

**Decision of the Hon'ble Speaker, the Legislative Assembly of NCT of Delhi.**

**In the matter of**

**Saurabh Bhardwaj**

**..... Petitioner**

Through: Mr. R. Arunadhri Iyer, Advocate

**Vs.**

**Anil Kumar Bajpai**

**Respondent**

Through: Mr. Purushaindra Kaurav, Senior Advocate, Mr. Neeraj, Mr. Anil Soni, Mr. Mukul Singh, Mr. Satya Ranjan Swain, Mr. Piyush Beriwal Advocates

**Petition for disqualification of Shri Anil Kumar Bajpai, Hon'ble Member, under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India read with Article 191 (2) of the Constitution, Section 16 of the National Capital Territory of Delhi, Act, 1991 and The Members of Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules**

1. On 11.6.2019 Sh. Saurabh Bharadwaj, a Member of the Legislative Assembly of NCT of Delhi (hereinafter referred to as Petitioner) filed a petition under paragraph 6 of the Tenth Schedule of the Constitution of India (hereinafter referred to as Constitution) read with section 191 (2) of the Constitution, Section 16 of the National Capital Territory of Delhi, Act, 1991 and Rule 6 of The Members of Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1996 (hereinafter referred to as Rules) seeking disqualification of Shri Anil Kumar Bajpai, a Member of the Legislative Assembly of NCT of Delhi (hereinafter referred to as Respondent) for being a member under paragraph 2(1)(a) of the Tenth Schedule on the ground that the Respondent has joined the Bhartiya Janata Party (hereinafter referred to as BJP) and thus has voluntarily given up his membership of his party namely the Aam Aadmi Party (hereinafter referred to as AAP).



2. The above petition on receipt was examined under Rule 7 of the Rules to ascertain whether the petition complies with the requirements of Rule 6. It was found that the petition was signed and verified by the Petitioner. I noted that the paragraph on verification did not mention the annexures. I noted, however, that the Petitioner had filed an Affidavit supporting the Petition, which contained a declaration on oath to the effect that the annexures to the Petition are true copies of their respective originals. The Affidavit contained a paragraph on verification as well. In my view, the Petition was in order and as per the Rules. Hon'ble Supreme Court's in its decision in Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council & Others [(2004) 8 SCC 747] said that Rule 6 is only directory and not mandatory. In the words of the Supreme Court "The Rules being in the domain of procedure, are intended to facilitate the holding of inquiry and not to frustrate or obstruct the same by introduction of innumerable technicalities. The petitioner had also annexed an authorization from the leader of the AAP Legislature Party dated 05.06.2019 to move the petition seeking to disqualify Shri Anil Kumar Bajpai.

3. I, therefore, admitted the petition. Thereafter, on my direction a copy of the petition along with the annexures was forwarded to the Respondent under Rule 7(3) of the Rules on 17.6.2019.

4. The Respondent was directed to submit his comments on or before 24.6.2019 and also to appear before me for the hearing at 3 pm on 25.6.2019. During the hearing on 25.06.2019 the Ld. Counsel of the Respondent complained that the annexures to the petition were not clear. I therefore, directed that another set of colour photocopies of the press clippings as annexed to the petition be given to the counsel. The Petitioner too handed over to the Counsel for the Respondent the original newspapers containing the press clippings annexed to the petition i.e.





the annexures. The Respondent was directed to submit his comments to the petition by 3.7.2019. The hearing was fixed for 4 pm on 4.7.2019.

5. The Respondent, instead of submitting his comments to the petition within the stipulated time, submitted an application on 3.7.2019 raising certain preliminary issues and seeking certain reliefs.

The issues the Respondent raised in the said application are:-

- a) The Speaker, the adjudicating authority, is not free from political inclinations. There are ample evidences to suggest that he is active in politics and is 'taking sides'. Therefore, there is a reasonable apprehension in the mind of the Respondent that the Speaker might act in a biased manner in this case. The Speaker should in these circumstances recuse himself from hearing this case.
- (b) The Respondent next contended that the Petition is inadmissible as the Annexures thereto are not duly verified as required by the Rules.
- (c) The Respondent contended that was furnished copies of newspapers that appear to have been taken from the Library of the Secretariat, and appropriate action ought to be initiated.
- (d) The Respondent quoted paragraph 8(3) of the Tenth Schedule and requested that since the Petitioner willfully contravened the rules made under paragraph 8 of the schedule, it should be treated as a breach of privilege of the House and action may be initiated against him. However, this contention was not accompanied by any particulars of what rules were contravened by the Petitioner.
- (e) The next preliminary prayer of the Respondent was that the Respondent should be allowed to cross examine the Petitioner, the reporters and editors of the newspapers.



