, to decide a particular disqualification petition pending before him within a certain time. Mr. Mukul Rohtagi, learned Attorney General for India, has submitted before us that the answer to this question has clearly been laid down in paragraph 110 of the Constitution Bench judgment in *Kihoto Hollohan vs. Zachillhu and Others* (1992) Supp.2 SCC 651. According to him, this judgment concludes the case before us, as has been held by the judgment in appeal in the present case. On the other hand, learned counsel appearing on behalf of the appellant has submitted before us that the focus in the decision *Kihoto Hollohan* (supra) was somewhat different. He submitted that the constitutional validity of the Tenth Schedule of the Constitution of India as a whole was what was before the Court, and the Court, therefore, was not faced with the particular question that arises in this case. He also sought to argue that a *quia timet* action is an action in the nature of stay of proceedings before the Speaker, and the direction that the Speaker should decide a particular dispute within a certain time does not fall within such an action. He also urged before us that a two-Judge Bench decision in *Speaker, Haryana Vidhan Sabha vs. Kuldeep Bishnoi and Others* (2015) 12 SCC 381, in paragraph 48, has in fact, granted such a direction. He has also relied upon the judgment of this Court in the case of *Speaker, Orissa Legislative Assembly vs. Utkal*

*Keshari Parida* reported in (2013) 11 SCC 794 in which a three-Judge Bench of this Court upheld the direction of the Orissa High Court directing the Speaker to decide a disqualification petition expeditiously, within a certain time frame.

We have considered the aforesaid submissions of both the learned Attorney General and the learned counsel appearing on behalf of the petitioner. We feel that a substantial question as to the interpretation of the Constitution arises on the facts of the present case. It is true that this Court in *Kihoto Hollohan's* case laid down that a *quia timet* action would not be permissible and Shri Jayant Bhushan, learned senior counsel appearing on behalf of some of the respondents has pointed out to us that in P. Ramanatha Aiyar's *Advanced Law Lexicon* a *quia timet* action is the right to be protected against anticipated future injury that cannot be prevented by the present action. Nevertheless, we are of the view that it needs to be authoritatively decided by a Bench of five learned Judges of this Court, as to whether the High Court, exercising power under Article 226 of the Constitution, can direct a Speaker of a legislative assembly (acting in quasi judicial capacity under the Tenth Schedule) to decide a disqualification petition within a certain time, and whether such a direction would not fall foul of the *quia timet* action doctrine mentioned in paragraph 110 of *Kihoto Hollohan's* case. We cannot be

mindful of the fact that just as a decision of a Speaker can be corrected by judicial review by the High Court exercising jurisdiction under Article 226, so prima facie should indecision by a Speaker be correctable by judicial review so as not to frustrate the laudable object and purpose of the Tenth Schedule, which has been referred to in both the majority and minority judgments in Kihoto Hollohan's case. The facts of the present case demonstrate that disqualification petitions had been referred to the Hon'ble Speaker of the Telangana State Legislative Assembly on 23<sup>rd</sup> August, 2014, and despite the hopes and aspirations expressed by the impugned judgment, the Speaker has chosen not to render any decision on the said petitions till date. We, therefore, place the papers before the Hon'ble Chief Justice of India to constitute an appropriate Bench to decide this question as early as possible.

This Court had passed an order dated 26<sup>th</sup> October, 2016 directing the Speaker to file an affidavit stating therein how much time is required to dispose of the petition filed by the petitioner. Since the Speaker contests the very jurisdiction of the High Court and consequently this Court to pass any such order, we keep this order in abeyance.

(Anita Malhotra)  
Court Master

(Chander Bala)  
Court Master