(f) The Respondent sought that the proceedings be recorded and that press and media be permitted to remain present during the proceedings.

(g) Lastly, the contention about the maintainability of the petition has been raised as a preliminary issue as well as one of the main issues in his written comments to the petition. According to the Respondent, since the petition is wholly based on the newspapers which are hearsay evidence, it is not maintainable.

6. On 04.07.2019, I heard the arguments by Shri R. Arunadhri Iyer, Advocate for the Petitioner, and Shri Purushaindra Kaurav, Senior Advocate for the Respondent. Shri Kaurav, apart from reiterating the contentions raised in the application, submitted that when an issue as to bias and jurisdiction of the Speaker is raised, the Speaker is bound to decide the same as a preliminary issue before entering upon the merits of the matter. Shri Iyer submitted that he reserves his right to make submissions on the Petition as well as the Application once the written comments of the Respondent are filed, and contended that under the Rules, the Respondent is bound to file written comments before any decision is rendered by the Speaker. Having considered the submissions, in view of the mandate of Rule 7(3) of the Rules, I directed the Respondent to file his written comments by 8.7.2019 despite his having been given over 15 days to do so, and adjourned the matter to 9.7.2019. The Respondent was informed vide letter dated 04.07.2019 that he should submit his written comments on the petition by 08.07.2019. He was also informed that his right to raise all grounds, including those raised in his applications, were left open.

7. However, feeling aggrieved, the Respondent filed a Writ Petition [WP (C) 7272 of 2019] in the Hon'ble High Court of Delhi challenging the letter dated 4.7.2019.





The Learned Single Judge of the High Court on 08.07.2019 dismissed the writ petition on the ground that the contentions of the Respondent were bereft of any merit and found no fault in the procedure adopted by the Speaker. In view of the concession made before the Hon'ble Court, the Respondent was directed to submit his written comments before 5 pm on 10.7.2019 and the hearing was fixed for 11.7.2019. The Respondent submitted his written comments to the petition on 10.7.2019.

8. In his written comments, apart from reiterating his contentions from the Application dated 3.7.2019, the Respondent submitted that,

(a) He has neither resigned/ voluntarily given up his membership from the AAP nor has he taken the primary membership of the BJP.

(b) He has supported the policies of the Prime Minister as he found him to be more deserving as compared to the leadership of AAP but if this amounted to defection then the Anti-Defection laws needed to be relooked.

9. In the hearing on 11.7.2019, the Respondent filed another application seeking opportunity to cross examine the Petitioner as well as all the reporters and editors concerned of the news reports annexed with the Petition, which, Shri Kaurav submitted, ought to be allowed before the matter can proceed further. Shri Iyer submitted that without prejudice to his contention that the Respondent does not have any right to cross-examine, the Petitioner has no objection to being cross-examined, and to the reporters and editors concerned being cross-examined and prayed that he be allowed to cross-examine the Respondent. Shri Kaurav, at that juncture, opposed the prayer of the Petitioner and contended that such a request can only be made by an application. I considered the requests made, and directed that the matter be listed



on 20.7.2019 for cross-examination of the Petitioner, the Respondent, and for examination of the reporters and editors concerned, of the newspaper reports filed with the Petition.

10. In the meantime, the Respondent challenged the order of the learned Single Judge in WP(C) 7272/2019 by preferring LPA 452/2019.

11. Taking refuge in the fact that the appeal was still pending, on the hearing on 20.7.2019, the Respondent sought an adjournment of the proceedings. However, considering that the proceedings for the day were fixed at the prayer of the Respondent, and considering that all reporters and editors had already been summoned and were present and available for cross-examination by the Respondent, the request was rejected. I myself questioned the said reporters and editors on oath, who all unanimously deposed that the news articles filed with the Petition, are true statements of the facts that transpired. Thereafter the Petitioner was cross-examined by Shri Kaurav on behalf of the Respondent. Shri Iyer, on behalf of Petitioner, at this juncture, sought permission to commence cross-examination of the Respondent, when the same was opposed by Shri Kaurav, who contended that to compel the Respondent to answer questions in cross-examination would amount to a violation of his Fundamental Right under Article 20(3). Shri Iyer opposed the objection and contended that no such objection was raised when the order directing the Respondent to remain present for cross-examination was issued. He submitted that he is willing to have the Speaker consider as to which of his questions are not in violation of Article 20(3) and thereafter have the same put to the Respondent. This too was opposed by the Respondent on the same ground. The proceedings were thus adjourned without cross-examining the Respondent.

12. By order dated 24.7.2019; the Hon'ble High Court of Delhi was pleased to dismiss LPA 452/2019.





13. Thereafter, the hearing in the matter was fixed for 29.7.2019 for cross-examining the Respondent and for personal hearing. However, on 29.7.2019, neither the Respondent nor his advocate appeared in the matter. Instead, an application was filed by the Respondent seeking transcripts and video and audio recordings of all proceedings in the matter, and a period of twelve days to respond.

14. In the hearing on 29.7.2019, Shri Iyer submitted that there is no justification for the Respondent or his Advocate to refrain from appearing before the Speaker, especially when an Advocate has filed his *Vakalatnama* on behalf of the Respondent. He submitted that the proceedings ought to be concluded and the decision in the matter ought to be reserved, in view of the material available on record to support the disqualification of the Respondent. In the interests of justice, the matter was adjourned to 31.7.2019 for the cross-examination of the Respondent and for personal hearing. The Respondent was informed that if he chooses to not appear in the matter, it will be presumed that he has no further submissions to make.

15. On 31.7.2019, once again, neither the Respondent nor his Advocate appeared in the matter. Accordingly, I heard Shri Iyer on behalf of the Petitioner, who submitted that,

(a) The Speaker is only authority competent to hear disqualification proceedings against a member, and the doctrine of necessity applies here. He cited the judgment in *Kihoto Hollohon* in support of this contention.

(b) That the allegation of not verifying the annexures is incorrect inasmuch as the annexures were duly verified by the affidavit in support of the Petition. The Speaker has power to condone minor discrepancies in the Petition. He cited the judgment of *Ravi S. Naik*, 1994 Supp (2) SCC 641 and in *Kedar Deshpande*, (2011) 2 SCC 654. He submitted that in any event, the Respondents are not prejudiced by the lack of



verification, which is supplied in the affidavit. The fact that the Respondent was not prejudiced is occasioned by the fact that the Respondent did not put any question or suggestion to the Petitioner in this regard during cross-examination

(c) That the alleged newspapers were not stolen. Assuming that they were stolen, it still does not take away from the reports their probative value. In any event, even if all the annexures were ignored, the reporters and editors were independently examined and they corroborated the contents of the reports.

(d) That there was no contravention of any rules by the Petitioner.

(e) That the allegation that the Petition is not based on any actual material is irrelevant since the reporters and editors were examined by the Speaker and cross-examined by the Respondent, who corroborated the case of the Petitioner conclusively. Though it is the case of the Petitioner that the Respondent has no right of cross-examination, the contention is not being pressed in view of the decision of the Speaker to accord him the opportunity.

(f) That there is a tacit admission in the written comments of the Petitioner that he supports the party in the opposition in the Assembly.

#### **Closure of Proceedings**

16. Despite the Respondent being informed well in advance to attend the hearing on 29.7.2019, he chose to remain absent by moving an application seeking records and an adjournment to consider the records. Even assuming the Respondent presumed the Application allowed on its mere filing, no explanation is forthcoming for why he failed to attend the hearing for his cross-examination. There is no bar to the Respondent appearing and submitting that he is disabled from presenting his case because the records sought are not provided, and





demonstrating how such disability has occurred. The Respondent has chosen not to so do, which to my mind, is indicative of the actual *bona fides* of the Respondent in moving the application in the first place.

17. Further, even assuming that the Respondent is under the impression that his plea of Article 20(3) gives him protection from cross-examination, there is no explanation as to why he refrained from appearing to contend to such effect, and refrain from answering questions, and then submit that no adverse inference ought to be drawn on his choosing to not answer the questions put to him. In any event, there is no explanation for why an Advocate who has filed his *Vakalatnama* in the matter has chosen to not appear or depute someone to appear and seek an adjournment on his behalf. Nonetheless, the Respondent was provided one further opportunity to appear in the matter, which was adjourned to 31.7.2019 for cross-examination of and for hearing the Respondent.

18. On 31.7.2019, both the Respondent as well as his Advocate were once again absent without reason. To my mind, this is not the behavior of a person who is desirous of genuinely defending himself. This is not an instance of a person disabled for any genuine reason from appearing in the matter, nor is it a fit case for granting an adjournment. An opportunity granted to be heard, if not availed, cannot be regarded as not having been granted.

19. To my mind, I have duly complied with the principles of natural justice enshrined in the Constitution by firstly ensuring he has more than sufficient time to file his written comments, which he has done. I thereafter permitted him to cross-examine the Petitioner, reporters and the editors without getting into the question of whether the Respondent has a right to cross-examine; especially since the Petitioner submitted that he has no objection to the same. I then



gave them two opportunities to appear and make submissions, which too was not availed. In the circumstances, the proceedings were closed and the order was reserved.

#### **Contentions of the Petitioner**

20. The petition submitted by the Petitioner seeking the disqualification of the Respondent raises the following points.

(a) The Respondent was set up as a candidate by the AAP in the election to the Legislative Assembly of Delhi held on 7.2.2015 from the Gandhi Nagar Constituency (AC-61) of Delhi. He was declared elected to the Assembly vide notification CEO/COE/102(31)/2015/22087 dated 11.2.2015 issued by the Election Commission of India.

(b) On 3.5.2019 the Respondent reportedly joined the BJP a rival political party. The Petitioner has annexed news clippings of 5 newspapers which have reported the news of the Respondent joining the BJP. Those news papers are.

- i. The Indian Express dated 4.5.2019
- ii. The Hindu dated 4.5.2019
- iii. The Hindustan Times dated 4.5.2019
- iv. The Times of India dated 4.5.2019
- v. Navbharat Times dated 4.5.2019

The original clippings of the above newspapers have been annexed as Annexure IV to the petition.

(c) The reports appearing in the above newspapers of 4.5.2019 show that the Respondent has joined the BJP.





- (d) The Petitioner, therefore, contends that the Respondent by joining the BJP has voluntarily given up the membership of his original political party, the AAP.
- (e) The Petitioner contends that the Respondent has by his conduct incurred disqualification under paragraph 2(1)(a) of the Tenth Schedule of the Constitution.
- (f) The Petitioner further contends that the Respondent has not resigned his seat in the Assembly. The Petitioner therefore prays that the Respondent may be disqualified for being a member of the Assembly.

#### **Contentions of the Respondent**

21. The Respondent has in his written comments raised the following contentions.
- (a) The present petition is baseless and is submitted without any proper evidence and devoid of any merit and therefore deserves to be dismissed.
- (b) The allegation that the Respondent has voluntarily given up the membership of AAP is baseless because there cannot be a deemed relinquishment of the membership of a party. So, the Respondent specifically denies that he has voluntarily given up the membership of the party.
- (c) The Respondent has not voluntarily resigned from the AAP nor has he been expelled from the AAP. He therefore continues to be a member of the AAP.
- (d) The entire basis of the petition is newspaper reports annexed to the petition, which is not admissible evidence being hearsay.
- (e) It is the duty of the Speaker to examine first, whether the petition complies with the requirements of Rule 6 of the Rules. The present petition does not contain any documentary evidence to prove the claim of the Petitioner. Further, the annexures have not been verified in accordance with the requirements of Rule 6 of Rules. Therefore, the



Speaker should have dismissed the petition as per the direction contained in Rule 7(2) of the Rules.

(f) The Rules framed by the Speaker under paragraph 8 of the Tenth Schedule are 'obligatory' in nature.

(g) As was held by the Supreme Court in Kihoto Hollohan Vs.Zachillu(AIR 1993 SC 412)the Speaker is a judicial authority and he acts as Tribunal when deciding cases under the Tenth Schedule. Hence, the proceedings shall be governed by the provisions of the Code of Civil Procedure, 1908. Any deviation therefrom will vitiate the proceedings.

(h) The Speaker is active in politics and is politically inclined towards the AAP. Further, he has continued with the proceedings even after the preliminary objections were raised by the Respondent against the Speaker conducting the proceedings because of an apprehension about his bias. This is against the principles of the natural justice.

(i) Hence the petition should be dismissed or in the alternative, the Respondent may be allowed to cross examine the Petitioner and also the reporters and editors of the newspapers cited by the Petitioner.

(j) The Respondent has not taken the membership of the BJP. He has not violated any directions given by the Legislative Party deliberately and intentionally. Hence, no anti-defection proceedings can be initiated or continued against him.

(k) The Respondent supports the dynamic vision and developmental policies of Sh. Narendra Modi, the Prime Minister of India. He supports his nationalism, anti-terrorism, inclusive development and many other policies. The Respondent contends





that if "Balakot surgical strikes" and "updating the military preparedness" amounts to defection, then the whole law on defection should be relooked.

m) The Respondent has not left the AAP. Therefore the present petition is bereft of merit and deserves to be dismissed.

**Analysis of rival contentions and appraisal of evidence.**

22. In support of his contention that I was biased and should recuse from hearing the matter, the Respondent quoted cases such as *Ranjit Thakur Vs. Union of India* (1986) 4 SCC 611 and *Justice P.D. Dinakaran vs. Hon'ble Judges' inquiry committee WP (Civil) No. 217 of 2011*.

23. *Ranjit Thakur's* case relates to the court martial proceedings and the issue dealt with therein was the likely bias on the part of one of the members of the Tribunal. As will be clear, this case has no relevance to the proceedings under the Tenth Schedule which vests the adjudicatory function exclusively in the speaker.

24. The question of bias of the Speaker was addressed by the Supreme Court in *Kihoto Hollohan Vs. Zachillhu* (supra) and suggestion of political bias on the part of the Speaker was originally rejected by the court. The Court said,

"The contention that the investiture of adjudicatory function in the Speaker/ Chairman would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected."

25. *P.D. Dinakaran's* case was quoted by the Respondent for no purpose than that he wanted to reiterate the proposition that justice should not only be done, but manifestly and undoubtedly be seen to be done. It is an unexceptionable proposition and the observation of the Supreme Court in *Kihoto* (Supra) is an answer to it.



26. In regards the prayer of the Respondent that I should recuse myself from the hearing I can only quote the observation of the Supreme Court in Jagjit Singh V. State of Haryana (AIR SC 2006).

"The Speaker, in law, was the only authority to decide whether the Petitioners incurred or not disqualification under the Tenth Schedule of the Constitution in his capacity as Speaker"

The court went further and said,

"It is not a case where the Speaker could transfer the case to some other tribunal. The doctrine of necessity under these circumstances would also be applicable."

Thus there is no merit in the contention raised by the Respondent.

27. The contention of non-compliance with the Rules has already been dealt with by me in paragraph 2 above. In any event, the Respondent has not demonstrated any prejudice caused to it as a consequence of the verification paragraph in the Petition not drawing reference to the Annexures, but the Affidavit in support of the Petition drawing a reference to it. The Annexures, in any event, have been independently corroborated by the reporters and editors on oath. Thus, the objection is rejected. For the same reason, the aspects of newspapers being stolen have to be rejected as well inasmuch as even if they were stolen, the evidence, especially when corroborated, was admissible.

28. The contention of the Respondent that the Petitioner has not presented any proper evidence needs to be carefully examined.

(i) The Respondent has averred that the Petitioner has presented only newspapers and no documentary evidence to support his claim. The Respondent is right, in saying that the Petitioner has presented only newspapers clippings as evidence. So, the question





I need to examine is whether newspaper evidence is proper evidence in the proceedings under the Tenth Schedule.

Before I deal with this question I may advert briefly to an issue of considerable importance in the content of the proceedings under the Tenth Schedule. What exactly is the nature of these proceedings? Are they in the nature of court trial? In a court trial the rules of the Indian Evidence Act need to be strictly applied. But that is not the case in the proceedings under the Tenth Schedule.

The Supreme Court in *Jagjit Singh v. State of Haryana* (supra) says,

*"It is necessary to bear in mind that the proceedings under the Tenth Schedule are not comparable to either a trial in a court of law or departmental proceedings for disciplinary action against an employee. But the proceedings here are against an elected representative of the people and the Judge holds the independent high office of the Speaker."*

The Court further says,

*"The Tribunal can draw an inference from the conduct of a member, of course depending upon the facts of the case and totality of the circumstances."*

(ii) In the light of this clear exposition of the nature of the proceedings under the Tenth Schedule and the parameters within which the Speaker acting as the Tribunal has to reach his findings in a given case, the contention regarding proper evidence needs to be dealt with keeping in view the facts and totality of circumstances. What is required for the tribunal is to draw a reasonable inference on the basis of the facts and circumstances not by strictly applying the rule of evidence contained in the Indian Evidence Act.



(iii) The Respondent has contended that the newspaper evidence is hearsay evidence and hence is not admissible. He further says that a member cannot be disqualified merely on the basis of newspaper evidence. The Respondent has quoted the following cases in support of his contentions:

- a. Joseph M. Puthussery v. TS John and Ors. (1.12.2010 Supreme Court)
- b. Quamarul Islam v. SK Kanta [1994 (1) SCR 210]
- c. Laxmiraj Shetty and Anr. V. State of Tamil Nadu [(1988) 3 SCC 319]

In the Joseph M. Puthussery case, the Court rejected the newspaper evidence on the sole ground that the reporters stated before the court that they had no personal knowledge of the events published.

In the case of Quamarul Islam the court says, *"since the maker of the reports which formed the basis of the publications did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible."*

In the Laxmiraj Shetty and Anr. V. State of Tamil Nadu case, the Hon'ble Supreme Court says, *"It is now a well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statements appearing in court and deposing to have perceived this fact reported."*

(iv) None of these three cases cited by the Respondent is of much help to him in the circumstances of the present case. What the Hon'ble Supreme Court emphasizes in all the above three cases is that newspaper evidences by itself is inadmissible in the absence of the corroboration by the makers of the reports. In other words, newspaper evidence





becomes admissible when it is corroborated by the maker of the report. I may also mention here that out of the three cases, two relate to election disputes and one a murder case. In criminal cases as well as elections cases involving corruption, standard of proof is very high. In those categories of cases the charge needs to be proved beyond a shadow of doubt, unlike in civil cases where preponderance of probability is the standard.

(v) In the present case the reporters and editors of each of the newspapers cited in evidence appeared before me. I first examined them under oath, and then they were cross-examined by the Ld. Counsel for the Respondent, Shri Kaurav, in the presence of the Respondent. During the cross examination the reporters stated on oath that the content of each of the report was true and that some of the reporters were present at the venue where it was announced in a press conference that the Respondent has joined the BJP. Shri Sourav Roy Burman, Senior Correspondent of the Indian Express who was present at the BJP Headquarters during the alleged press conference, in answer to a question from the Counsel for the Respondent,

*"I had a phone conversation with him (Shri Anil Bajpai) like something around 20 minutes , I spoke to him, he himself said I am joining the BJP and if you ask if who was there in the BJP Headquarters, you had Mr. Shyam Jaju, Vijay Goel with him so it was very evident. So based on that the entire story was published."*

The Respondent was present during the cross examination. This reporter further said that a press release was officially issued by the BJP Office saying that the Respondent has joined the BJP. I note that there was no suggestion put to the Reporter to the effect that he did not have a telephonic conversation with Mr. Bajpai.



Shri Jatin Anand, Principal correspondent of The Hindu who deposed that he was present at the BJP Headquarters and filed the report in The Hindu and stated on oath *"Sir, the formality that I saw was of the gentleman (Anil Kumar Bajpai) concerned being welcomed into the party with the party saying on record which was also later conveyed to us in a press release that his gentleman is joining the party."*

The Respondent was present during the cross examination. I note that there was no suggestion put to the Reporter to the effect that the Reporter was not present at the press conference or that he did not see the Respondent at the press conference.

Shri Atul Mathur, Senior Assistant Editor of the Times of India stated in answer to a question from the Counsel that he wrote the story about the Respondent joining the BJP. He said,

*"Shri Bajpai joined the Party (BJP). He was there on the dais when other leaders of the BJP were there. This is what he said. That what the BJP leader said, that he is joining the party today."*

Ms. Shivani Singh, Metro Editor of the Hindustan Times stated during the cross examination that she had seen the press release from the BJP headquarters saying that Shri Bajpai had joined the BJP. She said she had absolute faith in her reporters who were present at the venue and filed the report.

Ms. Rishi Chitlangia, Assistant Editor of Hindustan Times stated that the photograph published in the paper showing the Respondent along with the BJP leaders was a source photograph released by the BJP.

Shri Prashant Soni, Reporter, Navbharat Times, stated during the cross examination that there was a press release from the BJP of the Respondent joining the





BJP. He also stated that during the press conference there were questions from the reporters about Shri Bajpai joining the BJP to which he said that had joined the BJP.

The Editors / Reporters who appeared on behalf of each of these newspapers stated clearly and unambiguously that the content of the reports filed by their reporters was accurate and that they believed the same to be true.

The Ld. Counsel of the Respondent repeatedly asked a question of the reporters and editors whether they ascertained whether the Respondent had filled up the application form for joining the BJP. They replied that, that was not their duty especially when the BJP itself issued a press release informing everyone that the Respondent had joined their party, and (in respect of some reporters) they confirmed the same from the Respondent.

29. The Petitioner was also cross examined by the Ld. Counsel of the Respondent. The Petitioner stated in answer to questions put by the Counsel that the Respondent was not expelled from the AAP but when he joined the BJP it is assumed that he has voluntarily given up the membership of the AAP. The Ld. Counsel asked the Petitioner whether he has any personal knowledge about the Respondent joining the BJP. The Petitioner stated that he had no personal knowledge about this fact.

30. The contention of the Respondent that there cannot be a deemed relinquishment of the membership of the party has no merit. The Hon'ble Supreme Court in Ravi S. Naik v. Union of India (AIR 1994 SC 3026) explains the difference between resignation and voluntarily giving up the membership of the party. The Court says,

*"The words 'voluntarily given up the 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 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."*

It is clear from the above observation of the Hon'ble Supreme Court that it is the inference drawn from the conduct of the Member which is decisive in these matters.

31. The contention of the Respondent relating to admissibility of newspaper evidence has already been dealt with above.

32. The contention of the Respondent that the Petition should have been dismissed in the absence of verification of the annexures has already been dealt above.

33. The contention of the Respondent that the rules framed by the Speaker under Para 8 of the Tenth Schedule are obligatory has no merit. The Hon'ble Supreme Court in Mahachandra Prasad Singh v. Chairman Bihar Legislative Council [(2004) 8 SCC (74)] said,

*"Since disqualification rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with provisions of the Constitution. They cannot therefore, be regarded as constitutional mandates and a violation of the disqualification of rules does not afford a ground for judicial review of the order of the Speaker."*

34. The contention of the Respondent that he has not taken the membership of the BJP and he has not violated any direction given by the Legislature Party has no merit. The case sought to be made out by the Respondent, going on the basis of the written comments and the questions put to the Petitioner, the reporters and the editors, appears to be that the Respondent has not actually filled any form or signed any document whereby he was conferred membership by the





BJP. Shri Iyer had rightly submitted in this regard that the conduct of the Respondent has to be seen to ascertain whether he has given up the membership of his party. He had submitted that the Respondent has clearly sought to give the perception that the Respondent has joined the BJP. In my view, paragraph 11 quoted above, of the Hon'ble Supreme Court's observations in Ravi S Naik's case answers this question fully.

Further, submission of non-violation of any directions issued by the Legislature Party is irrelevant for the consideration of a petition under Paragraph 2(1)(a) of the Tenth Schedule.

35. The Respondent's support to the vision of the Prime Minister, Balakot Strike, strengthening of the armed forces etc., by itself is of no legal consequence in the context of the Tenth Schedule. The Schedule deals with the conduct of a legislator, which affords a ground to believe that he had voluntarily given up the membership of his party.

36. The contention of the Petitioner is that the Respondent has joined the BJP. However, he is not in possession of any evidence other than the newspaper reports of 4<sup>th</sup> May 2019. He has also admitted that he has no personal knowledge about the Respondent having joined the BJP. However, on the basis of the newspaper reports, which have now been corroborated by the reporters and editors on oath, the Petitioner prays that the Respondent be disqualified from being a Member of the Delhi Legislative Assembly.

#### **Findings.**

37. I have very carefully examined the key contentions of both the Petitioner and the Respondent. I note that the Respondent refused to be cross examined by the Petitioner's counsel, and has chosen to remain absent from the hearings on the dates fixed for his cross-examination after the hearing on 20.7.2019. Even on 20.7.2019, at the juncture when the cross-examination of the Respondent was to commence, the Ld. Counsel of the Respondent, in



fact, raised a Constitutional objection to the Respondent being cross examined. He submitted that Article 20(3) of the Constitution protects the right of the Respondent against self incrimination. On the point I adjourned the hearing of 20<sup>th</sup> July, 2019 to consider the contention. After consideration, the matter was directed to be taken up on 29.7.2019 for the Respondent being cross-examined, and being heard. This is because in my view, Article 20(3) applies to an offence, whereas the charge of defection is not a charge of an offence, Article 20(3) has no application to this case. The counsel for the Respondent was wrong in raising this objection and avoiding an opportunity to the Petitioner to cross examine the Respondent. In any event, as earlier observed, nothing prevented the Respondent from presenting himself for cross-examination, refusing to answer questions, and contending that an adverse inference in this regard ought to not be drawn. The conduct of the Respondent in avoiding the hearing, in my view, indicates lack of *bona fide*.

38. The Hon'ble Supreme Court has set the parameters within which to arrive at the findings in a case under the Tenth Schedule.

In Mahachandra Prasad Singh's Case, the Supreme Court said, *"there is no lis between the person moving the petition and Member of the House who is alleged to have incurred disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence."*

(i) Thus the first parameter is that the Petitioner is not required to lead evidence. To the contrary, I am under an obligation to inquire into the allegations even if the Petitioner were to, for any reason, withdraw his Petition. I am under an obligation to inquire and consider the allegations made, not on the basis of what the Petitioner states or produces, but independently.





(ii) The second parameter is that the Respondent is at liberty to file his written comments and lead evidence, if any against the averments in the Petition. This point was made clear by the Hon'ble Supreme Court in the Jagjit Singh case (*supra*). I am obligated to, in compliance with principles of natural justice, to hear the Respondent as well before I decide the question.

(iii) The third parameter is that the Speaker has to draw a reasonable inference on the basis of the conduct of the Respondent. [Ravi S. Naik (*supra*) and Jagjit Singh (*supra*)]. This inference has to be drawn on the facts and the totality of the circumstances [Jagjit Singh case (*supra*)].

39. The Petitioner was not required to lead evidence since there is no *lis* between the Petitioner and the Respondent. The Petitioner presented the newspaper evidence and the newspaper reporters were examined by me and cross examined by the Ld. Counsel for the Respondent to corroborate the truth of the reports. The Hon'ble Supreme Court has ruled in a number of cases that newspaper evidence is admissible if corroborated by the makers of the reports. Therefore, the evidence presented by the petitioner is credible, trustworthy and can be relied on to draw a reasonable inference.

40. The Respondent denied the specific charge that he had joined the BJP and voluntarily given up the membership of the AAP. But nowhere in his written comments did he specifically deny his presence in the BJP office where he was welcomed by the leaders of that party. The Respondent did not deny specifically that he participated in the press conference where it was announced that the Respondent has joined the BJP. One of the news reporters who deposed before me said that he had a 20 minute talk with the Respondent on the telephone during which he disclosed that he was joining the BJP. Another reporter stated during the cross



examination that during the press conference questions were put by reporters to the Respondent about his joining the BJP to which he answered that he has joined the BJP. None of the witnesses who were cross examined denied the contents of the news articles which they had published. Each one of them corroborated their respective news articles which were annexed by the Petitioner as part of his petition. The Reporters/ Editors confirmed that their article was based on the personal presence of the Reporters in the Press Conference and the official press release received from the Delhi BJP Office. To none of these reporters was put any suggestion that the conduct of the Respondent, as reported by them, is incorrectly reported.

41. Another credible piece of evidence to prove that the Respondent has joined the BJP is the press release issued officially by the BJP stating that the Respondent has joined the BJP. All the reporters and the editors who deposed before me referred to this press release issued by the Delhi BJP office. Even the photograph that was published alongside the news reports was deposed to be a source photo supplied by the BJP.

42. The Ld. Counsel of the Respondent tried to focus on the technicality of joining a party by filling up the forms and paying the annual subscription etc. In my view this was needless as what has to be seen is the conduct of the Respondent as would indicate that the Respondent has given up his membership.

43. For the purpose of proving that a member has joined another party, it is not necessary to prove that the person, against whom petition has been filed, has filled up an application form and paid the annual subscription. Materials available and the conduct of the Members are to be examined by the Speaker. The Hon'ble Supreme Court in Jagjit Singh (supra) case was dealing with the case of an independent MLA who joined a party. The Court says,





*"to find out whether an independent members has extended only outside support or in fact has joined a political party, materials available and also the conduct of the member is to be examined by the Speaker. It may be possible in a given situation for the Speaker to draw an inference that an independent MLA has joined a political party. No hard and fast rule can be laid down when the answer is dependent on the facts of each case.*

This is the approach the Tribunal is required to take when deciding the question of a Member of the Legislature joining another party. The question is whether a reasonable inference can be drawn from the materials available and the conduct of the Member.

44. In the present case sufficient material is available in the form of news reports corroborated by the makers of these reports. The appearance of the Respondent in the BJP Headquarters, the welcome accorded to him by the BJP leaders and the press conference in which the Respondent says that he has joined the BJP, the press notice issued by the BJP office announcing that the Respondent has joined the BJP, are clear evidences that the Respondent has joined the BJP. This is especially so in the absence of any suggestions to the reporters to the contrary.

45. Thus from the above, materials and the conduct of the Respondent, I am drawing an inference that the Respondent has joined the BJP, which happens to also be the party in opposition in the Assembly.

46. Under the Tenth Schedule, if a member joins another party without resigning from his original political party it would amount to voluntarily giving up the membership of his party. This was decided by the Hon'ble Supreme Court in *Viswanathan v. the Hon'ble Speaker, Tamil Nadu Legislative Assembly*, Madras (AIR 1996 SC 1060).



47. Hence I find and hold that the Respondent, Shri Anil Kumar Bajpai a Member of the Legislative Assembly of the National Capital Territory of Delhi has voluntarily given up the membership of his party, the legislature party of the AAP, within the meaning of paragraph 2(1)(a) of the Tenth Schedule of the Constitution.

48. The appearance of the Respondent in the BJP Office in Delhi, the press conference announcing his joining the party and the press note of the BJP declaring that he has joined the party on 3.5.2019 all clearly prove that he has voluntarily given up the membership of his party namely the AAP on 03.05.2019. Hence the Respondent has become subject to disqualification on 03.05.2019.

**I NOW DECLARE AS UNDER.**

That Shri Anil Kumar Bajpai, the Respondent in this case, an elected Member of the Legislative Assembly of the National Capital Territory of Delhi, elected from Gandhi Nagar, Assembly Constituency No.61 has become subject to disqualification under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution. That the disqualification of said Shri Anil Kumar Bajpai takes effect from 03<sup>rd</sup> May 2019.

Delhi

Date: 08<sup>th</sup> August 2019



(Ram Niwas Goel)

Speaker

Legislative Assembly,

National Capital Territory of Delhi